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The Code of Federal Regulations is sold by the Superintendent of Documents.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 70, 71, and 72

[NRC–2019–0032]

Pre-Application Communication and Scheduling for Accident Tolerant Fuel Submittals

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory issue summary; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Regulatory Issue Summary (RIS) 2019–032, ''Pre-Application Communication and Scheduling for Accident Tolerant Fuel Submittals.'' This RIS seeks Accident Tolerant Fuel (ATF) scheduling information for pre-application activities, topical report submittals, and other licensing submittals from all addressees to help inform the NRC's budget and resource planning for the eventual review of ATF-related applications.

DATES: The RIS is available as of January 21, 2020.

ADDRESSES: Please refer to Docket ID NRC–2019–0032 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0032. Address questions about NRC Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* Regulatory Issue Summary (RIS) 2019–032, ''Pre-Application Communication and Scheduling for Accident Tolerant Fuel Submittals'' is available in ADAMS under Accession No. ML19316B342.
- *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.
- *NRC's Public Website:* This RIS is also available on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/gen-comm/reg-issues/* (select ''2019'' and then select ''RIS–19–03'').

FOR FURTHER INFORMATION CONTACT: Phillip Sahd, Office of Nuclear Reactor Regulation, telephone: 301–415–2314, email: *Phillip.Sahd@nrc.gov* and Marilyn Diaz, Office of Nuclear Material Safety Safeguards, telephone: 301–415–7110, email: *Marilyn.Diaz@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: The NRC did not publish a notice of opportunity for public comment on this RIS in the **Federal Register**, because it pertains to an administrative aspect of the regulatory process that involves the voluntary submission of information on the part of addressees and does not represent a departure from current regulatory requirements.

Regulatory Issue Summary (RIS) 2019–032, ''Pre-Application Communication and Scheduling for Accident Tolerant Fuel Submittals'' is available in ADAMS under Accession No. ML19316B342.

As noted in the **Federal Register** issued on May 8, 2018 (83 FR 20858), this document is being published in the Rules section of the **Federal Register** to comply with publication requirements under title 1 of the *Code of Federal Regulations* chapter I.

Dated at Rockville, Maryland, this 9th day of January, 2020.

For the Nuclear Regulatory Commission.

Lisa M. Regner,

Branch Chief, Operating Experience Branch, Division of Reactor Oversight, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–00477 Filed 1–17–20; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Part 205

RIN 1901–AB50

Administrative Updates to Personnel References

AGENCY: Office of Cybersecurity, Energy Security, and Emergency Response, U.S. Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (''DOE'') publishes this final rule to update personnel references to correspond with the Secretary's delegation of authority. This final rule is needed to reflect changes to the Secretary's delegation of authority and does not otherwise substantively change the current regulations.

DATES: This rule is effective January 21, 2020.

FOR FURTHER INFORMATION CONTACT: Kate Marks, U.S. Department of Energy, Office of Cybersecurity, Energy Security, and Emergency Response, CR–20, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–2264. Email: *energyssa@hq.doe.gov;* Ms. Kavita Vaidyanathan, U.S. Department of Energy, Office of the General Counsel, GC–76, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–0669. Email: *kavita.vaidyanathan@hq.doe.gov.*

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I. Background and Summary of Final Rule

The regulations at 10 CFR part 205, subpart W, provide procedural regulations concerning the Secretary of Energy's issuance of an emergency order under the Federal Power Act. These regulations were last updated in January of 2018 (83 FR 1174; Jan. 10, 2018). The Secretary of Energy delegated the authority to review compliance filings, and issue implementing letters and directives; and take such other actions as are necessary and appropriate to implement and administer an emergency order issued by the Secretary or Deputy Secretary of Energy to the Under Secretary of Energy. *See* DOE Delegation Order No. 00–002.00Q (Nov. 1, 2018). In turn, the Under Secretary of Energy delegated the authority to review compliance filings, and issue implementing letters and directives; and take such other actions as are necessary and appropriate to implement and administer an emergency order issued by the Secretary or Deputy Secretary of Energy to the Assistant Secretary for Cybersecurity, Energy Security, and Emergency Response. *See* DOE Delegation Order No. 00–002.23 (June 4, 2019).

The administrative updates to a personnel reference are needed to conform to the current delegation authority to the Office of Cybersecurity, Energy Security, and Emergency Response. However, it is possible that in the future the Secretary will delegate this authority to another office within DOE. Therefore, this final rule revises DOE regulations at 10 CFR 205.383 by changing a reference to ''the Department of Energy's Office of Electricity Delivery and Energy Reliability'' to ''the office that is delegated the authority by the Secretary.''

II. Final Rulemaking

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

For the administrative update discussed in Section 1, DOE finds that providing an opportunity for public comment prior to publication of this rule is not necessary because DOE is carrying out an administrative change that does not substantively alter the existing 10 CFR part 205 regulatory framework. The actions taken concerning issuance of an emergency order under the Federal Power Act—including the review of compliance filings, issuance of implementing letters and directives, and other necessary actions—are not affected by this regulation recognizing the delegation of authority to take these actions. In addition, delegation of the authorities specified in the regulation has already occurred and may occur again as appropriate. For these reasons, providing an opportunity for notice and comment prior to publication of the rule would serve no purpose. For the same reasons, DOE is waiving the 30-day delay in effective date.

III. Regulatory Review

A. Review Under Executive Order 12866

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

B. Review Under Executive Orders 13771 and 13777

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

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

(i) Eliminate jobs, or inhibit job creation;

(ii) Are outdated, unnecessary, or ineffective;

(iii) Impose costs that exceed benefits;

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

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

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

DOE concludes that this final rule is consistent with the directives set forth in these Executive orders. This final rule does not substantively change the existing regulations and is intended only to make personnel references in the regulations at 10 CFR part 903 consistent with the Secretary's delegation of authority.

C. Review Under the National Environmental Policy Act of 1969

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

D. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)* requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by

Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *http://energy.gov/gc/office-general-counsel.* As discussed above, DOE has determined that prior notice and opportunity for public comment is unnecessary for this final rule. In accordance with 5 U.S.C. 604(a), no regulatory flexibility analysis has been prepared for this rule.

E. Review Under the Paperwork Reduction Act of 1995

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

F. Review Under the Unfunded Mandates Reform Act of 1995

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

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

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

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

H. Review Under Executive Order 13132

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

I. Review Under Executive Order 12988

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

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

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

K. Review Under Executive Order 13211

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

designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

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

L. Congressional Notification

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

IV. Approval of the Office of the Secretary

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

List of Subjects in 10 CFR Part 205

Administrative practice and procedure, Energy, Recordkeeping and reporting requirements.

Signed in Washington, DC, on December 23, 2019.

Karen. S. Evans,

Assistant Secretary, Office of Cybersecurity, Energy Security, and Emergency Response.

For the reasons stated in the preamble, DOE amends part 205 of chapter II of title 10 of the Code of Federal Regulations as set forth below:

PART 205—ADMINISTRATIVE PROCEDURES AND SANCTIONS

Subpart W—Electric Power System Permits and Reports; Applications; Administrative Procedures and Sanctions; Grid Security Emergency Orders

■ 1. The authority citation for subpart W of part 205 is revised to read as follows:

Authority: Pub. L. 95–91, 91 Stat. 565 (42 U.S.C. 7101); Pub. L. 66–280, 41 Stat. 1063 (16 U.S.C. Section 792 *et seq.*); E.O. 10485, 18 FR 5397, 3 CFR, 1949–1953, Comp., p. 970 as amended by E.O. 12038, 43 FR 4957, 3 CFR 1978 Comp., p. 136; Department of Energy Delegation Order No. 00–002.00Q (Nov. 1, 2018).

§ 205.383 [Amended]

■ 2. Section 205.383(a) introductory text is amended by removing the words ''the Department of Energy's Office of Electricity Delivery and Energy Reliability'' and adding in their place the words ''the office that is delegated the authority by the Secretary''.

[FR Doc. 2020–00101 Filed 1–17–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2016–BT–STD–0022]

RIN 1904–AD69

Energy Conservation Program: Energy Conservation Standards for Uninterruptible Power Supplies

Correction

In rule document 2019–2635 beginning on page 1447 in the issue of Friday, January 10, 2020, make the following correction:

§ 430.32 [Corrected]

On page 1503, in § 430.32(z)(3) the table should appear as follows:

Battery charger product class	Rated output power	Minimum efficiency
10a (VFD UPSs)	$0W < P_{rated} \leq 300\ W$	$-1.20E{-}06 * P^2_{rated} + 7.17E{-}04 * P_{rated} + 0.862$.
	$300\ W < P_{rated} \leq 700\ W$	$-7.85E{-}08 * P^2_{rated} + 1.01E{-}04 * P_{rated} + 0.946$.
	$P_{rated} > 700\ W$	$-7.23E{-}09 * P^2_{rated} + 7.52E{-}06 * P_{rated} + 0.977$.
10b (VI UPSs)	$0W < P_{rated} \leq 300\ W$	$-1.20E{-}06 * P^2_{rated} + 7.19E{-}04 * P_{rated} + 0.863$.
	$300\ W < P_{rated} \leq 700\ W$	$-7.67E{-}08 * P^2_{rated} + 1.05E{-}04 * P_{rated} + 0.947$.
	$P_{rated} > 700\ W$	$-4.62E{-}09 * P^2_{rated} + 8.54E{-}06 * P_{rated} + 0.979$.
10c (VFI UPSs)	$0W < P_{rated} \leq 300\ W$	$-3.13E{-}06 * P^2_{rated} + 1.96E{-}03 * P_{rated} + 0.543$.
	$300\ W < P_{rated} \leq 700\ W$	$-2.60E{-}07 * P^2_{rated} + 3.65E{-}04 * P_{rated} + 0.764$.
	$P_{rated} > 700\ W$	$-1.70E{-}08 * P^2_{rated} + 3.85E{-}05 * P_{rated} + 0.876$.

[FR Doc. C1–2019–26354 Filed 1–17–20; 8:45 am]

BILLING CODE 1301–00–D

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, 326, 337, 353, and 390

RIN 3064–AF14

Removal of Transferred OTS Regulations Regarding Certain Regulations for the Operations of State Savings Associations and Conforming Amendments to Other Regulations

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is adopting a final rule (final rule) to rescind and remove certain regulations transferred in 2011 to the FDIC from the former Office of Thrift Supervision (OTS) pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) because they are unnecessary, redundant, or duplicative of other regulations or safety and soundness considerations. In addition to the removal, the FDIC is making technical changes to other parts of the FDIC's regulations so that they may be applicable on their terms to State savings associations. Following the removal of the identified regulations, the regulations governing the operations of State savings associations will be substantially the same as those for all other FDIC-supervised institutions.

DATES: The final rule is effective February 20, 2020.

FOR FURTHER INFORMATION CONTACT: Karen J. Currie, Senior Examination Specialist, 202–898–3981, *kcurrie@fdic.gov,* Division of Risk Management Supervision; Cassandra Duhaney, Senior Policy Analyst, 202–898–6804, Division of Depositor and Consumer Protection; Gregory Feder, Counsel, 202–898–8724; Suzanne Dawley, Counsel, 202–898–6509; or Linda Hubble Ku, Counsel, 202–898–6634, Legal Division.

SUPPLEMENTARY INFORMATION:

I. Policy Objectives

The policy objectives of the proposed rule are twofold. The first is to simplify the FDIC's regulations by removing unnecessary ones and thereby improving ease of reference and public understanding. The second is to promote parity between State savings associations and State nonmember banks by having certain regulations governing the operations of both classes of institutions addressed in the same FDIC rules.

II. Background

A. The Dodd-Frank Act

Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act,[1] the powers, duties, and functions of the former Office of Thrift Supervision (OTS) were divided among the FDIC, as to State savings associations, the Office of the Comptroller of the Currency (OCC), as to Federal savings associations, and the Board of Governors of the Federal Reserve System (FRB), as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act, provides the manner of treatment for all orders, resolutions, determinations, regulations, and advisory materials that had been issued, made, prescribed, or allowed to become effective by the OTS.[2] The section provides that if such issuances were in effect on the day before the transfer date, they continue in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

The Dodd-Frank Act directed the FDIC and the OCC to consult with one another and to publish a list of the continued OTS regulations to be enforced by each respective agency. The list was published by the FDIC and OCC as a Joint Notice in the **Federal Register** on July 6, 2011,[3] and shortly thereafter, the FDIC published its transferred OTS regulations as new FDIC regulations in 12 CFR parts 390 and 391.[4] When it republished the transferred OTS regulations, the FDIC noted that its staff would evaluate the transferred OTS regulations and might later recommend incorporating the transferred OTS rules into other FDIC rules, amending them or rescinding them, as appropriate.

Section 312(b)(2)(C) of the Dodd-Frank Act[5] amended the definition of ''appropriate Federal banking agency'' contained in section 3(q) of the Federal Deposit Insurance Act (FDI Act)[6] to add State savings associations to the list of entities for which the FDIC is designated as the ''appropriate Federal banking agency.'' As a result, when the FDIC acts as the designated ''appropriate Federal banking agency'' (or under similar terminology) for State savings associations, as it does here, the FDIC is authorized to issue, modify, and rescind regulations involving such associations and for State nonmember banks and insured branches of foreign banks.

B. 12 CFR Part 390, Subpart S

One of the rules of the former OTS that was transferred to the FDIC, 12 CFR part 563, governs many of the operations of State savings associations. The former OTS's rule was transferred to the FDIC with nominal changes and is now found in the FDIC's rules at part 390, subpart S, entitled ''State Savings Associations—Operations.''[7] Subpart S governs a wide range of operations of State savings associations, as further discussed below.[8]

III. The Proposal

A. Removal of Part 390, Subpart S, Operations of State Savings Associations

On October 31, 2019, the FDIC published a notice of proposed rulemaking (NPR or proposal) regarding the removal of part 390, subpart S, which generally concerns supervision and governance of State savings associations, including operations dealing with chartering documents, the issuance and sale of State savings association securities, mergers and consolidations, advertising, composition of the board of directors, tying restrictions, employment contracts, affiliate transactions, insider loans, pension plans, capital rules for subordinated debt securities and certain preferred stock, capital distributions, management and financial policies, examinations, financial derivatives, interest-rate-risk management, Bank Secrecy Act (BSA), fidelity bonds, conflicts of interest, and changes of directors or officers.[9] The NPR proposed removing part 390, subpart S from the Code of Federal Regulations (CFR) because, after careful review and consideration, the FDIC believed it was largely unnecessary, redundant, or duplicative of existing regulations or safety and soundness considerations. The FDIC received no comments on these aspects of the proposal.

Rather than restate the rationale for rescission and removal of each section of subpart S, the reader is referred to the fulsome explanations for rescission and removal provided in the NPR,[10] which the FDIC references here as the basis for finalizing the regulations as proposed. In several instances, the proposal to remove a specific section of subpart S was coupled with a proposed amendment to another section of the FDIC's regulations. These amendments are discussed below.

B. Amendments to Parts 303, 326, 337, and 353

The proposal would have made largely technical amendments to sections of the FDIC's regulations located in parts 303, 326, 337, and 353. The proposal would have changed the scope of several regulations to make them applicable, not only to State nonmember banks, but also to State savings associations. One proposed amendment would have included provisions specific to the Home Owners Loan Act (HOLA)[11] and applicable to State savings associations in regulations that previously had not applied to State savings associations, as further described below. Other proposed changes would have revised FDIC regulations to take into account changes to other regulations that are cross-referenced in those FDIC regulations.

This Supplementary Information section of this final rule sets forth the rationales for the amendments to the FDIC's regulations located in parts 303, 326, 337, and 353 because in each case the proposal would have made, and the final rule makes, revisions to FDIC regulations that will remain in place, albeit in an amended form.

[1] 12 U.S.C. 5411.

[2] 12 U.S.C. 5414(b).

[3] List of Office of Thrift Supervision Regulations to be Enforced by the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 76 FR 39246 (Jul. 6, 2011).

[4] Transfer and Redesignation of Certain Regulations Involving State Savings Associations Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, 76 FR 47652 (Aug. 5, 2011).

[5] 12 U.S.C. 5412(b)(2)(C).

[6] 12 U.S.C. 1813(q).

[7] 12 CFR part 390, subpart S.

[8] The transferred OTS provision governing the frequency of safety and soundness examinations of State savings associations, 12 CFR 390.351, was rescinded and removed by the final rule that amended 12 CFR 337.12 to reflect the authority of the FDIC under section 4(a) of HOLA to provide for the examination of safe and sound operation of State savings associations. *See* Expanded Examination Cycle for Certain Small Insured Depository Institutions and U.S. Branches and Agencies of Foreign Banks, 81 FR 90949 (Dec. 16, 2016).

[9] 84 FR 58492 (Oct. 31, 2019).

[10] *Id.*

[11] 12 U.S.C. 1461, *et seq.*

1. Part 303—Filing Procedures

a. Subpart D—Mergers

The proposal would have amended § 303.62(a)(1) to clarify that subpart D of part 303 [12] applies to merger transactions in which the resulting institution is either a State nonmember bank or a State savings association. This would permit the FDIC to rescind § 390.332, which deals with mergers and similar transactions in which the resulting institution is a State savings association. The proposal also would have added a new paragraph (c) to § 303.64 to take into account HOLA's expedited statutory processing requirement as it applies to State savings associations. Specifically, the amendment would have clarified that the FDIC will act on merger applications submitted by State savings associations within 60 days after the date of the FDIC's receipt of a substantially complete merger application, subject to the FDIC's authority to extend such period by an additional 30 days in cases where material information is substantially inaccurate or incomplete. Finally, the proposal would have made a technical amendment to § 303.62(b)(5), requiring the transferring institution, rather than the assuming institution, to file the certification of assumption of deposit liability with the FDIC in accordance with part 307. This revision would have accurately reflected the requirements of part 307, which were amended in 2006.[13]

The FDIC received no comments on these aspects of the proposal.

b. Subpart K—Distributions and Reduction of Capital

The proposal would have made changes to §§ 303.200 and 303.203 so that subpart K of part 303 [14] would expressly apply to State savings associations, as well as to State nonmember banks and insured branches of foreign banks. The proposed change (together with revisions to § 303.241, described below) would render §§ 390.342–390.348 redundant and unnecessary. In addition, the proposal would have removed the reference to section 18(i) of the FDI Act, which is not applicable to State savings associations, and replaced it with a reference to § 303.241, which the proposal would have made applicable to State savings associations,[15] to ensure that filings subject to §§ 303.203 and 303.241 are made concurrently or as part of the same application.

The FDIC received no comments on these aspects of the proposal.

c. Subpart M—Other Filings

The proposal would have amended § 303.241, which implements section 18(i) of the FDI Act, to make § 303.241 applicable to State savings associations seeking to reduce or retire any part of their common stock or preferred stock, or capital notes or debentures, as if the State savings association were a State nonmember bank subject to section 18(i). As discussed in the proposal, while section 18(i) does not specifically apply to State savings associations, the FDIC believes that it would be consistent with its authority under section 39 of the FDI Act to prescribe an operational standard requiring State savings associations to obtain the approval of the FDIC before entering into a transaction that would result in the reduction or retirement of capital stock or debt instruments, even if the institution would not be undercapitalized as a result of the transaction. Consistent with the procedures set forth in subpart K of part 303, the proposal would have required that applications pursuant to section 38 of the FDI Act and § 303.241 should be filed concurrently or as a single application.

The FDIC received no comments on these aspects of the proposal.

2. Part 326—Minimum Security Devices and Procedures and Bank Secrecy Act Compliance

The proposal would have amended two sections in part 326 to make the regulations of that part applicable to all entities for which the FDIC is the appropriate Federal banking agency pursuant to section 3(q) of the FDI Act.[16] These amendments would have been accomplished by revising the definition in § 326.1(a) and by replacing each instance of ''insured nonmember bank'' in § 326.8 with ''FDIC-supervised institution'' and each instance of ''bank'' with ''institution.'' These revisions would have rendered § 390.354 duplicative and unnecessary. In addition, the title of § 326.8 would have been changed from ''Bank Security Act compliance'' to ''Bank Secrecy Act compliance'' to correct a scrivener's error.

The FDIC received no comments on these aspects of the proposal.

3. Part 337—Unsafe and Unsound Banking Practices

The proposal would have revised § 337.3 to include State savings associations and foreign banks having an insured branch, as well as insured nonmember banks, within the scope of the FDIC's limits on extensions of credit to executive officers, directors, and principal shareholders, thereby making § 390.338 redundant and unnecessary.

At the same time, the proposal would have made three technical edits to § 337.3. The first two revisions would have reflected changes made by the FRB to its Regulation O,[17] which the FDIC incorporated by reference in § 337.3 with the exception of §§ 215.5(b) and (c)(3) and (4) and 215.11. Due to revisions made by the FRB to Regulation O, those cross-references are no longer accurate, and the proposal would have corrected that error. Similarly, the proposal would have changed the cross-reference in footnote 3 to the correct section of Regulation O that defines unimpaired capital and surplus.

Finally, the proposal would have removed paragraphs (b)(3) and (4), which included transition periods for loans that were entered into prior to May, 28, 1992. Given the passage of time since the codification of § 337.3, the FDIC concluded that those subsections are no longer necessary.

The FDIC received no comments to these aspects of the proposal.

4. Part 353—Suspicious Activity Reports (SARs)

The proposed rule would have made the FDIC's SAR-reporting regulations applicable to State savings associations as well as State nonmember banks and foreign banks having an insured branch. It would have added a new definition of FDIC-supervised institution to § 353.2 and amended §§ 353.1 and 353.3 by (1) removing the term ''insured nonmember bank'' and replacing it with ''FDIC-supervised institution'' and (2) removing the term ''bank'' and replacing it with ''institution''. These revisions would have made the SAR-reporting requirements of § 390.355 duplicative and unnecessary.

The FDIC received no comments to these aspects of the proposal.

IV. The Final Rule

For the reasons stated herein and in the NPR, the FDIC is adopting the proposal as proposed.

V. Expected Effects

As of June 30, 2019, the FDIC supervised 3,424 insured depository

[12] 12 CFR 303.60–303.65.

[13] *See* 71 FR 8789 (Feb. 21, 2006), codified at 12 CFR 307.1 *et seq.*

[14] 12 CFR 303.200–.207.

[15] *See* section III.B.1.c., *infra.*

[16] 12 U.S.C. 1813(q).

[17] 12 CFR part 215.

institutions. The final rule primarily affects regulations that govern State savings associations. Of the 3,424 FDIC-supervised institutions, 38 (1.1 percent) are State savings associations.[18] Therefore, the final rule is expected to affect 38 FDIC-supervised institutions.

Section 390.330 requires a de novo State savings association, prior to commencing operations, to file its charter and bylaws with the FDIC for certification. The FDIC does not charter depository institutions, therefore the certification authority outlined in § 390.330 does not conform with the FDIC's general authority. The OCC or State banking supervisors do charter depository institutions and therefore, may have similar charter and bylaw certification requirements for de novo savings associations. If the OCC or a State banking supervisor does not have similar charter and bylaw certification requirements for de novo savings associations, this aspect of the final rule could reduce recordkeeping and reporting requirements for future de novo savings associations. However, an analysis of de novo activity for savings associations shows that there has been only one in the last eleven years. The final rule would also eliminate the federal requirement for a state savings association to make available to its accountholders, on request, a copy of its bylaws. The nature of the requirements contained in § 330 are typically addressed by state law. Depending on the state, elimination of this section could result in a small reduction in expenses. The final rule would also eliminate the federal requirement for a State savings association to make available to its accountholders, on request, a copy of its bylaws. The nature of the requirements contained in § 390.330 are typically addressed by state law. Depending on the state, elimination of this section could result in a small reduction in expenses. Therefore, this aspect of the final rule is unlikely to pose significant effects on a substantial number of FDIC-supervised State savings associations.

Section 390.331 requires that every security issued by a State savings association include in its provisions a clear statement that the security is not insured by the FDIC. Although, the FDIC does not have a companion rule that requires State nonmember institutions to clearly state that a security is not insured by the FDIC, provisions of the FDI Act, FDIC regulations, and Statements of Policy clarify that securities are not insured by the FDIC. Moreover, the FDIC has issued two Statements of Policy, one regarding the sale of nondeposit investment products and one regarding the use of offering circulars, that are intended to prevent confusion on the part of customers and investors regarding these matters. Therefore, rescission of § 390.331 would not substantively change deposit insurance coverage for State savings associations, or security disclosure practices. This aspect of the final rule is unlikely to pose significant effects on FDIC-supervised State savings associations.

Section 390.332 addresses the application requirements for mergers, consolidations, purchases or sales of assets, and assumptions of liabilities that apply to State savings associations. The FDIC is rescinding § 390.332 and amending 12 CFR part 303, subpart D, the section of the FDIC's regulations governing merger transactions. The amendments to subpart D would make that section applicable to any FDIC-supervised institution, including State savings associations, and would make other conforming changes. Because the changes would not affect the application requirements and application content this aspect of the final rule is unlikely to pose any effects on FDIC-supervised State savings associations.

Section 390.333 prohibits State savings associations from making inaccurate representations about services, contracts, investments, or financial condition in their advertising. The prohibition of misrepresentations in advertising contained in § 390.333 is substantially similar to the more general prohibition of unfair or deceptive acts or practices under section 5(a) of the Federal Trade Commission Act (section 5). The FDIC enforces this provision pursuant to its authority under section 8 of the FDI Act.[19] The prohibition contained in section 5 is broader than § 390.333 because it prohibits all ''unfair or deceptive acts or practices in or affecting commerce,'' and it applies to all FDIC-supervised institutions, not only State savings associations.[20] Because the narrower prohibitions of § 390.333 appear subsumed within the broader prohibitions of Section 5, the FDIC believes that this aspect of the final rule will not have any substantive effect on FDIC-supervised State savings associations.

Section 390.334 limits who may serve on the board of directors of a State savings association by providing that: A majority of the directors must not be employees of the State savings association or its affiliates; no more than two directors may come from the same family; and no more than one director may be an attorney with a particular law firm. This aspect of the final rule could reduce compliance requirements on FDIC-supervised State savings associations by enabling them to make changes to the composition of their board of directors if they so choose. Such a reduction of compliance requirements could benefit covered entities by enabling them to choose a board that best executes the fiduciary powers of the board of directors, and more effectively supports the financial health of the institution. However, rescinding § 390.334 also potentially reduces the independence of boards of directors for State savings associations. While an independent board of directors is an important aspect of the governance of an insured institution and contributes to its safety and soundness, State savings associations and their directors would be subject to the same governance standards, supervisory expectations for risk management, and examination approaches as would other banks supervised by the FDIC. Therefore, the FDIC believes that this aspect of the final rule will not have any significant effects on FDIC-supervised State savings associations.

Section 390.335 is entitled ''Tying restriction exception'' and refers solely to the regulations issued by the FRB. Section 312(b)(2) of the Dodd-Frank Act transferred the authority to grant exceptions from the anti-tying regulations of HOLA to the FRB, rather than to the FDIC, upon the dissolution of the OTS.[21] Therefore, rescinding § 390.335 would align the FDIC's regulations with the FDIC's general authority. Additionally, because the FRB maintains the authority to grant exceptions from the anti-tying regulations for Federal and State savings associations, this aspect of the final rule will have no substantive effect on FDIC-supervised State savings associations.

Section 390.336 sets forth requirements with which a State savings association must comply when entering into an employment contract with its officers and other employees. State savings associations are subject to existing statutory authority regarding employment contracts with institution-affiliated parties. For instance, section 30 of the FDI Act prohibits an insured depository institution from entering into a contract with any person for services or goods if the contract would adversely

[18] Based on data from the June 30, 2019 Consolidated Reports of Condition and Income (Call Report) and Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks.

[19] 12 U.S.C. 1818.

[20] 15 U.S.C. 45(a)(1).

[21] 12 U.S.C. 5412(b)(2)(A).

affect the institution's safety or soundness.[22] Further, the FDIC expects that State savings associations will be guided by the Interagency Guidelines Establishing Standards for Safety and Soundness (the Interagency Safety and Soundness Guidelines) prescribed pursuant to section 39 of the FDI Act, which apply to all insured depository institutions, including State savings associations.[23] In addition, part 359 of the FDIC's regulations limits and/or prohibits troubled institutions from paying and making golden parachute and indemnification payments to an institution-affiliated party. Although there are no similar regulations for FDIC-supervised institutions, existing statutes, guidelines, and regulations have a similar effect on FDIC-supervised institutions, including State savings associations. Therefore, removal of § 390.336 is unlikely to have any substantive effect on FDIC-supervised State savings associations.

Section 390.337 states only that State savings associations should ''see the regulations issued by Board of Governors of the Federal Reserve System'' for the applicable rules for transactions with affiliates. Because HOLA applies sections 23A and 23B of the Federal Reserve Act to State savings associations[24] and because the FRB's Regulation W[25] addresses the additional restrictions of HOLA applicable to State and Federal savings associations' transactions with their affiliates, the FDIC believes that this aspect of the final rule will not have any substantive effects on FDIC-supervised institutions.

Section 390.338 cross-referenced the FRB's Regulation O,[26] with some additional modifications. Section 337.3 of the FDIC's regulations reference Regulation O to impose similar direct regulatory requirements on State nonmember banks. The FDIC is rescinding and removing § 390.338, making minor conforming changes to § 337.3 to clarify its applicability to State savings associations, and making technical amendments to § 337.3. Therefore, this aspect of the final rule is unlikely to have any effect on FDIC-supervised institutions.

Section 390.339 prohibits State savings associations from sponsoring an employee pension plan which, because of unreasonable costs or for any other reason, could lead to material financial loss or damage to the sponsor. The section further requires a State savings association that serves as a pension plan sponsor to retain detailed pension plan records and actuarial funding reports and to provide advance notice of a pension plan termination. The Interagency Safety and Soundness Guidelines apply to all insured depository institutions, including State savings associations. Section III of the Interagency Safety and Soundness Guidelines explicitly prohibits compensation that could lead to material financial loss as an unsafe and unsound practice. The Interagency Safety and Soundness Guidelines also address excessive compensation as an unsafe and unsound practice, taking into account factors such as compensation history, the institution's financial condition, comparable compensation practices, the projected costs and benefits of postemployment benefits, fraudulent or other inappropriate activity, and any other factors the agencies deem relevant. ''Compensation'' is defined as ''all direct and indirect payments or benefits, both cash and non-cash, granted to or for the benefit of any executive officer, employee, director, or principal shareholder, including but not limited to payments or benefits derived from an employment contract, compensation or benefit agreement, fee arrangement, perquisite, stock option plan, postemployment benefit, or other compensatory arrangement.''[27] Additionally, regulations on recordkeeping by the Pension Benefit Guaranty Corporation (PBGC) would apply to any pension plan offered by an FDIC-supervised institution.[28] Because FDIC-supervised institutions, including State savings associations, will continue to be subject to the Interagency Safety and Soundness Guidelines, as well as PBGC regulations, rescinding § 390.339 is unlikely to substantively effect FDIC-supervised institutions.

Section 390.340 generally prohibits the offer or sale of debt or equity securities issued by a State savings association or an affiliate of the State savings association at an office of the State savings association with the exception of equity securities issued in connection with the State savings association's conversion from mutual to stock form in a transaction that has been approved by the FDIC or if the sale is conducted in accordance with the conditions set forth in § 390.340. The Nondeposit Investment Products (NDIP) Statement of Policy[29] provides guidelines for all sales of nondeposit products (such as annuities, mutual funds, and other securities) by depository institutions, including State savings associations. Additionally, the Offering Circular Statement of Policy[30] provides guidelines for sales and distribution of bank securities. Therefore, the FDIC believes that rescission of § 390.340 will not substantively change the offer or sale of debt or equity securities issued by a State savings associations or their subsidiaries. Therefore, this aspect of the final rule is unlikely to pose significant effects on FDIC-supervised State savings associations.

Section 390.341 provides application and notice procedures and form and content requirements for subordinated debt securities and mandatorily redeemable preferred stock that a State savings association seeks to include in its tier 2 capital. There is no corresponding requirement applicable to State nonmember banks. Many of the form and content requirements in § 390.341 that are designed to prevent consumer confusion are included in the FDIC's Offering Circular Statement of Policy. FDIC-supervised institutions, including State savings associations, are governed by the criteria for inclusion in tier 2 capital are included in the FDIC's capital rules in 12 CFR part 324.[31] Therefore, this aspect of the final rule is unlikely to pose significant effects on FDIC-supervised State savings associations.

Section 390.342 states that §§ 390.342 through 390.348 apply to capital distributions by a State savings association.[32] Because the final rule would rescind §§ 390.342 through 390.348, and would amend FDIC regulations 303.200, 303.203, and 303.241 to make them applicable to State savings associations, the removal of § 390.342 will not have any substantive effects on FDIC-supervised State savings associations.

Section 390.343 defines a ''capital distribution'' for the purposes of §§ 390.342–390.348. Section 38 of the FDI Act[33] applies to all insured depository institutions, and, among other things, generally prohibits an

[22] 12 U.S.C. 1831g.

[23] *See* 12 U.S.C. 1831p–1(c); 12 CFR part 364, app. A, section III.

[24] 12 U.S.C. 1468(a).

[25] The FDIC has interpreted the language ''in the same manner and to the same extent'' to include the application of Regulation W.

[26] 12 CFR part 215.

[27] 12 CFR part 364, app. A, section I.B.3.

[28] Public Law 109–280, 120 Stat. 780, 29 U.S.C. 1301 *et seq.*

[29] Interagency Statement on Retail Sales of Nondeposit Investment Products (February 15, 1994), *https://www.fdic.gov/regulations/laws/rules/5000-4500.html*.

[30] Statement of Policy Regarding Use of Offering Circulars in Connection with Public Distribution of Bank Securities, 61 FR 46808 (Sept. 5, 1996).

[31] *See* 12 CFR 324.20(d)(1).

[32] 12 CFR 390.342.

[33] 12 U.S.C. 1831o.

insured depository institution from making a capital distribution if, after making the distribution, the institution would be undercapitalized. Section 38 also defines a ''capital distribution'' to include certain dividends; repurchases, redemptions, retirements, or other acquisitions of shares or other ownership interests, including extensions of credit to finance an affiliated company's acquisition of such shares; and any other transaction that the Federal banking agencies find to be in substance a distribution of capital.[34] Part 303 of the FDIC's regulations includes procedures to implement the filing requirements for capital distributions under the Prompt Corrective Action (PCA) provisions of section 38 for insured State nonmember banks and insured branches of foreign banks. The final rule would amend § 303.203 so that it expressly applies to State savings associations. The requirements of § 390.343(a) and (b) are substantively similar to requirements in section 38 and the current, analogous FDIC regulations at § 303.203. Section 390.343(e) incorporates FDI Act section 38(b)(2)(B)(iii), which authorizes the Federal banking agencies to, by order or regulation, deem as a ''capital distribution'' any transaction that the FDIC determines to be in substance a distribution of capital.[35] Therefore, the final rule's rescission of these elements and amendments to § 303.203 will have no effects on FDIC-supervised State savings associations.

Section 390.343(c) further defines ''capital distribution'' to include any direct or indirect payment of cash or other property to owners or affiliates made in connection with a corporate restructuring, including the payment of cash or property to shareholders of another savings association or its holding company to acquire ownership in that savings association, other than by a distribution of shares.[36] This prong of § 390.343's definition of ''capital distribution'' is not matched by an analogous prong in section 38. Additionally, § 390.343(d) captures as a ''capital distribution'' any capital distribution that is charged against a State savings association's capital accounts if the State savings association would not be well capitalized following the distribution.[37] As with payments made in connection with a corporate restructuring, this element of § 390.343's regulatory definition is not expressly addressed in section 38. The final rule would rescind these requirements for FDIC-supervised State savings associations. The FDIC believes that this aspect of the final rule is unlikely to substantively affect FDIC-supervised institutions. Additionally, the FDIC believes that FDIC-supervised State savings association would benefit from the establishment of equal treatment of capital distributions for State nonmember banks and State savings associations. However, it is difficult to estimate these effects because they depend on the financial condition of, and future decisions of senior management at, FDIC-supervised State savings associations.

Section 390.344 adopts additional definitions specifically for the capital distribution provisions of §§ 390.342 through 390.348.[38] Part 303 of the FDIC's regulations includes procedures to implement the filing requirements for capital distributions under the PCA provisions of section 38 for insured State nonmember banks and insured branches of foreign banks, and definitions of terms for capital distribution provisions are contained in the FDIC's capital rules. The final rule would amend § 303.203 so that it expressly applies to State savings associations. Therefore, rescinding § 390.344 is unlikely to have any substantive effects on FDIC-supervised State savings associations.

Section 390.345 establishes that a State savings association is required to file an application for a proposed capital distribution in certain circumstances, and in others is required to file a notice. The application requirements of § 303.203 are analogous to those imposed on State savings associations by § 390.345(a)(3), as both sections require applications to the FDIC in cases where an institution would be undercapitalized following a capital distribution, as mandated by section 38 of the FDI Act. Because section 38 prohibits capital distributions in cases where an insured depository institution would be undercapitalized, the substantive requirements of § 390.345(a)(3) would be preserved by making § 303.203 applicable to State savings associations. The application requirements of § 303.241 are analogous to the notice requirements imposed on State savings associations by § 390.345(b)(2), as both sections require regulatory consideration of transactions that would reduce or retire common or preferred stock or capital notes or debentures. Accordingly, the FDIC is rescinding §§ 390.345(a)(3) and 390.345(b)(2) and, as noted above, the FDIC also is amending § 303.241 so that it applies to State savings associations.

The FDIC is rescinding the entirety of § 390.345, which would effectively eliminate application requirements for capital distributions in cases where: A State savings association is not eligible for expedited processing under § 390.101; the total amount of all capital distributions by a State savings association for the applicable calendar year exceeds the association's net income for that year to date plus retained net income for the preceding two years; and where a State savings association's proposed capital distribution would violate a prohibition contained in any applicable statute, regulation, or agreement with the FDIC, or violate a condition imposed on the State savings association in an FDIC-approved application or notice. The rescission of § 390.345 would also effectively eliminate the notice requirements for capital distributions in cases where a State savings association would not be well capitalized following the distribution. The PCA provisions of section 38 of the FDI Act, however, which apply to all insured institutions, would address such situations. This aspect of the final rule is expected to reduce compliance costs for FDIC-supervised State savings associations. Although reducing notice requirements for these capital distribution activities could potentially increase the frequency of this activity for FDIC-supervised State savings associations, the FDIC believes such effects are likely to be relatively small. However, it is difficult to estimate these effects because they depend on the financial condition of, and future decisions of senior management at, FDIC-supervised State savings associations. Additionally, the FDIC believes that FDIC-supervised State savings associations would benefit from the establishment of equal treatment for application and notification requirements of capital distributions for State nonmember banks and State savings associations.

Section 390.346 provides filing instructions for capital distributions that are subject to application or notice requirements under § 390.345, including instructions concerning a filing's content, schedules, and timing.[39] Because the FDIC is rescinding § 390.345, these provisions would no longer be applicable. Therefore, the FDIC is rescinding § 390.346. As described above, the FDIC is also making §§ 303.203 and 303.241 applicable to State savings associations,

[34] 12 U.S.C. 1831o(b)(2)(B).

[35] 12 CFR 390.343(e), 12 U.S.C. 1831*o*(b)(2)(B)(iii).

[36] 12 CFR 390.343(c).

[37] 12 CFR 390.343(d).

[38] 12 CFR 390.344.

[39] 12 CFR 390.346.

and both of these sections set forth requirements related to the content of filings. Furthermore, certain rules of general applicability, including those related to processing, are set forth in subpart A of part 303 of the FDIC's regulations and would apply to filings made by State savings associations under §§ 303.203 and 303.241. Based on this information, the FDIC believes that this aspect of the final rule is unlikely to have any effect on FDIC-supervised State savings associations.

Section 390.347 authorizes a State savings association to combine a notice or application required under § 390.345 with another related notice or application.[40] Because the FDIC is rescinding § 390.345, these provisions would no longer be applicable. Therefore, the FDIC is rescinding § 390.347. As noted above, by making State savings associations subject to §§ 303.203 and 303.241, as amended, State savings associations would be permitted to file applications that are subject to both sections as a single filing or concurrently with other filings.[41] Therefore, the FDIC believes that this aspect of the final rule is unlikely to have any effect on FDIC-supervised State savings associations.

Section 390.348 sets forth the bases on which the FDIC may deny, in whole or in part, a notice or application filed under § 390.345. Because the FDIC is rescinding § 390.345, these provisions would no longer be applicable. Furthermore, the statutory exception that applies to capital distributions subject to section 38 of the FDI Act would continue to apply to capital distributions by State savings associations that are subject to section 38. In addition, because the proposal would make reductions or retirements of capital by State savings associations subject to the application requirements of § 303.241, the FDIC would evaluate such applications in light of the statutory factors enumerated in section 18(i)(4) of the FDI Act, and the bases identified in §§ 390.348(b) and 390.348(c) would be preserved insofar as they would be inherent in how the FDIC would review applications in light of the statutory factors of section 18(i)(4).[42] Therefore, the FDIC believes that this aspect of the final rule is unlikely to have any effect on FDIC-supervised State savings associations.

Section 390.349 implements the statutory requirement of section 4 of the HOLA. That section requires each State savings association to be operated in a safe and sound manner and encourages State savings associations to provide credit for housing safely and soundly.[43] In particular, § 390.349 includes explicit safety and soundness requirements relating to liquidity and compensation to officers, directors, employees, and consultants. Section 39 of the FDI Act[44] requires the Federal banking agencies to prescribe safety and soundness standards for internal controls, information systems, and internal audit systems; loan documentation; credit underwriting; interest rate exposure; asset growth; compensation, fees, and benefits; and such other operational and managerial standards as the agency determines to be appropriate. To this end, the FDIC has adopted part 364 and the related appendices. Part 364 establishes compensation-related standards and provides for other safety- and soundness-related guidelines which apply to all insured State nonmember banks, to State-licensed insured branches of foreign banks, and to State savings associations.[45] As such, the safety and soundness standards in § 390.349 are generally duplicative of the standards implemented through part 364. Part 364, as amended, provides consistent safety and soundness standards for both State nonmember banks and State savings associations. Therefore, the FDIC believes that this aspect of the final rule will have no substantive effects on FDIC-supervised institutions.

Section 390.350 contains requirements regarding examinations, appraisals, establishing and maintaining books and records, and using data processing services for maintenance of records. The final rule rescinds paragraphs (a), pertaining to examinations and audits, and (b), pertaining to appraisals. Section 390.350(a) states that each State savings association and affiliate will be examined periodically and may be examined anytime by the FDIC and that appraisals may be required as part of the examination. Section 337.12 states that the FDIC examines State nonmember banks pursuant to section 10 of the FDI Act,[46] State savings associations pursuant to section 10 of the FDI Act and section 4 of HOLA,[47] and implements the frequency of examinations specified by section 10 for insured depository institutions, including State savings associations. Section 390.350(b) permits the FDIC to select appraisers in connection with an examination, requires State savings associations to pay for such an appraiser, and mandates that the FDIC furnish the appraisal report to the State savings association within 90 days following the filing of the report to the FDIC. Part 323 of the FDIC's regulations implements Title XI of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA),[48] which requires written appraisals in connection with certain federally related transactions entered into by institutions regulated by the FDIC. Section 323.3(c), which applies to all FDIC-supervised institutions, including State savings associations, allows the FDIC to require an appraisal whenever the agency believes it is necessary to address safety and soundness concerns, which would include during an examination.

Section 390.350(c) requires each State savings association and its affiliates to establish and maintain such accounting and other records as will provide an accurate and complete record of all business it transacts to enable the examination of the State savings association and its affiliates by the FDIC. The documents, files, and other material or property comprising said records shall at all times be available for such examination and audit wherever any of said records, documents, files, material, or property may be. State savings associations are already subject to other FDIC regulations that achieve the purposes of § 390.350(c). For example, as recognized by § 304.3 of the FDIC's regulations, all insured depository institutions, including State savings associations, are required to file quarterly Consolidated Reports of Condition and Income (Call Reports). As such, the records maintenance requirements for State savings associations outlined in § 390.350(c) are generally duplicative of the standards implemented through part 304. Therefore, rescinding § 390.350(c) will have no substantive effects on FDIC-supervised institutions.

[40] 12 CFR 390.347.

[41] *See* 12 CFR 303.203(b) and 12 CFR 303.241(e).

[42] The statutory factors of section 18(i)(4) are: (A) The financial history and condition of the institution; (B) the adequacy of its capital structure; (C) its future earnings prospects; (D) the general character and fitness of its management; (E) the convenience and needs of the community to be served; and (F) whether or not its corporate powers are consistent with the purposes of the FDI Act. 12 U.S.C. 1828(i)(4).

[43] 12 U.S.C. 1463(a).

[44] 12 U.S.C. 1831p–1.

[45] 12 CFR 364.101. In 2015, 12 CFR 364.101 was amended to apply to both State nonmember banks and State savings associations. *See* Removal of Transferred OTS Regulations Regarding Safety and Soundness Guidelines and Compliance Procedures; Rules on Safety and Soundness, 80 FR 65903 (Oct. 28, 2015).

[46] 12 U.S.C. 1820.

[47] 12 U.S.C. 1463.

[48] Public Law 101–73, 103 Stat. 183; codified at 12 U.S.C. 3331 *et seq.*

Section 390.350(d) prohibits State savings associations from transferring the location of any of its general accounting or control records, or the maintenance thereof, from its home office to a branch or service office, or from a branch or service office to its home office or to another branch or service office unless prior to the date of transfer its board of directors has authorized the transfer by resolution and notified the appropriate regional director. The FDIC has not promulgated a similar rule for State nonmember banks. The removal of § 390.350(d) will provide relief to State savings associations by not having to notify the appropriate regional director of its intention to relocate records from its home office to a branch or service office and will provide parity with State nonmember banks which do not provide the FDIC with prior notification of transferring records from one location to another. It is difficult to estimate these effects because they depend on the financial condition of, and future decisions of senior management at, FDIC-supervised State savings associations, in particular their propensity to change the location of general accounting or control records, or the maintenance thereof. However, because the final rule only affects a relatively small number of institutions and because the notification requirements being rescinded pose a relatively small burden, the FDIC believes that this aspect of the final rule is unlikely to substantively benefit any FDIC-supervised State savings associations.

Section 390.350(e) requires that when a State savings association maintains any of its records by means of data processing services, it will notify the appropriate regional director for the region in which the principal office of such State savings association is located, in writing, at least 90 days prior to the date on which such maintenance of records will begin. Section 304.3(d), implementing section 7 of the Bank Service Company Act,[49] already requires FDIC-supervised institutions, including State savings associations, to notify the FDIC about the existence of a service relationship within thirty days after the making of the contract or the performance of the service and provides for the required information either through a letter or FDIC Form 6120/06 *Notification of Performance of Bank Services.* Therefore, the FDIC believes that rescinding § 390.350 is unlikely to have any substantive effects on FDIC-supervised State savings associations.

Section 390.352 addresses the permissibility of financial derivatives transactions, the responsibility of the board of directors and management of a State savings association with respect to such transactions, and recordkeeping requirements related to such transactions. Section 28(a) of the FDI Act,[50] implemented by part 362 of the FDIC's regulations,[51] restricts and prohibits State savings associations and their service corporations from engaging in activities and investments of a type that are not permissible for a Federal savings association and its service corporations. The term ''activities permissible for a Federal savings association'' means, among other things, activities recognized as permissible in OCC regulations.[52] Section 163.172 of the OCC's regulations governs the financial derivatives activities of Federal savings associations, the responsibility of the board of directors and management of a Federal savings association with respect to such transactions, and recordkeeping requirements related to such transactions.[53] Because section 28(a) of the FDI Act and part 362 establish requirements that are duplicative of § 390.352, the FDIC believes that rescinding § 390.352 is unlikely to have any effect on FDIC-supervised State savings associations.

Section 390.353 requires the board of directors or a board committee of a State savings association to develop, implement, and review policies and procedures for the management of a State savings association's interest-rate-risk; requires the association's management to report periodically to the board regarding implementation of the policy; and requires the association's board of directors to adjust the policy as necessary, including adjustments to the authorized acceptable level of interest rate risk. As mentioned above, the Interagency Safety and Soundness Guidelines, promulgated pursuant to section 39 of the FDI Act, describe examples of safe and sound practices for State nonmember banks and State savings associations. The Guidelines provide that an institution ''should manage interest rate risk in a manner that is appropriate to its size and the complexity of its assets and liabilities''.[54] Management and the board of directors should be provided reports regarding interest rate risk that are adequate to assess the level of risk. Because the requirements outlined in § 390.353 are similar to the safety and soundness practices outlined in established Guidelines that already apply to FDIC-supervised State savings associations, the FDIC believes that this aspect of the final rule is unlikely to have any substantive effects on FDIC-supervised State savings associations.

Section 390.354 requires State savings associations to establish and maintain a Bank Secrecy Act (BSA) compliance program and a customer identification program. Section 390.354 also enumerates the four pillars required for a BSA compliance program. Similarly, § 326.8 of the FDIC's regulations[55] requires insured depository institutions for which the FDIC is the appropriate Federal banking agency to establish a BSA compliance program to include the same four pillars and a customer identification program. The final rule would rescind § 390.354 and make technical changes to § 326.8, which is currently only applicable to insured depository institutions for which the FDIC is the appropriate Federal banking agency.[56] Because the amended § 326.8 would be duplicative of § 390.354 the FDIC believes that this aspect of the final rule is unlikely to have any effect on FDIC-supervised State savings associations.

Section 390.355 requires State savings associations and service corporations to make certain reports. Section 390.355(a) requires State savings associations to make periodic reports to the FDIC in such a manner and on such forms as the FDIC may prescribe. There are a number of Federal statutes that require reporting by State savings associations. For example, section 5 of HOLA requires ''each association to make reports of conditions to the appropriate Federal banking agency which shall be in a form prescribed by the appropriate Federal banking agency . . . '' and sets forth the type of information such reports shall contain.[57] Section 7(a)(3) of the FDI Act

[49] 12 U.S.C. 1867.

[50] 12 U.S.C. 1831e(a).

[51] *See* 12 CFR 362.9–362.15.

[52] *See* 12 CFR 362.9(a).

[53] *See* 12 CFR 163.172.

[54] 12 CFR part 364, app. A, section II.E.

[55] 12 CFR 326.8, 326.1(a).

[56] 12 CFR 326.8 is applicable to ''all insured nonmember banks as defined in 12 CFR 326.1.'' Section 326.1 was revised to remove the definition of ''insured nonmember bank'' and replace it with the term ''FDIC-supervised institution'' or ''institution'', defined to mean any insured depository institution for which the FDIC is the appropriate Federal banking agency pursuant to section 3(q) of the FDI Act (12 U.S.C. 1813(q). 83 FR 13839, 13842 (April 2, 2018).

[57] 12 U.S.C. 1464(v)(1). Although 12 U.S.C. 1464 is titled ''Federal savings associations'', section 1464(v) describes the reporting obligations of ''[e]ach association'' and refers to the requirements of the ''appropriate Federal banking agency'' rather than only the OCC. The FDIC is the appropriate

Continued

requires all insured depository institutions to make four annual reports of condition to their appropriate Federal banking agency.[58] In addition, section 36 of the FDI Act [59] and the FDIC's implementing regulations at part 363 [60] require insured depository institutions above a specified asset threshold to have annual independent audits and to submit annual reports and audited financial statements to the FDIC. Section 37 of the FDI Act requires financial statements, and other reports provided to the FDIC, to be prepared in a manner consistent with generally accepted accounting principles.[61] Finally, the Interagency Policy Statement on External Auditing Programs of Banks and Savings Associations [62] provides unified interagency guidance regarding independent external auditing programs of insured depository institutions for community banks and savings associations that do not have to comply with part 363 (because they do not meet the size threshold) or that are not otherwise subject to audit requirements by order, agreement, statute, or FDIC regulations. Therefore, the FDIC believes that removing § 390.355(a) will not have any effect on FDIC-supervised State savings associations.

Section 390.355(b) prohibits State savings associations from making false or misleading statements or omissions to the FDIC and to auditors of State savings associations. The Dodd-Frank Act provided the OCC with rulemaking authority relating to both State and Federal savings associations.[63] On August 9, 2011, the OCC published in the **Federal Register** a final rule that contained a provision, 12 CFR 163.180(b), that is substantially similar to § 390.355(b) and that applies to both State and Federal savings associations.[64] It prohibits all savings associations from knowingly making false or misleading statements to their ''appropriate Federal banking agency'' and to those auditing the institution.[65] The OCC's prohibition at § 163.180(b), which is enforceable by the FDIC, effectively prohibits a State savings association from making false or misleading statements to the FDIC or to any party auditing or preparing or reviewing its financial statements. Therefore, the FDIC believes that rescinding this section will have no effect on FDIC-supervised State savings associations.

Section 390.355(c) requires a State savings association maintain bond insurance coverage to promptly notify its carrier and file a proof of loss concerning any covered losses more than twice the deductible amount. The FDIC generally requires fidelity bond insurance for insured depository institutions and considers whether fidelity bond insurance is in place when analyzing the general character and fitness of the management of a *de novo* financial institution applying for deposit insurance.[66] However, the FDIC does not otherwise impose a reporting requirement such as the one contained in § 390.355(c).[67] Therefore, rescinding § 390.355(c) potentially reduces reporting requirements on FDIC-supervised State savings associations. The FDIC believes that these potential effects are likely to be relatively small. However, it is difficult to estimate these effects because they depend on the financial condition of, and future decisions of senior management at, FDIC-supervised State savings associations.

Section 390.355(d) regulates SARs for State savings associations and was enacted in concert with the other Federal banking agencies, including the OCC,[68] the FRB,[69] and the FDIC,[70] as well as the Financial Crimes Enforcement Network (FinCEN).[71] These entities issued substantially similar proposals, which became effective on April 1, 1996. Section 390.355(d)(1)–(8), (12) and (13) mirrors § 353.3 for State nonmember banks. The notification requirements for the board of directors, or a committee of directors or executive officers of State savings associations outlined in § 390.355(d)(9) also mirror notifications requirements in § 353.3. Section 390.355(d)(9) also states that if the subject of the SAR is a director or executive officer, the State savings association may not notify the suspect, pursuant to 31 U.S.C. 5318(g)(2), but shall notify all directors who are not suspects. In this circumstance, § 353.3 does not have analogous language; however, the FDIC relies on 31 U.S.C. 5813(g)(2) to achieve the same purpose. Section 390.355(d)(10) states that a State savings association's failure to file a SAR in accordance with this section may subject the State savings association, its directors, officers, employees, agents, or other institution-affiliated parties to supervisory action. In this circumstance, § 353.3 does not have analogous language. Although § 353.3 does not explicitly provide a remedy for failure to file a SAR, the FDIC has enforcement authority for violations of law or regulation.[72] Therefore, the FDIC is rescinding § 390.355(d)(10) in its entirety because it is unnecessary. Section 390.355(d)(11) states that a State savings association may obtain SARs and the instructions from the appropriate FDIC region as defined in § 303.2 of the FDIC's regulations. In this circumstance, § 353.3 does not have analogous language. However, FDIC-supervised institutions can obtain SAR forms electronically. FinCEN converted to the BSA E-Filing System for filing SARs for all financial institutions; [73] therefore this provision is now obsolete as forms are no longer available from FDIC regions. With this final rule the FDIC is making conforming changes to §§ 353.1 and 353.3 to make part 353 of the FDIC's regulations applicable to all FDIC-supervised institutions, including State savings associations. Therefore, the FDIC believes that rescinding this subsection of § 390.355 will have no effect on FDIC-supervised State savings associations.

Section 390.355(e) requires State savings associations within the jurisdiction of a Federal Home Loan Bank (FHLB) to provide data from the Call Report upon the request of the FHLB. The FDIC is required under section 402(e)(3) of FIRREA to ''take such action as may be necessary to assure that the indexes prepared by the . . . Federal home loan banks immediately prior to the enactment of

Federal banking agency for State savings associations. 12 U.S.C. 1813(q).

[58] 12 U.S.C. 1817(a)(3).

[59] 12 U.S.C. 1831m.

[60] 12 CFR part 363.

[61] 12 U.S.C. 1831n(a)(2).

[62] *See* FIL–96–99 (Oct. 25, 1999); 64 FR 57094 (Oct. 22, 1999).

[63] *See* 12 U.S.C. 5412(b)(2)(B)(i)(II).

[64] 76 FR 49047 (Aug. 9, 2011).

[65] The FDIC is the ''appropriate Federal banking agency'' for any State savings association. *See* 12 U.S.C. 1813(q).

[66] *See* 12 U.S.C. 1816; FDIC Statement of Policy on Applications for Deposit Insurance, 63 FR 44756 (Aug. 20, 1998), amended at 67 FR 79278 (Dec. 27, 2002), available at *https://www.fdic.gov/regulations/laws/rules/5000-3000.html.*

[67] *Id.* (''An insured depository institution should maintain sufficient fidelity bond coverage on its active officers and employees to conform with generally accepted industry practices. Primary coverage of no less than $1 million is ordinarily expected. Approval of the application may be conditioned upon acquisition of adequate fidelity coverage prior to opening for business.'').

[68] Minimum Security Devices and Procedures, Reports of Suspicious Activities, and Bank Secrecy Act Compliance Program, 61 FR 4332 (Feb. 5, 1996).

[69] Membership of State Banking Institutions in the Federal Reserve System; International Banking Operations; Bank Holding Companies and Change in Control; Reports of Suspicious Activities Under Bank Secrecy Act, 61 FR 4338 (Feb. 5, 1996).

[70] Suspicious Activity Reports, 61 FR 6095 (Feb. 16, 1996).

[71] Amendment to the Bank Secrecy Act Regulations; Requirement to Report Suspicious Transactions, 61 FR 4326 (Feb. 5, 1996).

[72] *See* 12 U.S.C. 1818.

[73] *See https://bsaefiling.fincen.treas.gov/main.html.*

this subsection and used to calculate the interest rate on adjustable rate mortgage instruments continue to be available.'' [74] As noted above, the Dodd-Frank Act provided the OCC with rulemaking authority relating to both State and Federal savings associations.[75] On August 9, 2011, the OCC published in the **Federal Register** a final rule that contained a provision, § 163.180(e), that is substantially similar to § 390.355(e) and that applies to both State and Federal savings associations.[76] It requires all savings associations within the jurisdiction of that FHLB to report specified data items for the FHLB to use in calculating and publishing an adjustable-rate mortgage index.[77] Because the provision contained in the OCC's regulation is applicable to all savings associations, is enforceable by the FDIC with respect to State savings associations, and is substantially similar to the rule found at § 390.355(e), the FDIC believes that rescinding this subsection will not have any effect on FDIC-supervised State savings associations.

Section 390.356 requires fidelity bond coverage for directors, officers, employees, and agents of State savings associations. Neither the FDI Act nor the FDIC's regulations for State nonmember banks contain similar prescriptive language concerning fidelity bonds that would be applicable to State savings associations. Section 18(e) of the FDI Act authorizes, but does not mandate, the FDIC to require an insured depository institution to ''provide protection and indemnity against burglary, defalcation, and other similar insurable losses.'' [78] The FDIC generally requires fidelity bond insurance for insured depository institutions and considers whether fidelity bond insurance is in place when analyzing the general character and fitness of the management of a *de novo* financial institution applying for deposit insurance.[79] However, other than expressing general guidelines regarding the appropriate level of insurance coverage, the FDIC does not otherwise impose requirements such as the ones contained in § 390.356.[80] There are no other relevant provisions concerning fidelity bond coverage or the use of fidelity bond proceeds. And, there is no analogous statutory or regulatory language for State nonmember banks that mirrors § 390.356. Therefore, rescinding § 390.356 could potentially reduce compliance costs for FDIC-supervised State savings associations if they choose to make changes to their fidelity bond coverage. The FDIC believes that this aspect of the final rule is likely to pose relatively small effects on FDIC-supervised State savings associations. However, it is difficult to estimate these effects because they depend on the decisions of senior management at FDIC-supervised savings associations.

Section 390.357 provides that, in lieu of a bond for directors, officers, employees, and agents of State savings associations referenced in § 390.356, the State savings association's board may approve a bond for its agents. This bond must be twice the average monthly collections of such agent, and the agent is required to settle its account with the State savings association at least monthly. Similar to § 390.356, there are no analogous statutory or regulatory requirements for State nonmember banks that resemble § 390.357. Therefore, rescinding § 390.357 could potentially reduce compliance costs for FDIC-supervised State savings associations to the extent that they were engaging in such bond coverage practices and choose to make changes. The FDIC believes that this aspect of the final rule is likely to pose relatively small effects on FDIC-supervised State savings associations. However, it is difficult to estimate these effects because they depend on the decisions of senior management at FDIC-supervised State savings associations.

Section 390.358 prohibits persons including directors, officers, or employees of State savings associations, or others who have power to direct its management or policies or who otherwise owe a fiduciary duty to a State savings association from advancing personal or business interests, or those of others, at the expense of the State savings association. The section also prescribes how these individuals should interact with the board of directors of a State savings association if they have an interest in a matter or transaction requiring board consideration. While section 8(e) of the FDI Act authorizes enforcement actions against directors and officers who breach their fiduciary duties to the depository institution, the existence and scope of a fiduciary duty is a matter of State law. The FDIC does not believe rescinding § 390.358 will be likely to have a substantive effect on FDIC-supervised State savings associations because applicable State laws will continue to govern conflicts of interest and fiduciary duties, relevant FDIC guidance on boards of director will continue to apply, and the FDIC will have the same enforcement authority for violations of law in this area.

Section 390.359 prohibits persons, including directors and officers or others who have power to direct its management or policies or who otherwise owe a fiduciary duty to a State savings association from taking advantage of corporate opportunities belonging to the State savings association. Such conduct is governed by either statutory or common law. While section 8(e) of the FDI Act authorizes enforcement actions against directors and officers who breach their fiduciary duties to the depository institution, the existence and scope of a fiduciary duty is a matter of state law. The FDIC does not believe rescinding § 390.359 likely to have a substantive effect on FDIC-supervised State savings associations because applicable State laws will continue to govern conflicts of interest and fiduciary duties, relevant FDIC guidance on boards of director will continue to apply, and the FDIC will have the same enforcement authority for violations of law in this area.

Sections 390.360 through 390.368 require certain insured depository institutions and insured depository institution holding companies to furnish the appropriate Federal banking agency with at least 30 days' notice prior to adding any individual to the board of directors or employing any individual as a senior executive officer. It also permits the appropriate Federal banking agency no more than 90 days to issue a notice of disapproval of the proposed addition of a director or employment of a senior executive officer. Subpart F of part 303 of the FDIC's regulations imposes similar notice filing requirements on insured State nonmember banks. After careful review, the FDIC is amending subpart F of part 303 so that it applies to State savings associations as well as State nonmember banks and rescinding and removing §§ 390.360 through 390.368. Therefore, the FDIC believes that rescinding §§ 390.360 through 390.368 is unlikely to have any effect on FDIC-supervised State savings associations.

[74] *See* 12 U.S.C. 1437 nt.

[75] *See* 12 U.S.C. 5412(b)(2)(B)(i)(II).

[76] 76 FR 49047 (Aug. 9, 2011).

[77] 12 CFR 163.180(e).

[78] *See* 12 U.S.C. 1828(e).

[79] *See* 12 U.S.C. 1816; Statement of Policy on Applications for Deposit Insurance.

[80] *See* Statement of Policy on Applications for Deposit Insurance (''An insured depository institution should maintain sufficient fidelity bond coverage on its active officers and employees to conform with generally accepted industry practices. Primary coverage of no less than $1 million is ordinarily expected. Approval of the application may be conditioned upon acquisition of adequate fidelity coverage prior to opening for business.'').

VI. Alternatives Considered

The FDIC has considered alternatives to the final rule but believes that the amendments represent the most appropriate option for covered entities. As discussed previously, the Dodd-Frank Act transferred certain powers, duties, and functions formerly performed by the OTS to the FDIC. The FDIC's Board reissued and redesignated certain transferred regulations from the OTS, but noted that it would evaluate them and might later incorporate them into other FDIC regulations, amend them, or rescind them, as appropriate. The FDIC has evaluated the existing regulations relating to the operations of insured depository institutions, including part 303, part 326, part 337, part 353 and part 390, subpart S. The FDIC considered the status quo alternative of retaining the current regulations but did not choose to do so because the underlying purposes of those regulations are already accomplished through substantively similar regulations. Therefore, the FDIC is amending and streamlining the FDIC's regulations.

VII. Regulatory Analysis and Procedure

A. The Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA),[81] the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The final rule rescinds and removes from the FDIC's regulations part 390, subpart S. The final rule will not create any new or revise any existing information collections under the PRA. Therefore, no information collection request will be submitted to the OMB for review.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that, in connection with a final rule, an agency prepare and make available for public comment a final regulatory flexibility analysis that describes the impact of the final rule on small entities.[82] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, and publishes its certification and a short explanatory statement in the **Federal Register**, together with the rule. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million.[83] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. For the reasons provided below, the FDIC certifies that the final rule would not have a significant economic impact on a substantial number of small banking organizations. Accordingly, a regulatory flexibility analysis is not required.

As of June 30, 2019, the FDIC supervised 3,424 insured depository institutions, of which 2,665 are considered small banking organizations for the purposes of RFA. The final rule primarily affects regulations that govern State savings associations. There are 36 State savings associations considered to be small banking organizations for the purposes of the RFA.[84]

As described in the Expected Effects section of this rule, many of the provisions being removed will be replaced by substantively identical rules applicable to other FDIC-supervised banks. For such provisions, the final rule should have no substantive effect on the compliance costs of small FDIC-supervised institutions or their safety and soundness. As also described in the Expected Effects section, other provisions of subpart S that are being removed are more restrictive or more detailed than comparable rules applicable to other FDIC-supervised banks. As such, the 36 savings associations would benefit from potentially greater flexibility and reduced compliance burden in respect to those provisions. The effects on the small FDIC-supervised institutions affected by the rule are thus generally small and burden-reducing. The FDIC believes that the existing body of FDIC regulations, OCC regulations applicable to savings associations, and FDIC examination of the banks it supervises, make it highly unlikely that the rule will have adverse safety and soundness effects or associated costs resulting from the replacement of provisions applying to the 36 institutions that are more restrictive or detailed with the provisions more generally applicable to FDIC-supervised banks. Quantification of the costs and benefits of the rule is not feasible, as the effects depend on the nature of the activities of each institution and the relevance of the provisions being removed to those specific activities.

The FDIC received no comments on the information provided in the Regulatory Flexibility Act Section of the notice of proposed rulemaking.

Given the relatively small number of institutions affected (36) and that the affected institutions will be governed by regulations that are largely similar to the provisions being removed, the FDIC certifies that the final rule will not have a significant economic effect on a substantial number of institutions.

C. The Congressional Review Act

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a ''major'' rule.[85] If a rule is deemed a major rule by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[86]

The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in—(A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[87]

The OMB has determined that the final rule is not a major rule for purposes of the Congressional Review Act and the FDIC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

[81] 44 U.S.C. 3501, *et seq.*

[82] 5 U.S.C. 601, *et seq.*

[83] The SBA defines a small banking organization as having $600 million or less in assets, where ''a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* 13 CFR 121.201 (as amended by 84 FR 34261, effective August 19, 2019). ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' *See* 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the FDIC-supervised institution is ''small'' for the purposes of RFA.

[84] Based on data from the June 30, 2019, Call Report and Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks.

[85] 5 U.S.C. 801 *et seq.*

[86] 5 U.S.C. 801(a)(3).

[87] 5 U.S.C. 804(2).

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[88] requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. The FDIC has sought to present the final rule in a simple and straightforward manner and did not receive any comments on the use of plain language.

E. The Economic Growth and Regulatory Paperwork Reduction Act

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), the FDIC is required to review all of its regulations at least once every 10 years, in order to identify any outdated or otherwise unnecessary regulations imposed on insured institutions.[89] The FDIC, along with the other Federal banking agencies, submitted a Joint Report to Congress on March 21, 2017, (EGRPRA Report) discussing how the review was conducted, what has been done to date to address regulatory burden, and further measures that will be taken to address issues that were identified.[90] As noted in the EGRPRA Report, the FDIC is continuing to streamline and clarify its regulations through the OTS rule integration process. By removing outdated or unnecessary regulations, such as part 390, subpart S, this final rule complements other actions the FDIC has taken, separately and with the other Federal banking agencies, to further the EGRPRA mandate.

F. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA),[91] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosure, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[92]

As previously stated, the final rule removes part 390, subpart S from the Code of Federal Regulations because, after careful review and consideration, the FDIC believes it is largely unnecessary, redundant, or duplicative of existing regulations or safety and soundness considerations. In addition, the final rule also includes amendments to the FDIC's regulations located in parts 303, 326, 337, and 353 to ensure that any provisions that were contained in part 390, subpart S which are not considered unnecessary, redundant, or duplicative of existing FDIC regulations, will remain in place, albeit in an amended form. These amendments do not impose any additional reporting, disclosure, or other requirements on IDIs. Because the final rule does not impose additional reporting, disclosure, or other new requirements on IDIs, section 302 of the RCDRIA does not apply.

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 326

Banks, banking, Currency, Reporting and recordkeeping requirements, Security measures.

12 CFR Part 337

Banks, banking, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 353

Banks, banking, Crime, Reporting and recordkeeping requirements.

12 CFR Part 390

Administrative practice and procedure, Advertising, Aged, Civil rights, Conflict of interests, Credit, Crime, Equal employment opportunity, Fair Housing, Government employees, Individuals with disabilities, Reporting and recordkeeping requirements, Savings associations.

For the reasons stated in the preamble and under the authority of 12 U.S.C. 5412, the Federal Deposit Insurance Corporation amends parts 303, 326, 337, 353, and 390 of title 12 of the Code of Federal Regulations as follows:

PART 303—FILING PROCEDURES

■ 1. The authority citation for part 303 is revised to read as follows:

Authority: 12 U.S.C. 378, 478, 1463, 1467a, 1813, 1815, 1817, 1818, 1819 (Seventh and Tenth), 1820, 1823, 1828, 1831i, 1831e, 1831o, 1831p–1, 1831w, 1831z, 1835a, 1843(l), 3104, 3105, 3108, 3207, 5412; 15 U.S.C. 1601–1607.

■ 2. Amend § 303.2 by adding paragraph (gg) to read as follows:

§ 303.2 Definitions.

* * * * *

(gg) *FDIC-supervised institution* means any entity for which the FDIC is the appropriate Federal banking agency pursuant to section 3(q) of the FDI Act, 12 U.S.C. 1813(q).

* * * * *

■ 3. Revise § 303.62 to read as follows:

§ 303.62 Transactions requiring prior approval.

(a) *Merger transactions.* The following merger transactions require the prior written approval of the FDIC under this subpart:

(1) Any merger transaction, including any corporate reorganization, interim merger transaction, or optional conversion, in which the resulting institution is to be an FDIC-supervised institution; and

(2) Any merger transaction, including any corporate reorganization, or interim merger transaction, that involves an uninsured bank or institution.

(b) *Related regulations.* Transactions covered by this subpart also may be subject to other regulations or application requirements, including the following:

(1) *Interstate merger transactions.* Merger transactions between insured banks that are chartered in different states are subject to the regulations of section 44 of the FDI Act (12 U.S.C. 1831u). In the case of a merger transaction that consists of the acquisition by an out of state bank of a branch without acquisition of the bank, the branch is treated for section 44 purposes as a bank whose home state is the state in which the branch is located.

(2) *Deposit insurance.* An application for deposit insurance will be required in connection with a merger transaction between a state-chartered interim institution and an insured depository institution if the related merger application is being acted upon by a Federal banking agency other than the FDIC. If the FDIC is the Federal banking agency responsible for acting on the

[88] Public Law 106–102, 113 Stat. 1338, 1471 (1999).

[89] Public Law 104–208, 110 Stat. 3009 (1996).

[90] 82 FR 15900 (March 31, 2017).

[91] 12 U.S.C. 4802(a).

[92] 12 U.S.C. 4802.

related merger application, a separate application for deposit insurance is not necessary. Procedures for applying for deposit insurance are set forth in subpart B of this part. An application for deposit insurance will not be required in connection with a merger transaction (other than a purchase and assumption transaction) of a federally-chartered interim institution and an insured institution, even if the resulting institution is to operate under the charter of the Federal interim institution.

(3) *Branch closings.* Branch closings in connection with a merger transaction are subject to the notice requirements of section 42 of the FDI Act (12 U.S.C. 1831r–1), including requirements for notice to customers. These requirements are addressed in the ''Interagency Policy Statement Concerning Branch Closings Notices and Policies'' (1 FDIC Law, Regulations, Related Acts (FDIC) 5391; *see* § 309.4(a) and (b) of this chapter for availability).

(4) *Undercapitalized institutions.* Applications for a merger transaction by applicants subject to section 38 of the FDI Act (12 U.S.C. 1831o) should also provide the information required by § 303.204. Applications pursuant to sections 38 and 18(c) of the FDI Act (12 U.S.C, 1831o and 1828(c)) may be filed concurrently or as a single application.

(5) *Certification of assumption of deposit liability.* Whenever all of the deposit liabilities of an insured depository institution are assumed by one or more insured depository institutions by merger, consolidation, other statutory assumption, or by contract, the transferring insured depository institution, or its legal successor, shall provide an accurate written certification to the FDIC that its deposit liabilities have been assumed, in accordance with 12 CFR part 307.

■ 4. Revise § 303.64 to read as follows:

§ 303.64 Processing.

(a) *Expedited processing for eligible depository institutions*—(1) *General.* An application filed under this subpart by an eligible depository institution as defined in § 303.2(r) and which meets the additional criteria in paragraph (a)(4) of this section will be acknowledged by the FDIC in writing and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2).

(2) *Timing.* Under expedited processing, the FDIC will take action on an application by the date that is the latest of:

(i) 45 days after the date of the FDIC's receipt of a substantially complete merger application; or

(ii) 10 days after the date of the last notice publication required under § 303.65 of this subpart; or

(iii) 5 days after receipt of the Attorney General's report on the competitive factors involved in the proposed transaction; or

(iv) For an interstate merger transaction subject to the provisions of section 44 of the FDI Act (12 U.S.C. 1831u), 5 days after the FDIC receives confirmation from the host state (as defined in § 303.41(e)) that the applicant has both complied with the filing requirements of the host state and submitted a copy of the FDIC merger application to the host state's bank supervisor.

(3) *No automatic approval.* Notwithstanding paragraph (a)(1) or (2) of this section, if the FDIC does not act within the expedited processing period, it does not constitute an automatic or default approval.

(4) *Criteria.* The FDIC will process an application using expedited procedures if:

(i) Immediately following the merger transaction, the resulting institution will be ''well-capitalized'' pursuant to subpart H of part 324 of this chapter (12 CFR part 324), as applicable; and

(ii)(A) All parties to the merger transaction are eligible depository institutions as defined in § 303.2(r); or

(B) The acquiring party is an eligible depository institution as defined in § 303.2(r) and the amount of the total assets to be transferred does not exceed an amount equal to 10 percent of the acquiring institution's total assets as reported in its report of condition for the quarter immediately preceding the filing of the merger application.

(b) *Standard processing.* For those applications not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action taken by the FDIC on the application when the decision is rendered.

(c) *Processing for State savings associations.* Notwithstanding paragraphs (a) and (b) of this section, the FDIC will approve or disapprove an application filed by a State savings association to acquire or be acquired by another insured depository institution that is required to be filed with the FDIC within 60 days after the date of the FDIC's receipt of a substantially complete merger application, subject to the FDIC's discretion to extend such period by an additional 30 days if any material information submitted is substantially inaccurate or incomplete.

(1) The FDIC shall notify an applicant that is a State savings association in writing of the date the application is deemed substantially complete. The FDIC may request additional information at any time.

(2) Notwithstanding this paragraph (c), if the FDIC does not approve or disapprove an application within the 60-day or extended processing period it does not constitute an automatic or default approval.

■ 5. Revise § 303.100 to read as follows:

§ 303.100 Scope.

This subpart sets forth the circumstances under which an FDIC-supervised institution must notify the FDIC of a change in any member of its board of directors or any senior executive officer and the procedures for filing such notice. This subpart implements section 32 of the FDI Act (12 U.S.C. 1831i).

■ 6. Amend § 303.101 by revising paragraphs (a) introductory text, (b), (c) introductory text, (c)(3) and (4) and adding paragraph (d) to read as follows:

§ 303.101 Definitions.

(a) *Director* means a person who serves on the board of directors or board of trustees of an FDIC-supervised institution, except that this term does not include an advisory director who:

* * * * *

(b) *Senior executive officer* means a person who holds the title of president, chief executive officer, chief operating officer, chief managing official (in an insured state branch of a foreign bank), chief financial officer, chief lending officer, chief investment officer, or, without regard to title, salary, or compensation, performs the function of one or more of these positions. *Senior executive officer* also includes any other person identified by the FDIC, whether or not hired as an employee, with significant influence over, or who participates in, major policymaking decisions of the FDIC-supervised institution.

(c) *Troubled condition* means any FDIC-supervised institution that:

* * * * *

(3) Is subject to a cease-and-desist order or written agreement issued by either the FDIC or the appropriate state banking authority that requires action to improve the financial condition of the FDIC-supervised institution or is subject to a proceeding initiated by the FDIC or state authority which contemplates the issuance of an order that requires action to improve the financial condition of the

FDIC-supervised institution, unless otherwise informed in writing by the FDIC; or

(4) Is informed in writing by the FDIC that it is in troubled condition for purposes of the requirements of this subpart on the basis of the FDIC-supervised institution's most recent report of condition or report of examination, or other information available to the FDIC.

(d) *FDIC-supervised institution* means any entity for which the FDIC is the appropriate Federal banking agency pursuant to section 3(q) of the FDI Act, 12 U.S.C. 1813(q).

■ 7. Amend § 303.102 by revising paragraphs (a), (c)(1) introductory text, (c)(1)(i), and (c)(2) to read as follows:

§ 303.102 Filing procedures and waiver of prior notice.

(a) *FDIC-supervised institutions.* An FDIC-supervised institution shall give the FDIC written notice, as specified in paragraph (c)(1) of this section, at least 30 days prior to adding or replacing any member of its board of directors, employing any person as a senior executive officer of the institution, or changing the responsibilities of any senior executive officer so that the person would assume a different senior executive officer position, if the FDIC-supervised institution:

(1) Is not in compliance with all minimum capital requirements applicable to the FDIC-supervised institution as determined on the basis of the institution's most recent report of condition or report of examination;

(2) Is in troubled condition; or

(3) The FDIC determines, in connection with its review of a capital restoration plan required under section 38(e)(2) of the FDI Act (12 U.S.C. 1831o(e)(2)) or otherwise, that such notice is appropriate.

* * * * *

(c) * * *

(1) *Waiver requests.* The FDIC may permit an individual, upon petition by the FDIC-supervised institution to the appropriate FDIC office, to serve as a senior executive officer or director before filing the notice required under this subpart if the FDIC finds that:

(i) Delay would threaten the safety and soundness of the FDIC-supervised institution

* * * * *

(2) *Automatic waiver.* The prior 30-day notice is automatically waived in the case of the election of a new director not proposed by management at a meeting of the shareholders of an FDIC-supervised institution, and the individual immediately may begin serving, provided that a complete notice is filed with the appropriate FDIC office within two business days after the individual's election.

* * * * *

■ 8. Revise § 303.103 to read as follows:

§ 303.103 Processing.

(a) *Processing.* The 30-day notice period specified in § 303.102(a) shall begin on the date substantially all information required to be submitted by the notificant pursuant to § 303.102(c)(1) is received by the appropriate FDIC office. The FDIC shall notify the FDIC-supervised institution submitting the notice of the date on which the notice is accepted for processing and of the date on which the 30-day notice period will expire. If processing cannot be completed with 30 days, the notificant will be advised in writing, prior to expiration of the 30-day period, of the reason for the delay in processing and of the additional time period, not to exceed 60 days, in which processing will be completed.

(b) *Commencement of service*—(1) *At expiration of period.* A proposed director or senior executive officer may begin service after the end of the 30-day period or any other additional period as provided under paragraph (a) of this section, unless the FDIC disapproves the notice before the end of the period.

(2) *Prior to expiration of the period.* A proposed director or senior executive officer may begin service before the end of the 30-day period or any additional time period as provided under paragraph (a) of this section, if the FDIC notifies the FDIC-supervised institution and the individual in writing of the FDIC's intention not to disapprove the notice.

(c) *Notice of disapproval.* The FDIC may disapprove a notice filed under § 303.102 if the FDIC finds that the competence, experience, character, or integrity of the individual with respect to whom the notice is submitted indicates that it would not be in the best interests of depositors of the FDIC-supervised institution or in the best interests of the public to permit the individual to be employed by, or associated with the FDIC-supervised institution. Subpart L of 12 CFR part 308 sets forth the rules of practice and procedure for a notice of disapproval.

■ 9. Amend § 303.200 by revising paragraph (b) to read as follows:

§ 303.200 Scope.

* * * * *

(b) *Institutions covered.* Restrictions and prohibitions contained in subpart H of part 324 of this chapter apply primarily to FDIC-supervised institutions, as well as to directors and senior executive officers of those institutions. Portions of subpart H of part 324 of this chapter also apply to all insured depository institutions that are deemed to be critically undercapitalized.

■ 10. Revise § 303.203 to read as follows:

§ 303.203 Applications for capital distributions.

(a) *Scope.* An FDIC-supervised institution shall submit an application for a capital distribution if, after having made a capital distribution, the institution would be undercapitalized, significantly undercapitalized, or critically undercapitalized.

(b) *Content of filing.* An application to repurchase, redeem, retire, or otherwise acquire shares or ownership interests of the FDIC-supervised institution shall describe the proposal, the shares or obligations that are the subject thereof, and the additional shares or obligations of the institution that will be issued in at least an amount equivalent to the distribution. The application also shall explain how the proposal will reduce the institution's financial obligations or otherwise improve its financial condition. If the proposed action also requires an application under § 303.241 of this part regarding prior consent to retire capital, such application should be filed concurrently with, or made a part of, the application filed pursuant to section 38 of the FDI Act (12 U.S.C. 1831*o*).

■ 11. Amend § 303.241 by revising paragraphs (a) and (e) to read as follows:

§ 303.241 Reduce or retire capital stock or capital debt instruments.

(a) *Scope*—(1) *Insured State nonmember banks.* The procedures contained in this section are to be followed by an insured State nonmember bank to seek the prior approval of the FDIC to reduce the amount or retire any part of its common or preferred stock, or to retire any part of its capital notes or debentures pursuant to section 18(i)(1) of the FDI Act (12 U.S.C. 1828(i)(1)).

(2) *Insured State savings associations.* The procedures contained in this section are to be followed by an insured State savings association to seek the prior approval of the FDIC to reduce the amount or retire any part of its common or preferred stock, or to retire any part of its capital notes or debentures, as if the insured State savings association were a State nonmember bank subject to

section 18(i)(1) of the Act (12 U.S.C. 1828(i)(1)).

* * * * *

(e) *Undercapitalized institutions.* Procedures regarding applications by an undercapitalized insured depository institution to retire capital stock or capital debt instruments pursuant to section 38 of the FDI Act (12 U.S.C. 1831*o*) are set forth in subpart K (Prompt Corrective Action), § 303.203. Applications pursuant to section 38 and this section should be filed concurrently, or as a single application.

* * * * *

PART 326—MINIMUM SECURITY DEVICES AND PROCEDURES AND BANK SECRECY ACT COMPLIANCE

■ 12. The authority citation for part 326 is revised to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1818, 1819 (Tenth), 1881–1883, 5412; 31 U.S.C. 5311–5314, 5316–5332.2.

■ 13. Amend § 326.1 by revising paragraph (a) to read as follows:

§ 326.1 Definitions.

* * * * *

(a) The term *FDIC-supervised institution* or *institution* means any entity for which the Federal Deposit Insurance Corporation is the appropriate Federal banking agency pursuant to section 3(q) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(q).

* * * * *

■ 14. Revise § 326.8 to read as follows:

§ 326.8 Bank Secrecy Act compliance.

(a) *Purpose.* This subpart is issued to assure that all FDIC-supervised institutions as defined in 12 CFR 326.1 establish and maintain procedures reasonably designed to assure and monitor their compliance with the requirements of subchapter II of chapter 53 of title 31, United States Code, and the implementing regulations promulgated thereunder by the Department of Treasury at 31 CFR Chapter X.

(b) *Compliance procedures*—(1) *Program requirement.* Each institution shall develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code, and the implementing regulations issued by the Department of Treasury at 31 CFR Chapter X. The compliance program shall be written, approved by the institution's board of directors, and noted in the minutes.

(2) *Customer identification program.* Each institution is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the FDIC and the Department of the Treasury at 31 CFR 1020.220.

(c) *Contents of compliance program.* The compliance program shall, at a minimum:

(1) Provide for a system of internal controls to assure ongoing compliance;

(2) Provide for independent testing for compliance to be conducted by institution personnel or by an outside party;

(3) Designate an individual or individuals responsible for coordinating and monitoring day-to-day compliance; and

(4) Provide training for appropriate personnel.

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

■ 15. The authority citation for part 337 is revised to read as follows:

Authority: 12 U.S.C. 375a(4), 375b, 1463, 1464, 1468, 1816, 1818(a), 1818(b), 1819, 1820(d), 1821(f), 1828(j)(2), 1831, 1831f, 1831g, 5412.

■ 16. Revise § 337.3 to read as follows:

§ 337.3 Limits on extensions of credit to executive officers, directors, and principal shareholders of FDIC-supervised institutions.

(a) With the exception of 12 CFR 215.5(b) and (c)(3) and (4), FDIC-supervised institutions are subject to the restrictions contained in Federal Reserve Board Regulation O (12 CFR part 215) to the same extent and to the same manner as though they were member banks.

(b) For the purposes of compliance with § 215.4(b) of Federal Reserve Board Regulation O, no FDIC-supervised institution may extend credit or grant a line of credit to any of its executive officers, directors, or principal shareholders or to any related interest of any such person in an amount that, when aggregated with the amount of all other extensions of credit and lines of credit by the FDIC-supervised institution to that person and to all related interests of that person, exceeds the greater of $25,000 or five percent of the FDIC-supervised institution's unimpaired capital and unimpaired surplus,[1] or $500,000 unless:

(1) The extension of credit or line of credit has been approved in advance by a majority of the entire board of directors of that FDIC-supervised institution and

(2) The interested party has abstained from participating directly or indirectly in the voting.

(c)(1) No FDIC-supervised institution may extend credit in an aggregate amount greater than the amount permitted in paragraph (c)(2) of this section to a partnership in which one or more of the FDIC-supervised institution's executive officers are partners and, either individually or together, hold a majority interest. For the purposes of paragraph (c)(2) of this section, the total amount of credit extended by an FDIC-supervised institution to such partnership is considered to be extended to each executive officer of the FDIC-supervised institution who is a member of the partnership.

(2) An FDIC-supervised institution is authorized to extend credit to any executive officer of the bank for any other purpose not specified in § 215.5(c)(1) and (2) of Federal Reserve Board Regulation O (12 CFR 215.5(c)(1) and (2)) if the aggregate amount of such other extensions of credit does not exceed at any one time the higher of 2.5 percent of the FDIC-supervised institution's unimpaired capital and unimpaired surplus or $25,000 but in no event more than $100,000, provided, however, that no such extension of credit shall be subject to this limit if the extension of credit is secured by:

(i) A perfected security interest in bonds, notes, certificates of indebtedness, or Treasury bills of the United States or in other such obligations fully guaranteed as to principal and interest by the United States;

(ii) Unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission or establishment of the United States or any corporation wholly owned directly or indirectly by the United States; or

(iii) A perfected security interest in a segregated deposit account in the lending FDIC-supervised institution.

(3) For the purposes of this paragraph (c), the definitions of the terms used in Federal Reserve Board Regulation O shall apply including the exclusion of executive officers of an FDIC-supervised institution's parent bank or savings and loan holding company and executive officers of any other subsidiary of that bank or savings and loan holding company from the definition of executive officer for the purposes of complying with the loan restrictions contained in section 22(g) of the Federal

[1] For the purposes of section 337.3, an FDIC-supervised institution's unimpaired capital and unimpaired surplus shall have the same meaning as found in section 215.2(i) of Federal Reserve Board Regulation O (12 CFR 215.2(i)).

Reserve Act. For the purposes of complying with § 215.5(d) of Federal Reserve Board Regulation O, the reference to ''the amount specified for a category of credit in paragraph (c) of this section'' shall be understood to refer to the amount specified in paragraph (c)(2) of this § 337.3.

(d) *Definition.* For purposes of this section, *FDIC-supervised institution* means an entity for which the FDIC is the appropriate Federal banking agency pursuant to section 3(q) of the FDI Act, 12 U.S.C. 1813(q).

■ 17. Revise § 337.11 to read as follows:

§ 337.11 Effect on other banking practices.

(a) Nothing in this part shall be construed as restricting in any manner the Corporation's authority to deal with any banking practice which is deemed to be unsafe or unsound or otherwise not in accordance with law, rule, or regulation; or which violates any condition imposed in writing by the Corporation in connection with the granting of any application or other request by an FDIC-Supervised institution, or any written agreement entered into by such institution with the Corporation. Compliance with the provisions of this part shall not relieve an FDIC-supervised institution from its duty to conduct its operations in a safe and sound manner nor prevent the Corporation from taking whatever action it deems necessary and desirable to deal with specific acts or practices which, although they do not violate the provisions of this part, are considered detrimental to the safety and sound operation of the institution engaged therein.

(b) *Definition. FDIC-supervised institution* means an entity for which the FDIC is the appropriate Federal banking agency pursuant to section 3(q) of the FDI Act, 12 U.S.C. 1813(q).

PART 353—SUSPICIOUS ACTIVITY REPORTS

■ 18. The authority citation for part 353 is revised to read as follows:

Authority: 12 U.S.C. 1818, 1819; 31 U.S.C. 5318.

§ 353.1 [Amended]

■ 19. Revise § 353.1 to read as follows:

§ 353.1 Purpose and scope.

The purpose of this part is to ensure that an FDIC supervised institution files a Suspicious Activity Report when it detects a known or suspected criminal violation of federal law or a suspicious transaction related to a money laundering activity or a violation of the Bank Secrecy Act. This part applies to all FDIC supervised institutions.

■ 20. Amend § 353.2 by adding paragraph (c) to read as follows:

§ 353.2 Definitions.

* * * * *

(c) *FDIC-supervised institution* means an entity for which the FDIC is the appropriate Federal banking agency pursuant to section 3(q) of the FDI Act, 12 U.S.C. 1813(q).

§ 353.3 [Amended]

■ 21. Amend § 353.3 by:

■ a. Removing the term ''A bank'' and adding in its place the term ''An FDIC-supervised institution'' wherever it appears;

■ b. Removing the term ''a bank'' and adding in its place the term ''an FDIC-supervised institution'' wherever it appears;

■ c. Removing the term ''an insured state-licensed branch of a foreign bank'' in paragraph (f) and adding in its place the term ''a foreign bank having an insured branch'';

■ d. Removing the term ''Any bank'' in paragraph (g) and adding ''An FDIC-supervised institution'' in its place;

■ e. Removing the term ''any bank'' in paragraph (h) and adding ''an FDIC-supervised institution'' in its place; and

■ f. Removing the term ''the bank'' and adding in its place the term ''the FDIC-supervised institution'' wherever it appears.

PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

■ 22. The authority citation for part 390 is revised to read as follows:

Authority: 12 U.S.C. 1819.

Subpart F also issued under 5 U.S.C. 552; 559; 12 U.S.C. 2901 *et seq.*

Subpart G also issued under 12 U.S.C. 2810 *et seq.,* 2901 *et seq.;* 15 U.S.C. 1691; 42 U.S.C. 1981, 1982, 3601–3619.

Subpart O also issued under 12 U.S.C. 1828.

Subpart Q also issued under 12 U.S.C. 1462; 1462a; 1463; 1464.

Subpart W also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78l; 78m; 78n; 78p; 78w.

Subpart Y also issued under 12 U.S.C.1831o.

Subpart S—[Removed and Reserved]

■ 23. Remove and reserve subpart S, consisting of §§ 390.330 through 390.368.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on December 12, 2019.

Annmarie H. Boyd,

Assistant Executive Secretary.

[FR Doc. 2019–27580 Filed 1–17–20; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 390

RIN 3064–AF13

Removal of Transferred OTS Regulations Regarding Regulatory Reporting Requirements, Reports and Audits of State Savings Associations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (''FDIC'') is adopting a final rule rescinding and removing from the Code of Federal Regulations the regulations regarding regulatory reporting standards.

DATES: The final rule is effective on February 20, 2020.

FOR FURTHER INFORMATION CONTACT: Christine M. Bouvier, Assistant Chief Accountant, (202) 898–7289, *CBouvier@FDIC.gov,* Division of Risk Management Supervision; Karen J. Currie, Senior Examination Specialist, (202) 898–3981, Division of Risk Management Supervision; David M. Miles, Counsel, Legal Division, (202) 898–3651.

SUPPLEMENTARY INFORMATION:

I. Policy Objectives

The policy objectives of the final rule are twofold. The first is to simplify the FDIC's regulations by removing unnecessary ones and thereby improving ease of reference and public understanding. The second is to promote parity between State savings associations and State nonmember banks by having the regulatory reporting requirements, regulatory reports and audits of both classes of institutions addressed in the same FDIC rules.

II. Background

Part 390, subpart R was included in the regulations that were transferred from the Office of Thrift Supervision (''OTS'') to the FDIC on July 21, 2011, in connection with the implementation of title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'').[1] Beginning July 21, 2011, the transfer date established by

[1] Public Law 111–203, 124 Stat. 1376 (2010).

section 311 of the Dodd-Frank Act,[2] the powers, duties, and functions formerly performed by the OTS were divided among the FDIC for State savings associations, the Office of the Comptroller of the Currency (''OCC'') for Federal savings associations, and the Board of Governors of the Federal Reserve System (''FRB'') for savings and loan holding companies. Section 316(b) of the Dodd-Frank Act [3] provides the manner of treatment for all orders, resolutions, determinations, regulations, and advisory materials that had been issued, made, prescribed, or allowed to become effective by the OTS. The section provides that if such regulatory issuances were in effect on the day before the transfer date, they continue in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

The Dodd-Frank Act directed the FDIC and the OCC to consult with one another and to publish a list of continued OTS regulations to be enforced by each respective agency that would continue to remain in effect until the appropriate Federal banking agency modified or removed the regulations in accordance with applicable law. The list was published by the FDIC and OCC as a Joint Notice in the **Federal Register** on July 6, 2011,[4] and shortly thereafter, the FDIC published its transferred OTS regulations as new FDIC regulations in parts 390 and 391. When it republished the transferred OTS regulations, the FDIC noted that its staff would evaluate the transferred OTS rules and might later recommend incorporating the transferred regulations into other FDIC rules, amending them, or rescinding them, as appropriate. Further, section 312(c)(1) of the Dodd-Frank Act [5] amended the definition of ''appropriate Federal banking agency'' contained in section 3(q) of the FDI Act,[6] to add State savings associations to the list of entities for which the FDIC is designated as the ''appropriate Federal banking agency.'' As a result, when the FDIC acts as the ''appropriate Federal banking agency'' for State savings associations, as it does today, it has the authority to issue, modify, and rescind regulations involving such associations, as well as for State nonmember banks and State-licensed insured branches of foreign banks.

III. Proposed Rule

On October 2, 2019, the FDIC published a notice of proposed rulemaking (NPR) regarding the removal of part 390, subpart R (former OTS part 562), which addressed regulatory reporting requirements, regulatory reports and audits of State savings associations.[7] The former OTS rule was transferred to the FDIC with only nominal changes. The NPR proposed removing part 390, subpart R, because, after careful review and consideration, the FDIC believed it was largely unnecessary, redundant or duplicative given other FDIC regulations that pertain to regulatory reporting requirements (12 CFR part 304, 12 CFR part 363 and its appendices A and B, and 12 CFR part 364 and its appendix A), regulatory reports (12 CFR part 304 and 12 CFR part 308), and audits of insured depository institutions (12 CFR part 363 and its appendices A and B and 12 CFR part 364 and its appendix A) that already apply to State savings associations.

IV. Comments

The FDIC issued the NPR on October 2, 2019, with a 30-day comment period. On October 9, 2019, the FDIC issued a supplemental notice of proposed rulemaking (SNPR) which, among other things, extended the deadline for comments on the FDIC's regulatory flexibility analysis until November 8, 2019. The FDIC received no comments on the NPR or the SNPR, and consequently the final rule is adopted without change.

V. Explanation of the Final Rule

As discussed in the NPR, 12 CFR part 390, subpart R, is being rescinded, in its entirety, because it is largely unnecessary, redundant or duplicative given the existence of other applicable FDIC regulations described in Part III above.

VI. Expected Effects

As explained in Part III of this Supplementary Information section, certain OTS regulations transferred to the FDIC by the Dodd-Frank Act relating to regulatory reporting requirements, regulatory reports, and audits of State savings associations are redundant or unnecessary in light of other applicable FDIC regulations. This rule would eliminate those transferred OTS regulations.

As of June 30, 2019, the FDIC supervises 3,424 insured depository institutions, of which 38 (1.1 percent) are State savings associations.[8] The rule primarily would affect regulations that govern State savings associations.

As explained in the NPR, the rule would remove §§ 390.320, 390.321, and 390.332 of part 390, subpart R, because these sections are redundant of, or otherwise unnecessary in light of, applicable statutes and other FDIC regulations regarding audits, reporting, and safety and soundness. As a result, rescinding and removing these regulations will not have any substantive effects on FDIC-supervised institutions.

VII. Alternatives

The FDIC has considered alternatives to the final rule but believes that the amendments represent the most appropriate option for covered institutions. As discussed previously, the Dodd-Frank Act transferred certain powers, duties, and functions formerly performed by the OTS to the FDIC. The FDIC's Board reissued and redesignated certain transferred regulations from the OTS, but noted that it would evaluate them and might later incorporate them into other FDIC regulations, amend them, or rescind them, as appropriate. The FDIC has evaluated the existing regulations relating to regulatory reporting standards and audits of insured depository institutions, including 12 CFR part 304; 12 CFR part 308; 12 CFR part 363 and its appendices A and B; 12 CFR part 364 and its appendix A; and 12 CFR part 390, subpart R. The FDIC considered the status quo alternative of retaining the current regulations but did not choose to do so because the underlying purposes of those regulations are already accomplished through substantively similar regulations regarding regulatory reports, regulatory reporting requirements, and audits. Therefore, the FDIC is amending and streamlining the FDIC's regulations.

VIII. Regulatory Analysis and Procedure

A. The Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (''PRA''),[9] the FDIC may not conduct or sponsor, and the respondent is not

[2] 12 U.S.C. 5411.

[3] 12 U.S.C. 5414(b).

[4] 76 FR 39246 (July 6, 2011).

[5] 12 U.S.C. 5412(c)(1).

[6] 12 U.S.C. 1813(q).

[7] *See* 84 FR 52387 (Oct. 2, 2019). The FDIC published a SNPR in the **Federal Register** relating to the FDIC's regulatory flexibility analysis on October 9, 2019. *See* 84 FR 54045 (Oct. 9, 2019).

[8] Based on data from the June 30, 2019, Call Report and FFIEC 002 Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks.

[9] 44 U.S.C. 3501–3521.

required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (''OMB'') control number.

The final rule rescinds and removes from FDIC regulations part 390, subpart R. The final rule will not create any new or revise any existing collections of information under the PRA. Therefore, no information collection request will be submitted to the OMB for review.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires that, in connection with a final rule, an agency prepare and make available for public comment a final regulatory flexibility analysis that describes the impact of the final rule on small entities.[10] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, and publishes its certification and a short explanatory statement in the **Federal Register** together with the rule. The Small Business Administration (''SBA'') has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million.[11] [12] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. For the reasons provided below, the FDIC certifies that the rule would not have a significant economic impact on a substantial number of small banking organizations. Accordingly, a regulatory flexibility analysis is not required.

As of June 30, 2019, the FDIC supervised 3,424 insured depository institutions, of which 2,665 are considered small banking organizations for the purposes of RFA.[13] The final rule primarily affects regulations that govern State savings associations. There are 36 State savings associations considered to be small banking organizations for the purposes of the RFA.[14]

As explained in the NPR, the final rule would remove §§ 390.320, 390.321, and 390.332 of part 390, subpart R, because these sections are redundant or otherwise unnecessary in light of applicable statutes and other FDIC regulations. As a result, rescinding the regulations would not have any substantive effects on small FDIC-supervised institutions.

Based on the information above, the FDIC certifies that the final rule would not have a significant economic impact on a substantial number of small entities.

C. The Congressional Review Act

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a ''major'' rule.[15] If a rule is deemed a major rule by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[16]

The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in—(A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[17]

The OMB has determined that the final rule is not a major rule for purposes of the Congressional Review Act and the FDIC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[18] requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. The FDIC has sought to present the final rule in a simple and straightforward manner and did not receive any comments on the use of plain language.

E. The Economic Growth and Regulatory Paperwork Reduction Act

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (''EGRPRA''), the FDIC is required to review all of its regulations, at least once every 10 years, in order to identify any outdated or otherwise unnecessary regulations imposed on insured institutions.[19] The FDIC, along with the other Federal banking agencies, submitted a Joint Report to Congress on March 21, 2017 (''EGRPRA Report''), discussing how the review was conducted, what has been done to date to address regulatory burden, and further measures the agency will take to address issues that were identified.[20] As noted in the EGRPRA Report, the FDIC is continuing to streamline and clarify its regulations through the OTS rule integration process. By removing outdated or unnecessary regulations, such as part 390, subpart R, this final rule complements other actions the FDIC has taken, separately and with the other Federal banking agencies, to further the EGRPRA mandate.

F. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (''RCDRIA''),[21] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (''IDIs''), each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosure, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date

[10] 5 U.S.C. 601, *et seq.*

[11] The SBA defines a small banking organization as having $600 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* 13 CFR 121.201 (as amended, by 84 FR 34261, effective August 19, 2019). In its determination, ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' *See* 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of the RFA.

[12] The FDIC supplemented the RFA analysis in the NPR with an updated regulatory flexibility analysis to reflect changes to the Small Business Administration's monetary-based size standards which were adjusted for inflation as of August 19, 2019. See 84 FR 54045 (Oct. 9, 2019).

[13] FDIC Call Report, June 30, 2019.

[14] *Id.*

[15] 5 U.S.C. 801 *et seq.*

[16] 5 U.S.C. 801(a)(3).

[17] 5 U.S.C. 804(2).

[18] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999).

[19] Public Law 104–208, 110 Stat. 3900 (1996).

[20] 82 FR 15900 (March 31, 2017).

[21] 12 U.S.C. 4802(a).

on which the regulations are published in final form.[22]

Because the final rule does not impose additional reporting, disclosure, or other requirements on IDIs, section 302 of RCDRIA does not apply.

List of Subjects in 12 CFR Part 390

Regulatory reporting standards.

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation amends title 12 CFR part 390 as follows:

PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

■ 1. Revise the authority citation for part 390 to read as follows:

Authority: 12 U.S.C. 1819.

Subpart F also issued under 5 U.S.C. 552; 559; 12 U.S.C. 2901 *et seq.*

Subpart G also issued under 12 U.S.C. 2810 *et seq.,* 2901 *et seq.;* 15 U.S.C. 1691; 42 U.S.C. 1981, 1982, 3601–3619.

Subpart O also issued under 12 U.S.C. 1828.

Subpart Q also issued under 12 U.S.C. 1462; 1462a; 1463; 1464.

Subpart W also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78l; 78m; 78n; 78p; 78w.

Subpart Y also issued under 12 U.S.C. 1831o.

Subpart R—[Removed and Reserved]

■ 2. Remove and reserve subpart R, consisting of §§ 390.320 through 390.322.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on December 12, 2019.

Annmarie H. Boyd,

Assistant Executive Secretary.

[FR Doc. 2019–27577 Filed 1–17–20; 8:45 am]

BILLING CODE 6714–01–P

[22] 12 U.S.C. 4802.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 390

RIN 3064–AF15

Removal of Transferred OTS Regulations Regarding Accounting Requirements for State Savings Associations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is adopting a final rule to rescind and remove rules regarding accounting requirements for State savings associations because these financial statement and disclosure requirements are substantially similar to, although more detailed than, otherwise applicable financial statement form and content requirements and disclosure requirements that a State savings association must satisfy under Federal banking or securities laws or regulations. The final rule adopts, without change, a notice of proposed rulemaking (NPR) published in the **Federal Register** on October 2, 2019, which received no comments.

DATES: The final rule is effective on February 20, 2020.

FOR FURTHER INFORMATION CONTACT: Maureen Loviglio, Senior Staff Accountant, Division of Risk Management Supervision, (202) 898–6777, *MLoviglio@FDIC.gov;* Suzanne Dawley, Counsel, Legal Division, *sudawley@FDIC.gov.*

SUPPLEMENTARY INFORMATION:

I. Policy Objectives

The policy objectives of the final rule are twofold. The first is to simplify the FDIC's regulations by removing unnecessary regulations, or realigning existing regulations in order to improve the public's understanding and to improve the ease of reference. The second is to promote parity between State savings associations and State nonmember banks by making both classes of institutions subject to the same accounting requirements. Thus, as further detailed in this section, the FDIC is rescinding and removing from the Code of Federal Regulations rules entitled Accounting Requirements (part 390, subpart T) applicable to State savings associations. Such requirements prescribe definitions, public accountant qualifications, and the form and content of financial statements pertaining to certain securities and their related transaction documents. Transaction documents may include proxy statements and offering circulars in connection with a conversion, any offering of securities by a State savings association, and filings by State savings associations requiring financial statements under the Securities Exchange Act of 1934 (Exchange Act).[1] The FDIC has determined that the additional financial disclosure requirements required by part 390, subpart T, for State savings associations are substantially similar to, although more detailed than, otherwise applicable financial statement form and content requirements and disclosure requirements that State nonmember banks must satisfy under Federal banking or securities laws or regulations. Therefore, the FDIC is rescinding and removing part 390, subpart T, and will apply existing disclosure requirements, and related form and content of financial statements requirements to State savings associations.

II. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[2] signed into law on July 21, 2010, provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies.[3] Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act,[4] the powers, duties, and functions formerly performed by the Office of Thrift Supervision (OTS) were divided among the FDIC, as to State savings associations, the Office of the Comptroller of the Currency (OCC), as to Federal savings associations, and the Board of Governors of the Federal Reserve System, as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act[5] provides the manner of treatment for all orders, resolutions, determinations, regulations, and advisory materials issued, made, prescribed, or allowed to become effective by the OTS. Section 316(b) also provides that, if such materials were in effect on the day before the transfer date, they continue in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

Pursuant to section 316(c) of the Dodd-Frank Act,[6] on June 14, 2011, the FDIC's Board of Directors approved a ''List of OTS Regulations to be Enforced by the OCC and the FDIC Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.'' This list was published by the FDIC and the OCC as a Joint Notice in the **Federal Register** on July 6, 2011.[7]

[1] 15 U.S.C. 78a *et seq.*

[2] 12 U.S.C. 5301 *et seq.*

[3] 12 U.S.C. 5411.

[4] *Id.*

[5] 12 U.S.C. 5414(b).

[6] 12 U.S.C. 5414(c).

[7] 76 FR 39246 (July 6, 2011).

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act [8] granted the OCC rulemaking authority relating to both State and Federal savings associations, nothing in the Dodd-Frank Act affected the FDIC's existing authority to issue regulations under the Federal Deposit Insurance Act (FDI Act) [9] and other laws as the ''appropriate Federal banking agency'' or under similar statutory terminology. Section 312(c)(1) of the Dodd-Frank Act [10] revised the definition of ''appropriate Federal banking agency'' contained in section 3(q) of the FDI Act [11] to add State savings associations to the list of entities for which the FDIC is designated as the ''appropriate Federal banking agency.'' As a result, when the FDIC acts as the designated ''appropriate Federal banking agency'' (or under similar terminology) for State savings associations, as it does here, the FDIC is authorized to issue, modify and rescind regulations involving such associations. Further, section 376 of the Dodd-Frank Act [12] grants rulemaking and administrative authority to the FDIC over the Exchange Act [13] filings of State savings associations.

As noted, on June 14, 2011, operating pursuant to this authority, the FDIC's Board of Directors reissued and re-designated certain transferring regulations of the former OTS. These transferred OTS regulations were published as new FDIC regulations in the **Federal Register** on August 5, 2011.[14] When it republished the transferred OTS regulations as new FDIC regulations, the FDIC specifically noted that its staff would evaluate the transferred OTS rules and might later recommend incorporating the transferred OTS regulations into other FDIC rules, amending them, or rescinding them, as appropriate.

III. The Proposed Rule

On October 2, 2019, the FDIC published a notice of proposed rulemaking (NPR) regarding the removal of part 390, subpart T (formerly OTS part 563c),[15] which addressed accounting requirements for State savings associations.[16] This subpart prescribes for State savings associations accounting requirements with respect to definitions, public accountant qualifications, and the form and content of financial statements pertaining to certain securities transaction documents.[17] These transaction documents include proxy statements and offering circulars in connection with a conversion, any offering of securities by a State savings association, and filings by State savings associations requiring financial statements under the Exchange Act.[18]

After a careful review of part 390, subpart T, the FDIC determined that the accounting requirements with respect to financial statements and disclosure forms and content set forth by part 390, subpart T, are substantially similar to, although more detailed than, other requirements that a State savings association must satisfy under Federal banking or securities laws or regulations. Therefore, the FDIC proposed to rescind and remove part 390, subpart T (including the appendix to 12 CFR 390.384).

State savings association reports and financial statements are required to be uniform and consistent with U.S. generally accepted accounting principles (GAAP) pursuant to section 37 of the FDI Act and section 4(b) of the Homeowners Owners Loan Act (HOLA).[19] While securities issued by State savings associations are exempt from registration requirements of the Securities Act of 1933 (Securities Act),[20] the FDIC reviews for compliance with 12 CFR part 192, *Conversion from a Mutual to Stock Form* (OCC conversion regulations), offering circulars related to mutual-to-stock conversions involving securities offerings by State savings associations. The FDIC will not approve an offering circular until concerns regarding the adequacy or accuracy of the offering circular or the disclosures are satisfactorily addressed.[21] The FDIC is also responsible for administering and enforcing certain sections of the Exchange Act with respect to State savings associations with securities that are publicly traded.[22] As such, a State savings association that is an Exchange Act reporting company must file required periodic reports such as annual reports on Form 10–K, quarterly reports on Form 10–Q, and current reports on Form 8–K with the FDIC pursuant to 12 CFR part 335, entitled *Securities of State Nonmember Banks and State Savings Associations* (part 335) of the FDIC rules.[23] With respect to the form and content requirements for offerings of mutual capital certificates and debt securities of State savings associations set forth in part 390, subpart T,[24] the FDIC has determined that the additional disclosures required by part 390, subpart T, may be more detailed than otherwise applicable financial statement form and content and disclosure requirements that a State savings association must satisfy under GAAP, the Exchange Act, FDIC regulations, and state regulations, as appropriate. While there may be situations where the disclosures required under GAAP, FDIC regulations, and state regulations, as appropriate, with respect to the offerings of mutual capital certificates and debt securities are less detailed than the requirements under part 390, subpart T, there have been no recent filings by State savings associations to the FDIC related to the offerings of mutual capital certificates and debt securities. Therefore, the FDIC has concluded that the practical impact of the differences in level of disclosure detail is negligible and does not justify maintaining separate disclosure regulations applicable solely to State savings associations.

[8] 12 U.S.C. 5412(b)(2)(B)(i)(II).

[9] 12 U.S.C. 1811 *et seq.*

[10] 12 U.S.C. 5412(c)(1).

[11] 12 U.S.C. 1813(q).

[12] Section 376 of the Dodd Frank Act amended section 3(a) of the Exchange Act. *See* 15 U.S.C. 78c(a)(34).

[13] 15 U.S.C. 78a *et seq.*

[14] 76 FR 47652 (Aug. 5, 2011).

[15] 12 CFR part 390, subpart T.

[16] 84 FR 52387 (Oct. 2, 2019).

[17] *Id.*

[18] 12 CFR 390.380.

[19] 12 U.S.C. 1831n(a)(2); 12 U.S.C. 1463(b)(2).

[20] 15 U.S.C. 77a *et seq.* Section 3(a)(5) of the Securities Act exempts from registration requirements securities issued by State savings associations. 15 U.S.C. 77c(a)(5).

[21] 12 CFR 192.300.

[22] 12 CFR 335.101. Part 335, issued by the FDIC under section 12(i) of the Exchange Act, applies to all securities of State savings associations that are subject to the registration requirements of section 12(b) or section 12(g) of the Exchange Act. The FDIC is vested with the powers, functions, and duties of the Securities and Exchange Commission (SEC) to administer and enforce Exchange Act sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act (15 U.S.C. 78j–1, 78l, 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78p) and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley) (15 U.S.C. 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265) regarding State savings associations with one or more classes of securities subject to the registration provisions of sections 12(b) or 12(g) of the Exchange Act.

[23] Pursuant to section 12(a) of the Exchange Act, an issuer must register as an Exchange Act reporting company if it elects to list a class of securities (debt or equity) on a national securities exchange. 15 U.S.C. 78l(a). Generally, an issuer must register pursuant to section 12(g) of the Exchange Act if a class of its equity securities (other than exempted securities) is held of record by either (i) 2,000 persons, or (ii) 500 persons who are not accredited investors and, on the last day of the issuer's fiscal year, its total assets exceed $10 million. 12 CFR part 335. However, for banks, bank holding companies, and savings and loan holding companies, the threshold is 2,000 or more holders of record; the separate registration trigger for 500 or more non-accredited holders of record does not apply. A list of FDIC-supervised depository institutions currently reporting to the FDIC under the Exchange Act and part 335 can be accessed at *https://www.fdic.gov/bank/individual/part335/index.html.*

[24] 12 CFR 390.384(c).

IV. Comments

The FDIC issued the NPR with a 30-day comment period, which closed on November 4, 2019. The FDIC received no comments on the NPR. Consequently, the proposed rule is adopted as final without change, and part 390, subpart T, will be rescinded in its entirety.

V. Explanation of the Final Rule

As discussed in the NPR, 12 CFR part 390, subpart T, is being rescinded, in its entirety, because the financial statement and disclosure requirements set forth in part 390, subpart T, are substantially similar to, although more detailed than, otherwise applicable financial statement form and content requirements and disclosure requirements that a State savings association must satisfy under Federal banking or securities laws or regulations. The FDI Act has long required that reports and statements to be filed with the FDIC by insured depository institutions, including insured State saving associations, be uniform and consistent with GAAP. Moreover, the HOLA has required that savings association reports and financial statements be consistent with GAAP since the Competitive Equality Banking Act of 1987 [25] was enacted. State savings associations with securities traded in the secondary market are subject to the registration provisions and reporting requirements of the Exchange Act as implemented by the FDIC, pursuant to the authority granted by Section 12(i) of the Exchange Act. As a result, a State savings association, like a State nonmember bank, is required to file reports and other filings containing generally the same information that would be included in Exchange Act reports with the FDIC pursuant to part 335, instead of filing with the SEC.

The form and content of financial statements used in connection with proxy solicitations and offering circulars for the conversion of a State savings association from mutual to stock form remain subject to the OCC conversion regulations at part 192 and offering materials for the issuance of mutual capital certificates remain subject to the OCC regulations at 12 CFR 163.74, in addition to GAAP and any applicable Exchange Act requirements. While State savings association public offerings of securities are exempt from Securities Act registration requirements, the FDIC reviews offering circulars to ascertain that they were prepared in compliance with the anti-fraud provisions of the Federal securities laws, which require full and adequate disclosure of material facts, meet the needs of investors and depositors, and are uniform and consistent with GAAP, including financial statement disclosure requirements. Removing part 390, subpart T, will streamline the FDIC's regulations and will not increase regulatory burden for FDIC-supervised institutions.

VI. Expected Effects

As of June 30, 2019, the FDIC supervises 3,424 insured depository institutions, of which 38 (1.1 percent) are insured State saving associations.[26] The final rule primarily would only affect regulations that govern State savings associations. As explained in the NPR, the final rule would remove §§ 390.380, 390.381, 390.382, 390.383, and 390.384 of part 390, subpart T, because other Federal banking or securities laws or regulations contain similar requirements. Because these regulations are largely redundant, rescinding them will not have any substantive effects on FDIC-supervised institutions.

VII. Alternatives

The FDIC considered alternatives to the final rule but believes that the amendments represent the most appropriate option for covered institutions. As discussed previously, the Dodd-Frank Act transferred certain powers, duties, and functions formerly performed by the OTS to the FDIC. The FDIC's Board reissued and redesignated certain transferred regulations from the OTS, but noted that it would evaluate them and might later incorporate them into other FDIC regulations, amend them, or rescind them, as appropriate. The FDIC has evaluated the existing regulations relating to State savings association accounting requirements and part 390, subpart T (including the appendix to 12 CFR 390.384). The FDIC considered the alternative of retaining the current regulations, but did not choose to do so because it would be needlessly complex and confusing for its supervised institutions if substantively similar regulations regarding accounting requirements for Exchange Act filers were located in different locations within the Code of Federal Regulations. The FDIC believes it would be burdensome for FDIC-supervised institutions to refer to these separate sets of regulations. Therefore, the FDIC is rescinding part 390, subpart T (including the appendix to 12 CFR 390.384) and streamlining the FDIC's regulations.

VIII. Administrative Law Matters

A. The Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA),[27] the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The final rule rescinds and removes from FDIC regulations part 390, subpart T (including the appendix to 12 CFR 390.384). The final rule will not create any new or revise any existing collections of information under the PRA. Therefore, no information collection request will be submitted to the OMB for review.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), requires that, in connection with a final rule, an agency prepare a final regulatory flexibility analysis that describes the impact of the final rule on small entities.[28] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, and publishes its certification and a short explanatory statement in the **Federal Register** together with the rule. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million.[29] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. For the reasons provided below, the FDIC certifies that the rule would not have a significant economic impact on a

[25] Public Law 100–86, 101 Stat. 552 (1987).

[26] Based on data from the June 30, 2019, Consolidated Reports of Condition and Income (Call Report) and Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks.

[27] 44 U.S.C. 3501–3521.

[28] 5 U.S.C. 601, *et seq.*

[29] The SBA defines a small banking organization as having $600 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See 13 CFR 121.201 (as amended, by 84 FR 34261, effective August 19, 2019). ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

substantial number of small banking organizations. Accordingly, a regulatory flexibility analysis is not required.

As of June 30, 2019, the FDIC supervised 3,424 insured depository institutions, of which 2,665 are considered small banking organizations for the purposes of RFA.[30] The rule primarily affects regulations that govern State savings associations. There are 36 State savings associations considered to be small banking organizations for the purposes of the RFA.[31]

As explained in the NPR, the final rule would remove §§ 390.380, 390.381, 390.382, 390.383, and 390.384 of part 390, subpart T, because these sections are unnecessary or redundant of existing Federal banking and securities laws or regulations that prescribe accounting requirements for State savings associations. Because these regulations are redundant to existing regulations, rescinding them would not have any substantive effects on small FDIC-supervised institutions.

Based on the information above, the FDIC certifies that the final rule would not have a significant economic impact on a substantial number of small entities.

C. The Congressional Review Act

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a ''major'' rule.[32] If a rule is deemed a major rule by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[33]

The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in—(A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[34]

The OMB has determined that the final rule is not a major rule for purposes of the Congressional Review Act and the FDIC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[35] requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. The FDIC sought to present the final rule in a simple and straightforward manner and did not receive any comments on the use of plain language.

E. The Economic Growth and Regulatory Paperwork Reduction Act

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), the FDIC is required to review all of its regulations, at least once every 10 years, in order to identify any outdated or otherwise unnecessary regulations imposed on insured institutions.[36] The FDIC, along with the other Federal banking agencies, submitted a Joint Report to Congress on March 21, 2017, (EGRPRA Report) discussing how the review was conducted, what has been done to date to address regulatory burden, and further measures that will be taken to address issues that were identified.[37] As noted in the EGRPRA Report, the FDIC is continuing to streamline and clarify its regulations through the OTS rule integration process. By removing outdated or unnecessary regulations, such as part 390, subpart T, this final rule complements other actions the FDIC has taken, separately and with the other Federal banking agencies, to further the EGRPRA mandate.

F. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[38] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[39]

Because the final rule does not impose additional reporting, disclosure, or other requirements on IDIs, section 302 of RCDRIA does not apply.

List of Subjects in 12 CFR Part 390

Administrative practice and procedure, Advertising, Aged, Civil rights, Conflict of interests, Credit, Crime, Equal employment opportunity, Fair housing, Government employees, Individuals with disabilities, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation amends 12 CFR part 390 as follows:

PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

■ 1. The authority citation for part 390 is revised to read as follows:

Authority: 12 U.S.C. 1819.

Subpart F also issued under 5 U.S.C. 552; 559; 12 U.S.C. 2901 *et seq.*

Subpart G also issued under 12 U.S.C. 2810 *et seq.,* 2901 *et seq.;* 15 U.S.C. 1691; 42 U.S.C. 1981, 1982, 3601–3619.

Subpart O also issued under 12 U.S.C. 1828.

Subpart Q also issued under 12 U.S.C. 1462; 1462a; 1463; 1464.

Subpart W also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78l; 78m; 78n; 78p; 78w.

Subpart Y also issued under 12 U.S.C. 1831o.

Subpart T—[Removed and Reserved]

■ 2. Remove and reserve subpart T, consisting of §§ 390.380 through 390.384.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on December 12, 2019.

Annmarie H. Boyd,

Assistant Executive Secretary.

[FR Doc. 2019–27579 Filed 1–17–20; 8:45 am]

BILLING CODE 6714–01–P

[30] Based on data from the June 30, 2019, Call Report and Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks.

[31] *Id.*

[32] 5 U.S.C. 801 *et seq.*

[33] 5 U.S.C. 801(a)(3).

[34] 5 U.S.C. 804(2).

[35] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999).

[36] Public Law 104–208, 110 Stat. 3009 (1996).

[37] 82 FR 15900 (March 31, 2017).

[38] 12 U.S.C. 4802(a).

[39] 12 U.S.C. 4802(b).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 11, 300, and 302

49 CFR Parts 1, 5, 7, 106, 211, 389, 553, and 601

RIN 2105–AE84

Administrative Rulemaking, Guidance, and Enforcement Procedures

Correction

In rule document 2019–26672, appearing on pages 71714 through 71734, in the issue of Friday, December 27, 2019 make the following corrections:

1. Correction document C1–2019–26672 published by the Office of the Federal Register, appearing on page 1747, in the issue of Monday, January 13, 2020 was incorrect and is withdrawn.

§ 5.23 [Corrected]

2. On page 71726, in the second column, in the third paragraph, on the second line from the bottom, ''its [8] officers'' should read ''its officers''.

3. On the same page, in the same column, in the footnotes, footnote 8 should be removed.

[FR Doc. C2–2019–26672 Filed 1–17–20; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0986; Product Identifier 2019–NM–201–AD; Amendment 39–21020; AD 2019–25–55]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for The Boeing Company Model 737–300, –400, and –700 series airplanes, modified to a Bedek Division Special Freighter (BDSF) by Supplemental Type Certificate (STC) ST01566LA, ST01961SE, or ST02556SE, with a 9G rigid barrier. An emergency AD was sent to all known U.S. owners and operators of these airplanes. This AD requires complying with loading restrictions and methods. This AD was prompted by a review of the manufacturing process for the 9G rigid barrier installed on BDSF conversions that identified a manufacturing non-compliance. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 21, 2020 to all persons except those persons to whom it was made immediately effective by Emergency AD 2019–25–55, issued on December 13, 2019, which contained the requirements of this amendment.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 21, 2020.

The FAA must receive comments on this AD by March 6, 2020.

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

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

For service information identified in this final rule, contact Israel Aerospace Industries, LTD., Ben-Gurion International Airport, 70100 Israel; telephone 972–3–935–3090; email *aviation_group@iai.co.il;* internet *https://www.iai.co.il/about/groups/aviation-group.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0986.

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–2019–0986; 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 street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Eric Lin, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3523; email: *eric.lin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The Civil Aviation Authority of Israel (CAAI), which is the aviation authority for Israel, has issued Israeli AD ISR–I–53–2019–12–6, dated December 12, 2019 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for The Boeing Company Model 737–300, –400, and –700 series airplanes, modified to a BDSF by STC ST01566LA, ST01961SE, or ST02556SE, with a 9G rigid barrier. You may examine the MCAI on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0986.

On December 13, 2019, the FAA issued Emergency AD 2019–25–55, which requires complying with loading restrictions and methods. The emergency AD was sent previously to all known U.S. owners and operators of these airplanes. This action was prompted by a review of the manufacturing process for the 9G rigid barrier installed on BDSF conversions that identified a manufacturing non-compliance. It has been found that the surface preparation before bonding was improperly done, which can affect the 9G rigid barrier's strength characteristics. This condition, if not addressed, could result in the potential failure of the 9G rigid barrier under certain emergency landing loads, which could injure occupants. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Israel Aerospace Industries Service Bulletin 365–00–054, dated December 2019. This service information describes loading restrictions and methods that include reducing the cargo weights for each loading configuration and using additional straps when necessary to address 9G rigid barrier manufacturing non-compliance. 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

Pursuant to a bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe

condition described in the MCAI and service information referenced above. The FAA is issuing this AD because the agency evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

AD Requirements

This AD requires complying with the loading restrictions and methods specified in the service information described previously, except as discussed under ''Differences Between this AD and the Service Information.''

Differences Between This AD and the Service Information

Where Israel Aerospace Industries Service Bulletin 365–00–054, dated December 2019, specifies using cargo restraint straps rated at a minimum of 7,500 pounds, this AD requires using Technical Standard Order TSO–C172 cargo restraint straps; that TSO specifies a load rating of 5,000 pounds. This exception corrects the Israel Aerospace Industries service bulletin's reference to a TSO–C172 cargo strap load rating of 7,500 pounds; the cargo strap load capability specified in the TSO is 5,000 pounds.

This AD specifies that the provisions for restraining cargo directly to a pallet or the airplane as provided in the existing airplane flight manual (AFM) (reference section 1–68–XX of the Israel Aerospace Industries Weight and Balance Manual (WBM)) can only be used if that cargo and all cargo aft of that location are restrained to a forward load factor of 9G. This exception corrects an omission in the Israel Aerospace Industries' service bulletin.

Interim Action

The FAA considers this AD interim action.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of Emergency AD 2019–25–55, issued on December 13, 2019, to all known U.S. owners and operators of these airplanes. The FAA found that the risk to the flying public justified waiving notice and comment prior to adoption of this rule because the potential failure of the 9G rigid barrier, under certain emergency landing loads, could injure occupants. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons. Therefore, the FAA finds good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reasons stated above, the FAA finds that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, the FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2019–0986 and Product Identifier 2019–NM–201–AD at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. The FAA will consider all comments received by the closing date and may amend this final rule 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 final rule.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

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 FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$510

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, and

(2) Will not affect intrastate aviation in Alaska.

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):

2019–25–55 The Boeing Company: Amendment 39–21020; Docket No. FAA–2019–0986; Product Identifier 2019–NM–201–AD.

(a) Effective Date

This AD is effective January 21, 2020 to all persons except those persons to whom it was made immediately effective by Emergency AD 2019–25–55, issued on December 13, 2019, which contained the requirements of this amendment.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–300, –400, and –700 series airplanes, certificated in any category, modified to a Bedek Division Special Freighter (BDSF) by Supplemental Type Certificate (STC) ST01566LA, ST01961SE, or ST02556SE, with a 9G rigid barrier.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

(e) Unsafe Condition

This AD was prompted by a review of the manufacturing process for the 9G rigid barrier installed on BDSF conversions that identified a manufacturing non-compliance. It has been found that the surface preparation before bonding was improperly done, which can affect the 9G rigid barrier's strength characteristics. The FAA is issuing this AD to address potential failure of the 9G rigid barrier under certain emergency landing loads, which could injure occupants.

(f) Compliance

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

(g) Loading Restrictions and Methods

Before further flight, comply with the loading restrictions and methods specified in the Accomplishment Instructions of Israel Aerospace Industries Service Bulletin 365–00–054, dated December 2019, except as specified in paragraph (h) of this AD. The loading restrictions include reducing the cargo weights for each loading configuration and using additional straps as applicable.

(h) Exceptions to Service Information

(1) Where Israel Aerospace Industries Service Bulletin 365–00–054, dated December 2019, specifies using cargo restraint straps rated at a minimum of 7,500 pounds, for this AD use Technical Standard Order TSO–C172 cargo restraint straps; that TSO specifies a load rating of 5,000 pounds.

(2) The provisions for restraining cargo directly to a pallet or the airplane as provided in the existing airplane flight manual (AFM) can only be used if that cargo and all cargo aft of that location are restrained to a forward load factor of 9G.

(i) Alternative Methods of Compliance (AMOCs)

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)(2) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-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.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Israeli AD ISR–I–53–2019–12–6, dated December 12, 2019, for related information.

(2) For more information about this AD, contact Eric Lin, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3523; email: *eric.lin@faa.gov.*

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Israel Aerospace Industries Service Bulletin 365–00–054, dated December 2019.

(ii) [Reserved]

(3) For service information identified in this AD, contact Israel Aerospace Industries, LTD., Ben-Gurion International Airport, 70100 Israel; telephone 972–3–935–3090; email *aviation_group@iai.co.il;* internet *https://www.iai.co.il/about/groups/aviation-group.*

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this service information that is incorporated by reference 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: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on December 26, 2019.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2020–00798 Filed 1–17–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0221; Airspace Docket No. 17–ANM–24]

RIN–2120–AA66

Amendment, Revocation, and Establishment of Air Traffic Service (ATS) Routes; Western United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** of November 20, 2019, that amended, removed and established United States Area Navigation (RNAV) ATS routes in the western United States. ATS route T–268 had a geographic coordinate misidentified for HEMER, WA waypoint. This action corrects the geographic coordinate that was incorrectly listed in the final rule.

DATES: Effective date 0901 UTC, January 30, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Kenneth Ready, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

The FAA published a final rule in the **Federal Register** for Docket No. FAA–2018–0221 (84 FR 64014, November 20, 2019), that amended, removed and established RNAV ATS routes in the western United States. Subsequent to publication, the FAA identified an

editorial error to the geographic coordinate that identified HEMER, WA, waypoint (WP) along ATS route T–268. To accurately reflect the geographic coordinate HEMER, WA, WP, this correction changes the geographic coordinate from ''HEMER, WA WP (Lat. 48°21′52.95″ N, long. 124°23′26.86″ W)'' to read ''HEMER, WA WP (Lat. 48°22′37.11″ N, long. 124°24′07.47″ W)''.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, Amendment, Revocation, and Establishment of Air Traffic Service (ATS) Routes; Western United States, published in the **Federal Register** of November 20, 2019 (84 FR 64014) FR Doc. 2019–25047, is corrected as follows:

§ 71.1 [Amended]

Paragraph 6011 United States Area Navigation Routes.

T–268 TATOOSH, WA (TOU) to BISMARCK, ND (BIS) [Corrected]

On page 64015, column 3, line 46, remove ''HEMER, WA WP (Lat. 48°21′52.95″ N, long. 124°23′26.86″ W)'' and add in its place ''HEMER, WA WP (Lat. 48°22′37.11″ N, long. 124°24′07.47″ W)''.

Issued in Washington, DC, on January 13, 2020.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–00772 Filed 1–17–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF EDUCATION

34 CFR Chapter I

Updated Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools

AGENCY: Office of the General Counsel, Department of Education.

ACTION: Availability of guidance.

SUMMARY: The Department publishes updated guidance on constitutionally protected prayer and religious expression in public elementary and secondary schools, dated January 16, 2020.

DATES: January 21, 2020.

FOR FURTHER INFORMATION CONTACT: Patrick Shaheen, U.S. Department of Education, Office of the General Counsel, 400 Maryland Avenue SW, Room 6E300, Washington, DC 20202. Telephone: (202) 453–6339. Email: *Patrick.Shaheen@ed.gov.*

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

SUPPLEMENTARY INFORMATION: The Department publishes updated guidance, dated January 16, 2020, on constitutionally protected prayer and religious expression in public elementary and secondary schools. The purpose of this updated guidance is to provide information on the current state of the law concerning religious expression in public schools.

Section 8524(a) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act and codified at 20 U.S.C. 7904(a), requires the Secretary to issue guidance to State educational agencies (SEAs), local educational agencies (LEAs), and the public on constitutionally protected prayer in public elementary and secondary schools. In addition, section 8524(b) requires that, as a condition of receiving ESEA funds, an LEA must certify in writing to its SEA that it has no policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public schools as detailed in this updated guidance.

The updated guidance is in Appendix A of this document.

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

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 7904.

Dated: January 15, 2020.

Reed D. Rubinstein,

Principal Deputy General Counsel, delegated the Duties and Authority of the General Counsel.

BILLING CODE 4000–01–P

Appendix A

Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools

Updated January 16, 2020

Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools (Updated January 16, 2020)

U.S. Department of Education and U.S. Department of Justice

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I. Introduction

Section 8524(a) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act and codified at 20 U.S.C. § 7904(a), requires the Secretary to issue guidance to State educational agencies (SEAs), local educational agencies (LEAs), and the public on constitutionally protected prayer in public elementary and secondary schools. In addition, section 8524(b) requires that, as a condition of receiving ESEA funds, an LEA must certify in writing to its SEA that it has no policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public schools as detailed in this updated guidance.

The purpose of this updated guidance is to provide information on the current state of the law concerning religious expression in public schools. Part I is an introduction. Part II clarifies the extent to which prayer in public schools is legally protected. LEAs and SEAs are responsible, under section 8524(b) of the ESEA, to certify their compliance with the standards set forth in Part II.

Part III of this updated guidance generally addresses principles of religious liberty that relate to religious expression more broadly, including prayer, in accordance with Executive Order 13798 (May 4, 2017), 82 Fed. Reg. 21675 (May 9, 2017), and the Attorney General's Memorandum on Federal Law Protections for Religious Liberty of October 7, 2017, 82 Fed. Reg. 49668 (Oct. 26, 2017) (AG Memo). It is meant to advise SEAs and LEAs on how to comply with governing constitutional and statutory law, but it is not a part of the required certification under section 8524(b) of the ESEA. Part IV discusses the Equal Access Act, which provides statutory protection for religious expression in public schools. These broader principles were drawn substantially from a 1995 presidential memorandum, *Memorandum on Religious Expression in Public Schools*, 2 Pub. Papers 1083 (July 12, 1995), and a 1998 Department of Education memorandum, Richard W. Riley, U.S. Secretary of Education, *Religious Expression in Public Schools: A Statement of Principles* (June 1998).

The Office of Legal Counsel in the Department of Justice and the Office of General Counsel in the Department of Education have

jointly approved this updated guidance as reflecting the current state of the law. This updated guidance will be made available on the Department of Education's website (www.ed.gov) and the Department of Justice's website (www.justice.gov).

A. The Section 8524 Certification Process

To receive funds under the ESEA, an LEA must certify in writing to its SEA that no policy of the LEA prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary and secondary schools as detailed in Part II of this updated guidance. An LEA must provide this certification to the SEA by October 1 of each year during which the LEA participates in an ESEA program.

Each SEA should establish a process by which its LEAs may provide the necessary certification. There is no specific Federal form that an LEA must use in providing this certification to its SEA. The certification may be provided as part of the application process for ESEA programs, or separately, and in whatever form the SEA finds most appropriate, as long as the certification is in writing and clearly states that the LEA has no policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary and secondary schools as detailed in this updated guidance.

Section 8524(b) of the ESEA also requires that, by November 1 of each year, each SEA must send to the Secretary a list of those LEAs that have not filed the required certification or that have been the subject of a complaint to the SEA alleging that the LEA has a policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary and secondary schools. The SEA must provide a process for filing a complaint against an LEA that allegedly denies a person, including a student or employee, the right to participate in constitutionally protected prayer. To the extent the SEA has notice of a public legal charge or complaint such as a lawsuit filed against an LEA, alleging that the LEA denied a person the right to participate in constitutionally protected prayer, the SEA must report the complaint to the Secretary. The SEA must

report all complaints that are filed through the process the SEA provides, including complaints that the SEA may deem meritless, to the Secretary. This list should be sent to:

Office of Elementary and Secondary Education and
Center for Faith and Opportunity Initiatives
Attention: Phyllis Knight and Angel Rush
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

The SEA's submission should describe what investigation and/or enforcement action the SEA has initiated with respect to each listed LEA and the status of the investigation or action. The SEA should not send the LEA certifications to the Secretary but should maintain these records in accordance with its usual records retention policy.

B. Enforcement of Section 8524

Under section 8524(c) of the ESEA, the Secretary is authorized and directed to effectuate compliance with this section by issuing, and securing compliance with, rules or orders with respect to an LEA that fails to certify, or is found to have certified in bad faith, that no policy of the LEA prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary and secondary schools. The General Education Provisions Act also authorizes the Secretary to bring enforcement actions against recipients of Federal education funds that are not in compliance with the law. 20 U.S.C. §§ 1234c–1234e. Such measures include withholding funds until the recipient comes into compliance.

If an LEA fails to file the required certification, or is found to have a policy that prevents or otherwise denies participation in, constitutionally protected prayer in public elementary schools and secondary schools, the SEA should ensure compliance in accordance with its regular enforcement procedures.

C. Overview of Governing Constitutional Principles

The relationship between religion and government in the United States is governed by the First Amendment to the Constitution,

which the Supreme Court has held both prevents the government from establishing religion and protects privately initiated religious expression and activities from government interference and discrimination.[1] The legal rules that govern the issue of constitutionally protected prayer in the public schools are similar to those that govern religious expression generally. The Supreme Court has repeatedly held that the First Amendment requires public school officials to show neither favoritism toward nor hostility against religious expression such as prayer.[2] The line between government-sponsored and privately-initiated religious expression is vital to a proper understanding of the First Amendment's scope. As the Court has explained in several cases, "there is a crucial difference between *government* speech endorsing religion, which the Establishment Clause forbids, and *private* speech endorsing religion, which the Free Speech and Free Exercise Clauses protect."[3]

The Supreme Court's decisions set forth principles that distinguish impermissible governmental religious speech from constitutionally protected private religious speech. For example, teachers and other public school officials, acting in their official capacities, may not lead their classes in prayer, devotional readings from the Bible, or other religious activities,[4] nor may school officials use their authority to

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[1] The relevant portions of the First Amendment provide that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech." U.S. CONST. amend. I. The Supreme Court has held that the Fourteenth Amendment makes these provisions applicable to all levels of government—Federal, State, and local—and to all types of governmental policies and activities. *See Everson v. Bd. of Educ.*, 330 U.S. 1, 15 (1947); *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940).

[2] *See, e.g., Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001); *McCreary Cnty. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844 (2005).

[3] *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 302 (2000) (quoting *Bd. of Educ. v. Mergens*, 496 U.S. 226, 250 (1990) (plurality opinion)); *accord Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 841 (1995).

[4] *Engel v. Vitale*, 370 U.S. 421 (1962) (invalidating state laws directing the use of prayer in public schools); *School Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963) (invalidating state laws and policies requiring public schools to begin the school day with Bible readings and prayer). The Supreme Court has also held, however, that the study of the Bible or of religion, when presented objectively as part of a secular program of education (e.g.,

attempt to persuade or compel students to participate in prayer or other religious activities.[5] The Supreme Court has held, for example, that public school officials violated the Establishment Clause by inviting a rabbi to deliver a prayer at a graduation ceremony because such conduct was "attributable to the State" and applied "subtle coercive pressures," "where the student had no real alternative which would have allowed her to avoid the fact or appearance of participation."[6] Accordingly, school officials may not select public speakers on a basis that favors religious speech.[7]

Although the Constitution forbids public school officials from directing or favoring prayer in their official capacities, students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."[8] The Supreme Court has made clear that "private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression."[9] Moreover, not all religious speech that takes place in the public schools or at school-sponsored events is governmental speech.[10] For example, "nothing in the Constitution . . . prohibits any public school student from voluntarily praying at any time before, during, or after the schoolday,"[11] and students may pray with fellow students during the school day on the same terms and conditions that they may engage in other conversation or speech. Students may also speak to, and attempt to persuade, their peers about religious topics just as they do with regard to political topics.

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in history or literature classes), is consistent with the First Amendment. *See Schempp*, 374 U.S. at 225.

[5] *See Lee v. Weisman*, 505 U.S. 577, 599 (1992); *see also Wallace v. Jaffree*, 472 U.S. 38 (1985).

[6] *Lee*, 505 U.S. at 587–88.

[7] *Santa Fe*, 530 U.S. 290 (2000).

[8] *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969).

[9] *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995) (citing *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993); *Mergens*, 496 U.S. 226; *Widmar v. Vincent,* 454 U.S. 263 (1981); *Heffron v. Int'l Soc. for Krishna Consciousness, Inc.,* 452 U.S. 640 (1981)).

[10] *Santa Fe*, 530 U.S. at 302 (explaining that "not every message" that is "authorized by a government policy and take[s] place on government property at government-sponsored school-related events" is "the government's own").

[11] *Id.* at 313.

Local school authorities possess substantial discretion to impose rules of order and pedagogical restrictions on student activities,[12] but they may not structure or administer such rules to discriminate against speech with a religious perspective. Where schools permit student expression on the basis of genuinely content-neutral criteria, and students retain primary control over the content of their expression, the speech of students who choose to express themselves through religious means such as prayer is not attributable to the State and may not be restricted because of its religious content.[13] Public schools also may not restrict or censor prayers on the ground that they might be deemed "too religious" to others. The Establishment Clause prohibits State officials from making judgments about what constitutes an appropriate prayer, and from favoring or disfavoring certain types of prayers—be they "nonsectarian" and "nonproselytizing" or the opposite.[14] Student remarks are not attributable to the school simply because they are delivered in a public setting or to a public audience.[15] As the Supreme Court has explained, "[t]he proposition that schools do not endorse everything they fail to censor is not

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[12] For example, the First Amendment permits public school officials to review student speeches for vulgarity, lewdness, or sexually explicit language. *Bethel Sch. Dist. v. Fraser*, 478 U.S. 675, 683–86 (1986). Without more, however, such review does not make student speech attributable to the State.

[13] *Rosenberger*, 515 U.S. at 829 ("Once it has opened a limited forum, . . . the State must respect the lawful boundaries it has set. The State may not exclude speech where its distinction is not reasonable in light of the purpose served by the forum, nor may it discriminate against speech because of its viewpoint." (citations and quotations omitted); *see also Lamb's Chapel*, 508 U.S. at 392 ("[C]ontrol over access to a nonpublic forum can be based on subject matter and speaker identity so long as the distinctions drawn are reasonable in light of the purpose served by the forum and are viewpoint-neutral." (quotations omitted)); *Widmar*, 454 U.S. at 269–76; *Good News Club*, 533 U.S. at 122 (Scalia, J., concurring) ("Even subject-matter limits must be reasonable in light of the purpose served by the forum" (citations and quotations marked omitted)); .

[14] *See Engel v. Vitale*, 370 U.S. 421, 429–30 (1962) (explaining that "one of the greatest dangers to the freedom of the individual to worship in his own way lay in the Government's placing its official stamp of approval upon one particular kind of prayer or one particular form of religious services," that "neither the power nor the prestige" of State officials may "be used to control, support or influence the kinds of prayer the American people can say," and that the State is "without power to prescribe by law any particular form of prayer").

[15] *Santa Fe*, 530 U.S. at 302; *Rosenberger*, 515 U.S. at 834–35.

complicated,"[16] and the Constitution mandates neutrality rather than hostility toward privately initiated religious expression.[17]

II. Applying the Governing Constitutional Principles in Particular Contexts Related to Prayer

A. Prayer During Non-instructional Time

Students may pray when not engaged in school activities or instruction, subject to the same rules designed to prevent material disruption of the educational program that are applied to other privately initiated expressive activities. Among other things, students may read their Bibles, Torahs, Korans, or other scriptures; say grace before meals; and pray or study religious materials with fellow students during recess, the lunch hour, or other non-instructional time to the same extent that they may engage in nonreligious activities. While school authorities may impose rules of order and pedagogical restrictions on student activities, they may not discriminate against student prayer or religious perspectives in applying such rules and restrictions.

B. Organized Prayer Groups and Activities

Students may organize prayer groups, religious clubs, and "see you at the pole" gatherings before school to the same extent that students are permitted to organize other noncurricular student activities groups. Such groups must be given the same access to school facilities for assembling as is given to other noncurricular groups, without discrimination because of the religious perspective of their expression. School authorities possess substantial discretion concerning whether to permit the use of school media for student advertising or announcements regarding noncurricular activities. However, where student groups that meet for nonreligious activities are permitted to advertise or announce their meetings—for example, by advertising in a student newspaper, making announcements on a student activities bulletin board or public address system, or handing out leaflets—school authorities may not discriminate against groups who meet to engage in religious expression such as

[16] *Mergens*, 496 U.S. at 250 (plurality op.).
[17] *Rosenberger*, 515 U.S. at 845-46; *Everson*, 330 U.S. at 18.

prayer. School authorities may disclaim sponsorship of noncurricular groups and events, provided they administer such disclaimers in a manner that neither favors nor disfavors groups that meet to engage in prayer or express religious perspectives.

C. Teachers, Administrators, and Other School Employees

When acting in their official capacities as representatives of the State, teachers, school administrators, and other school employees are prohibited by the First Amendment from encouraging or discouraging prayer, and from actively participating in such activity with students. Teachers, however, may take part in religious activities where the overall context makes clear that they are not participating in their official capacities. Teachers also may take part in religious activities such as prayer even during their workday at a time when it is permissible to engage in other private conduct such as making a personal telephone call. Before school or during lunch, for example, teachers may meet with other teachers for prayer or Bible study to the same extent that they may engage in other conversation or nonreligious activities. Similarly, teachers may participate in their personal capacities in privately sponsored baccalaureate ceremonies or similar events.

D. Moments of Silence

If a school has a "moment of silence" or other quiet periods during the school day, students are free to pray silently, or not to pray, during these periods of time. Teachers and other school employees may neither require, encourage, nor discourage students from praying during such time periods.

E. Accommodation of Prayer During Instructional Time

Schools have the discretion to dismiss students to off-premises religious instruction, provided that schools do not encourage or discourage participation in such instruction or penalize students for attending or not attending. Similarly, schools may excuse students from class to remove a significant burden on their religious exercise, including prayer, where doing so would not impose material burdens on other students. For example, it would be lawful for schools to excuse Muslim students from class

to enable them to fulfill their religious obligations to pray during Ramadan.

F. Prayer in Class Assignments

Students may express their beliefs about religion in homework, artwork, and other written and oral assignments free from discrimination based on the religious perspective of their submissions. Such home and classroom work should be judged by ordinary academic standards of substance and relevance and against other legitimate pedagogical concerns identified by the school. Thus, if a teacher's assignment involves writing a poem, the work of a student who submits a poem in the form of a prayer (for example, a psalm) should be judged on the basis of academic standards (such as literary quality) and neither penalized nor rewarded on account of its religious perspective.

G. Student Assemblies and Noncurricular Events

Student speakers at student assemblies and noncurricular activities such as sporting events may not be selected on a basis that either favors or disfavors religious perspectives. Where student speakers are selected on the basis of genuinely content-neutral, evenhanded criteria and retain primary control over the content of their expression, that expression is not attributable to the school and therefore may not be restricted because of its religious (or anti-religious) content, and may include prayer. By contrast, where school officials determine or substantially control the content of what is expressed, such speech is attributable to the school and may not include prayer or other specifically religious (or anti-religious) content. To avoid any mistaken perception that a school endorses student speech that is not in fact attributable to the school, school officials may make appropriate, neutral disclaimers to clarify that such speech (whether religious or nonreligious) is the speaker's and not the school's speech.

H. Prayer at Graduation

School officials may not mandate or organize prayer at graduation or select speakers for such events in a manner that favors religious speech such as prayer. Where students or other

private graduation speakers are selected on the basis of genuinely content-neutral, evenhanded criteria and retain primary control over the content of their expression, however, that expression is not attributable to the school and therefore may not be restricted because of its religious (or anti-religious) content and may include prayer. To avoid any mistaken perception that a school endorses student or other private speech that is not in fact attributable to the school, school officials may make appropriate, neutral disclaimers to clarify that such speech (whether religious or nonreligious) is the speaker's and not the school's speech.

I. Baccalaureate Ceremonies

School officials may not mandate or organize religious ceremonies. However, if a school makes its facilities and related services available to other private groups, it must make its facilities and services available on the same terms to organizers of privately sponsored religious baccalaureate ceremonies. In addition, a school may disclaim official endorsement of events sponsored by private groups, provided it does so in a manner that neither favors nor disfavors groups that meet to engage in prayer or religious speech.

III. Applying the Governing Constitutional Principles in Particular Contexts Related to Religious Expression

A. Religious Literature

Students have a right to distribute religious literature to their schoolmates on the same terms as they are permitted to distribute other literature that is unrelated to school curriculum or activities. Schools may impose the same reasonable time, place, and manner or other constitutional restrictions on distribution of religious literature as they do on non-school literature generally, but they may not single out religious literature for special regulation.

B. Teaching about Religion

Public schools may not provide religious instruction, but they may teach *about* religion. For example, philosophical questions

concerning religion, the history of religion, comparative religion, the Bible (or other religious teachings) as literature, and the role of religion in the history of the United States and other countries all are permissible public school subjects. Similarly, it is permissible to consider religious influences on philosophy, art, music, literature, and social studies. Although public schools may teach about religious holidays, including their religious aspects, and may celebrate the secular aspects of holidays, schools may not observe holidays as religious events or promote such observance by students.

C. Student Dress Codes and Policies

Schools enjoy substantial discretion in adopting policies relating to student dress and school uniforms. Schools, however, may not single out religious attire in general, or attire of a particular religion, for prohibition or regulation. If a school makes exceptions to the dress code for nonreligious reasons, it must also make exceptions for religious reasons, absent a compelling interest. Students may display religious messages on items of clothing to the same extent that they are permitted to display other comparable messages. Religious messages may not be singled out for suppression, but rather are subject to the same rules as generally apply to comparable messages.

D. Religious Excusals

Where school officials have a practice of excusing students from class on the basis of parents' requests for accommodation of nonreligious needs, religiously motivated requests for excusal may not be accorded less favorable treatment. In addition, in some circumstances, based on Federal or State constitutional law or pursuant to State statutes, schools may be required to make accommodations that relieve substantial burdens on students' religious exercise. School officials are therefore encouraged to consult with their attorneys regarding such obligations.

IV. The Equal Access Act

The Equal Access Act, 20 U.S.C. § 4071, is designed to ensure that student religious activities are accorded the same access

to Federally funded public secondary school facilities as are student secular activities. Based on decisions of the Federal courts, as well as its interpretations of the Act, the Department of Justice has developed the following guidance for interpreting the Act's requirements:

General Provisions: Student religious groups at Federally funded public secondary schools have the same right of access to school facilities as is enjoyed by other comparable student groups. Under the Equal Access Act, a public secondary school receiving Federal funds that creates a "limited open forum" may not refuse student religious groups access to that forum. A "limited open forum" exists "whenever such school grants an offering to or opportunity for one or more noncurriculum related student groups to meet on school premises during noninstructional time." 20 U.S.C. § 4071(b).

Prayer Services and Worship Exercises: A meeting, as defined and protected by the Equal Access Act, may include a prayer service, Bible reading, or other worship exercise.

Means of Publicizing Meetings: A public secondary school receiving Federal funds must allow student groups meeting under the Act to use the school media—including the public address system, the school newspaper, and the school bulletin board—to announce their meetings on the same terms as other noncurriculum-related student groups are allowed to use the school media. Any policy concerning the use of school media must be applied to all noncurriculum-related student groups in a nondiscriminatory matter. Schools, however, may inform students that certain groups are not school-sponsored.

Lunch-time and Recess: The Equal Access Act prohibits a Federally funded public secondary school from denying a religious student group equal access to a limited open forum. A "limited open forum" exists "whenever such school grants an offering to or opportunity for one or more noncurriculum related student groups to meet on school premises during noninstructional time." *Id.* Accordingly, a Federally funded secondary school triggers equal access rights for religious groups when it allows students to meet during their lunch

periods or other non-instructional time during the school day, as well as when it allows students to meet before and after the school day.

Leadership of Religious Student Groups: Similar to other student groups such as political student groups, the Equal Access Act permits religious student groups to allow only members of their religion to serve in leadership positions if these leadership positions are positions that affect the religious content of the speech at the group's meetings. For example, a religious student group may require leaders such as the group's president, vice-president, and music coordinator to be a dedicated member of a particular religion if the leaders' duties consist of leading prayers, devotions, and safeguarding the spiritual content of the meetings.

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BILLING CODE 4000–01–C

Proposed Rules

Federal Register
Vol. 85, No. 13
Tuesday, January 21, 2020

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

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 124, 125, and 129

RIN 3245–AH18

Use of Federal Surplus Personal Property for Veteran-Owned Small Businesses and Small Businesses in Disaster Areas and Puerto Rico

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: This rule is proposing to expand access for certain small business concerns in varying circumstances to the U.S. General Services Administration's (GSA) Federal Surplus Personal Property Donation Program in accordance with the Recovery Improvements for Small Entities After Disaster Act of 2015 (RISE Act), the Veterans Small Business Enhancement Act, and the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (NDAA). The statutes provide that small businesses in disaster areas, veteran-owned small businesses, and small business concerns located in Puerto Rico, respectively, should be considered for surplus personal property distributions. SBA, in coordination with GSA, is proposing certain procedures for determining which firms may participate in GSA's existing surplus personal property Program, and under what conditions.

DATES: Comments must be received on or before March 23, 2020.

ADDRESSES: You may submit comments, identified by RIN 3245–AH18 by any of the following methods:

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

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

FOR FURTHER INFORMATION CONTACT: Brenda Fernandez, Office of Policy, Planning and Liaison, 409 Third Street SW, Washington, DC 20416; (202) 205–7337; *brenda.fernandez@sba.gov.*

SUPPLEMENTARY INFORMATION:

General Background

SBA is proposing this rule to implement three new statutory programs regarding the transfer of surplus personal property to certain small businesses. The first, authorized by section 2105 of Public Law 114–88 (Recovery Improvements for Small Entities After Disaster Act of 2015 or the RISE After Disaster Act of 2015 (RISE After Disaster Act)), contains provisions authorizing the transfer of surplus personal property to small businesses under certain conditions in disaster areas. The second, authorized by Public Law 115–416 (Veterans Small Business Enhancement Act), contains provisions authorizing the transfer of surplus personal property to certain veteran-owned small businesses. The third, authorized by section 861 of Public Law 115–232 (John S. McCain National Defense Authorization Act for Fiscal Year 2019), authorizes small business concerns located in Puerto Rico to also receive federal surplus personal property under certain conditions. After discussions with GSA, SBA has modified the title of this proposed regulation to more clearly state that it covers the disposition of ''personal'' not ''real'' property through GSA's programs. Therefore, the previous title for the proposed regulations, used in SBA's designation sheet (Use of Federal Surplus Property for Veteran Owned Small Businesses and Small Businesses in Disaster Areas and Puerto Rico), was changed to ''Use of Federal Surplus *Personal* Property for Veteran-Owned Small Businesses and Small Businesses in Disaster Areas and Puerto Rico''.

GSA operates the Federal Surplus Personal Property Donation Program (Program) under the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, and other applicable laws, see 41 CFR 102–37. Currently, eligible state and local government agencies and nonprofit organizations can obtain personal property that the federal government no longer needs through the Program. More information is available on the GSA website at *https://www.gsa.gov/buying-selling/government-property-for-sale-or-disposal/personal-property-for-reuse-sale/for-state-agencies-and-public-organizations/.*

The Veterans Small Business Enhancement Act

The Veterans Small Business Enhancement Act, Public Law No: 115–416 (1/3/19), codified in the Small Business Act at 15 U.S.C. 657b(g), provides that veteran-owned small business should have access to surplus government personal property. SBA is proposing to add a new subpart F to 13 CFR part 125 to implement these changes.

SBA is proposing to add § 125.100 to detail the requirements of this Program. The proposed language is similar in some respects to the surplus personal property regulations for SBA's 8(a) Business Development (BD) program (13 CFR 124.405 How does a Participant obtain Federal Government surplus property?), but does differ in some significant ways. There are certain statutory requirements that are unique to each program, and the differences in the regulations will reflect that. Key to the difference is that the 8(a) BD program is a business development program and the Small Business Act contains several provisions with regard to the transfer of surplus personal property that reflect this difference—specifically, that 8(a) BD participants must retain received surplus personal property for the duration of their time in the program and for one year after graduation. This means that 8(a) BD

participants are subject to additional compliance requirements that other parties that receive surplus personal property through GSA's Program are not. Thus, there are additional compliance requirements unique to the 8(a) program that are not necessary for veteran-owned small businesses. GSA and the State Agencies for Surplus Property (SASPs) already maintain a compliance and oversight role with regard the distribution of surplus personal property. As such, veteran-owned small business concerns that receive surplus personal property will generally follow the same guidelines and procedures as other recipients through GSA's Program. The proposed language in § 125.100(a) references the regulations that govern the GSA Program, and the requirements that concerns will need to meet to use the Program.

SBA is proposing to add § 125.100(b)(1) to incorporate the requirement that concerns will need to be verified as a small business owned and controlled by veterans by the Department of Veteran Affairs in order to be eligible for this Program. 38 CFR part 74. This requirement is incorporated directly from the Small Business Act and can be found at 15 U.S.C. 657b(g)(2).

SBA is proposing to add § 125.100(c) to provide the requirements for the use of surplus personal property received, and repercussions for misuse of the surplus personal property. The proposed language references GSA and SASP guidelines for use of surplus personal property, because as mentioned above, veteran-owned small businesses will be treated similarly to other recipients with regard to use, maintenance, and retention of surplus personal property.

SBA is proposing to add § 125.100(d) to provide notice that there are costs associated with receiving the surplus personal property. As noted above, the costs will be calculated by the individual SASP pursuant to 41 CFR 102–37 appendix B (e) and the SASP's State Plan of Operation and veteran-owned small business concerns will be treated similarly to other recipients.

SBA is proposing to add § 125.100(e) to provide notice of the type of title that veteran-owned small business concerns will receive. They will not be receiving full title at the time of transfer. They will be receiving conditional title and full title will transfer when they have met all the requirements of GSA and the SASP. Once again as noted above, this procedure will have veteran-owned small business concerns treated in a similar manner to other recipients of surplus personal property through GSA's Program.

RISE After Disaster Act

Section 2105 of the RISE After Disaster Act authorizes SBA to transfer technology or surplus personal property to small business concerns located in disaster areas. In order to implement the changes made by section 2105 of the RISE After Disaster Act, SBA is proposing to amend § 124.405 and add a new subpart 129 to title 13 of the Code of Federal Regulations.

Section 2105 of the RISE After Disaster Act, codified in the Small Business Act at 15 U.S.C. 636(j)(13)(F)(ii), provides that SBA may transfer technology or surplus personal property to a small business concern located in a disaster area if the small business meets the requirements for such a transfer, without regard to whether that small business is a participant in the 8(a) BD program. If the concern is an 8(a) BD program Participant, the concern it should not have received surplus personal property based on its status as an 8(a) BD program Participant on or after the date of the disaster declaration. Section 2105 provides that the requirements for transferring surplus personal property to a small business concern located in a disaster area shall generally be the same as those applicable to transfers to 8(a) BD program Participants. Section 2105 provides that a small business that receives surplus personal property as a small business concern located in a disaster area shall not subsequently receive surplus personal property as an 8(a) BD program Participant during the 2-year period beginning on the date on which the President declared the major disaster. A small business concern eligible for surplus personal property under a presidentially declared disaster may also be eligible for surplus personal property for a 2-year period under a subsequent presidentially declared disaster.

In order to implement the changes made by section 2105, SBA proposes to amend § 124.405 by updating the statutory reference contained in paragraph (a) and by adding a new paragraph (b)(6) to provide that 8(a) BD program Participants are not eligible to receive surplus personal property under § 124.405 if they have received surplus personal property under proposed subpart A as a small business concern located in a disaster area during the 2-year period beginning on the date on which the President declared the applicable major disaster.

In addition to the changes necessitated by section 2105, SBA is also proposing several other changes to § 124.405.

SBA is proposing to change the cross citation for the GSA and SASP procedures in § 124.405(a)(1). The change is needed to update the cross reference because it has changed since publication. SBA is proposing to change the language in paragraph (a)(2) to remove the term ''donable'' and in its place provide a more descriptive language, because ''donable'' is not a defined term in GSA's surplus personal property regulations.

SBA is proposing to amend § 124.405(b)(3) to add a reference to the nonprocurement debarment regulations contained in Title 2 of the Code of Federal Regulations.

SBA is proposing to amend § 124.405(c)(1) to provide clarity on how the Program has been historically administered. Specifically, the current regulations states that ''Participants may acquire surplus Federal Property located in any state.'' That statement is true but could be misleading as to an individual participant. The language was intended to convey that Participants throughout the country could take part, not that a Participant could acquire surplus personal property from any State at any time. Currently, a Participant may only acquire surplus personal property from the SASP in the state(s) where the Participant currently operates. This is not a new policy and has been clearly established by SBA's agreements with the SASPs. The new proposed language more clearly articulates the current policy and SBA believes will lead to less confusion now that there are additional programs.

SBA is proposing to amend § 124.405(d) to update the cross references to GSA's regulations.

SBA is proposing to amend § 124.405(f) to alter the method for transferring title. Currently title transfers to the participant when the agreement between the participant and the SASP is executed. SBA is proposing to change this to the participant being given conditional title to the surplus personal property pending the terms of the agreement being executed and the firm meeting all the additional requirements of this part. This change will align the 8(a) BD program participant title terms with the other programs SBA is implementing with this proposed rule, and with the general practice of GSA and the SASP with treatment of title with regard to other donees. SBA believes that aligning all these programs with similar title rules will simplify the process for all the parties involved.

As noted above SBA is proposing to add a new subpart A to 13 CFR part 129 to incorporate the provisions of section 2105. Part 129, Contracts for Small Businesses Located in Disaster Areas, was recently added by *SBA Final Rule: National Defense Authorization Acts of 2016 and 2017, Recovery Improvements for Small Entities After Disaster Act of 2015, and Other Small Business Government Contracting,* 84 FR 65647 (Nov. 29, 2019). This proposed subpart to part 129 addresses how a small business concern located in a disaster area would be able to obtain surplus personal property. SBA is proposing to add § 129.200 which will have one definition for this subpart. It is a definition for ''covered period''. This term is incorporated into SBA regulations as defined in the Small Business Act at 15 U.S.C. 636(j)(f)(13)(F)(ii)(I)(aa).

SBA is also proposing to add § 129.201 to implement the program for transfer of surplus personal property. The provisions of proposed § 129.201 are based on SBA's proposed regulations governing the transfer of surplus personal property to veteran-owned small business concerns addressed above and under the 8(a) BD program regulations, contained in 13 CFR 124.405.

John S. McCain National Defense Authorization Act for Fiscal Year 2019 (NDAA)

Section 861 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (NDAA), Public Law 115–232 (8/13/18) codified in the Small Business Act at 15 U.S.C. 636(j)(13)(F)(iii), provides that SBA may transfer technology or surplus personal property to a small business concern located in Puerto Rico if the small business meets the requirements for such a transfer, without regard to whether that small business is a participant in the 8(a) BD program. SBA is proposing to add a subpart B to part 129 to incorporate these changes.

SBA is proposing to add a new § 129.300. This section will have two definitions. The first definition is an incorporation of ''covered period'', a defined term in the Small Business Act. Specifically, SBA is proposing to incorporate the term ''covered period'' as defined at 15 U.S.C. 636(j)(13)(F)(iii)(I). SBA is proposing to adopt the statutory language as is without modification. It should be noted that this definition for covered period is different than the definition in proposed § 129.200. The two terms are defined separately in the Small Business Act and therefore SBA is proposing to adopt the language from the Act, as is, for each program. While it may be confusing to have two definitions of the same term for similar programs, it would not be proper for SBA to modify the clearly defined terms of the Small Business Act.

The second definition is for the term, ''*located in Puerto Rico.*'' The Small Business Act directs that SBA may transfer technology or surplus personal property to a ''Puerto Rico business'', but does not define what a Puerto Rico business is. SBA has proposed that to be eligible for a transfer a concern should be a small business and should be located in Puerto Rico. Therefore, SBA has proposed that in order to be considered located in Puerto Rico a firm should have a physical location in Puerto Rico and be organized under the laws of Puerto Rico. SBA believes that this requirement provides clear guidance for which firms are eligible.

SBA is also proposing to add § 129.301 to implement the program for transfer of surplus personal property. The provisions of proposed § 129.301 are based on SBA's proposed regulations governing the transfer of surplus personal property to veteran-owned small business concerns addressed above and under the 8(a) BD program regulations, contained in 13 CFR 124.405.

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

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is not a ''significant'' regulatory action for purposes of Executive Order 12866. This is not a major rule under the Congressional Review Act, 5 U.S.C. 801, *et. seq.*

Executive Order 13563

This executive order directs agencies to, among other things: (a) Afford the public a meaningful opportunity to comment through the internet on proposed regulations, with a comment period that should generally consist of not less than 60 days; (b) provide for an ''open exchange'' of information among government officials, experts, stakeholders, and the public; and (c) seek the views of those who are likely to be affected by the rulemaking, even before issuing a notice of proposed rulemaking. As far as practicable or relevant, SBA considered these requirements in developing this rule, as discussed below.

1. *Did the agency use the best available techniques to quantify anticipated present and future costs when responding to E.O. 12866 (e.g., identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes)?*

To the extent possible, the agency utilized the most recent data available in the Federal Procurement Data System—Next Generation, System for Award Management and Electronic Subcontracting Reporting System.

2. *Public participation: Did the agency: (a) Afford the public a meaningful opportunity to comment through the internet on any proposed regulation, with a comment period that should generally consist of not less than 60 days; (b) provide for an ''open exchange'' of information among government officials, experts, stakeholders, and the public; (c) provide timely online access to the rulemaking docket on Regulations.gov;and (d) seek the views of those who are likely to be affected by rulemaking, even before issuing a notice of proposed rulemaking?*

The proposed rule will have a 60 day comment period and will be posted on *www.regulations.gov* to allow the public to comment meaningfully on its provisions. In addition, the proposed rule was discussed with GSA, the Department of Veterans Affairs and with representatives of the National Association of State Agencies for Surplus Property.

3. *Flexibility: Did the agency identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public?*

Yes, the proposed rule implements statutory provisions and will provide clarification to rules that were requested by agencies and stakeholders. In addition, SBA is proposing changes that will allow potential small business participants to participate in the GSA Program in as similar a manner as other participants do without additional regulatory requirements.

Executive Order 12988

This action meets applicable standards set forth set forth in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. This action does not have any retroactive or preemptive effect.

Executive Order 13132

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial

direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule would implement new policies allowing more small businesses to participate in the GSA Program administered by the SASPs. SBA has analyzed this proposed rule and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. We note that this rule would impose a reporting requirement specific to state agencies that participate in the Program to provide federal technology or surplus personal property to small business concerns located in disaster areas, designated as veteran-owned small businesses, and in Puerto Rico. However, given the potential for application and annual reporting burdens on the States and Territories, particularly Puerto Rico, SBA does solicit comments on the issue of whether this rule has implications for federalism.

Executive Order 13771

This proposed rule is expected not to be subject to Executive Order 13771 because the proposed rule is a transfer rule. The benefits to small businesses in disaster areas, veteran-owned small businesses, and small business concerns located in Puerto Rico produced by this rule are a transfer of benefits from other entities who may have received the surplus personal property in their place.

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

For the purposes of the Paperwork Reduction Act, SBA has determined that this proposed rule would not impose new government-wide reporting requirements on small business concerns. SBA and GSA have discussed the possible implication of the new regulations, and do not believe that any new requirements are being added to GSA's Programs in a addition to the requirements already in place for recipients of surplus personal property. GSA has specific forms for its Surplus Property Program, but these proposed amendments will require no changes to those forms. See Standard Form 123, Transfer Order Surplus Personal Property, OMB Control Number 3090–0014 (expires 3/31/22). SBA welcomes comments on whether the proposed regulations would affect the already approved collections.

However, this rule would does have a reporting requirement specific to state agencies that participate in the Program to provide federal technology or surplus personal property to small business concerns located in disaster areas, designated as veteran-owned small businesses, and in Puerto Rico. GSA already has a specific form to collect data from SASPs with regard to the surplus personal property donation Program. See GSA Form 3040, State Agency Monthly Donation Report of Surplus Property, OMB Control Number 3090–0112 (expires 3/31/2022).

Concerning the verification of veteran-owned small businesses, the Department of Veteran Affairs already has the authority to verify qualified small business concerns. 38 CFR part 74. The Department of Veterans Affairs is responsible to update its public database accordingly. *https://www.va.gov/osdbu/verification/.* SASPs will rely on the accurately updated information to make decisions. Concerning the designation of a ''disaster area'' the term is defined in the RISE Act as area for which the President has declared a major disaster during the covered period; namely, the 2-year period beginning on the date of the declaration of the applicable major disaster.

SBA invites public comments on the proposed changes to the regulations requiring reporting from SASPs to the Federal Government. Comments must be received by the deadline stated in the **DATES** section of this rule. Refer to the **ADDRESSES** section for instructions on how and where to submit.

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

According to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, when an agency issues a rulemaking, it must ''prepare and make available for public comment an initial regulatory analysis'' which will ''describe the impact of the proposed rule on small entities.'' Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Although the rulemaking will impact all veteran-owned small businesses and small business concerns in disaster areas and Puerto Rico, SBA does not believe the impact will be significant. After discussions with GSA, SBA believes that the proposed regulation will have an impact on a substantial number of entities, but that it will not have a significant economic impact. SBA reached this conclusion because the overall amount of donated personal property will not change. The proposed regulation will be implementing statutory changes with regard to the mix of how that property is distributed among the various eligible entities, but neither GSA or SBA believe that the overall impact on all relevant parties will be significant given that the regulation is not changing the total value of personal property distributed.

The Federal Surplus Personal Property Donation Program enables certain nonfederal organizations to obtain personal property that the federal government no longer needs. SASPs maintain the list of eligible organizations and these generally include: Public agencies, nonprofit educational and public health agencies, nonprofit and public programs for the elderly, public airports, and educational agencies of special interest to the Armed Services. More information on the list of eligible entities can be found at *http://www.nasasp.org/findmystate.html.* In fiscal year 2018 GSA donated through this program personal property with original acquisition value of $418,158,102. It should be noted that this reflects the value of the property when it was acquired, not when it was donated. SBA does not have accurate data to reflect the value at time of donation, but does believe the value would be significantly less than the value at which the property was acquired.

As noted above this proposed regulation will have an effect on a substantial number of entities. First, it will have an impact on all the entities currently entitled to receive surplus property. SBA does not have a number for all those entities, but that number does include approximately 4,400 participants in SBA's 8(a) BD program. In addition to the entities already eligible for GSA's Program, these proposed regulations will also have an impact on new entities that will be allowed to take part once these regulations go into effect. As of December 9, 2019, the Department of Veteran Affairs has a total of 13,853 verified service-disabled-veteran owned small businesses and veteran-owned small businesses. Those businesses would be eligible to participate in GSA's Program under the proposed regulations. Further, as of November 2019, SBA used data from the federal procurement data system to identify approximately 3,400 small firms in Puerto Rico that are currently engaged in business with the federal government. Finally, according to the 2012 economic census there are approximately 7.7 million small businesses in the United States with employees. Under the proposed

regulations any small business located in a major disaster area may be eligible for the Program. Under this proposed regulation it is possible that any small business in the United States could potentially be a participant, because a major disaster could happen anywhere and at any time. This is a variable that cannot be known with certainty at this time. Therefore, SBA is operating under the assumption that all small businesses could be affected at some point in the future.

The provisions of this proposed regulation are implementing three distinct and new statutory provisions enacted by Congress and detailed above. Therefore, it is necessary for SBA to take some action in order to implement the new statutory requirements. SBA in conjunction with GSA has reviewed possible alternatives to this proposed regulation. One alternative discussed was for SBA and GSA to enter into one or several memorandums of understanding with regard to additional potential program participants. As noted above, participants in SBA's 8(a) BD program are currently able to participate in GSA's Program. Participation in the GSA Program by 8(a) BD participants is governed by both regulations issued by SBA and memorandums of understanding entered into by SBA, GSA, and the various SASPs. In implementing the new statutory provisions SBA believes that following the previous example of the 8(a) BD program is the best course of action and has therefore chosen to implement the statutes by regulation. Going through the formal regulation process allows SBA to craft the rules for the programs with direct input from the public, and to have a place within SBA's regulations that interested parties may go to review the requirements of the various programs. While SBA believes that the formal rule making process is the best alternative for implementation, SBA is still open to comments on the issue. If any possible impacted parties would like to provide comments on either the considered alternative or another alternative that SBA has not considered, please follow the instructions above to do so.

SBA is also aware that the statutes implementing these programs and other programs for distribution of surplus personal property do not use the same language. SBA does not think that this proposed regulation, or the various statutes conflict with each other. SBA believes that these proposed regulations will help provide clarity around any issues or differences between the various statutes. That said, SBA welcomes comments from any impacted parties about whether the proposed regulations as written conflict with other statutes or regulations.

There are no new compliance or other costs imposed by the proposed rule on small business concerns. The proposed rule expands the access to GSA's Program on to more small business concerns under varying circumstances, without significant costs. The benefits to small businesses in disaster areas, veteran-owned small businesses, and small business concerns located in Puerto Rico produced by this rule are a transfer of benefits from other entities who may have received the surplus personal property in their place. The firms must adhere to certain regulations regarding certification or status relevant to designation as a small business concern.

For the reasons discussed, SBA certifies that this proposed rule would not have a significant economic impact on a substantial number of small business concerns.

List of Subjects

13 CFR Part 124

Administrative practice and procedure, Government procurement, Hawaiian natives, Indians—business and finance, Minority businesses, Reporting and recordkeeping requirements, Technical assistance.

13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small business, Technical assistance, Veterans.

13 CFR Part 129

Administrative practice and procedure, Government contracts, Government procurement, Government property, Small businesses.

Accordingly, for the reasons stated in the preamble, SBA proposes to amend 13 CFR parts 124, 125, and 129 as follows:

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

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

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

■ 2. Amend § 124.405 by:

■ a. Revising the second sentence of paragraph (a)(1) and paragraph (a)(2);

■ b. Revising paragraph (b)(3);

■ c. Adding paragraph (b)(6);

■ d. Revising the heading of paragraph (c) and paragraph (c)(1) introductory text;

■ e. Revising the heading of paragraph (d) and paragraph (d)(1); and

■ f. Revising paragraph (f).

The revisions and addition read as follows:

§ 124.405 How does a Participant obtain Federal Government surplus property?

(a) * * *

(1) * * * The procedures set forth in 41 CFR part 102–37 and this section will be used to transfer surplus personal property to eligible Participants.

(2) The surplus personal property which may be transferred to SASPs for further transfer to eligible Participants includes all personal property which has become available for donation pursuant to 41 CFR 102–37.30.

(b) * * *

(3) Not be debarred, suspended, or declared ineligible under Title 2 or Title 48 of the Code of Federal Regulations;

* * * * *

(6) Not have received property under part 129 subpart B of this chapter, during the applicable period described in that subpart.

(c) *Use of acquired surplus personal property.* (1) Eligible Participants may acquire Federal surplus personal property from the SASP in the State(s) where the Participant is located and operates, provided the Participant represents in writing:

* * * * *

(d) *Procedures for acquiring Federal Government surplus personal property.* (1) Participants may participate in the GSA Federal Surplus Personal Property Donation Program administered by the SASPs. See generally 41 CFR 102–37 and/or § 102–37.125.

* * * * *

(f) *Title.* Upon execution of the SASP distribution document, the Participant has conditional title only to the surplus personal property during the applicable period of restriction. Full title to the surplus personal property will vest in the donee only after the donee has met all of the requirements of this part.

* * * * *

PART 125—GOVERNMENT CONTRACTING PROGRAMS

■ 3. The authority citation for part 125 continues to read as follows:

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

■ 4. Add subpart F to read as follows:

Subpart F—Surplus Personal Property for Veteran Owned Small Business Programs

§ 125.100 How does a small business concern owned and controlled by veterans, obtain Federal Surplus personal property?

(a) *General.* (1) Pursuant to 15 U.S.C. 657b(g), eligible small business concerns owned and controlled by veterans may receive surplus Federal Government property from State Agencies for Surplus Property (SASPs). The procedures set forth in 41 CFR part 102–37 and this section will be used to transfer surplus personal property to such concerns.

(2) The surplus personal property which may be transferred to SASPs for further transfer to eligible small business concerns owned and controlled by veterans includes all surplus personal property which has become available for donation pursuant to 41 CFR 102–37.30.

(b) *Eligibility to receive Federal surplus personal property.* To be eligible to receive Federal surplus personal property, on the date of transfer a concern must:

(1) Be a small business concern owned and controlled by veterans, that has been verified by the Secretary of Veterans Affairs under section 8127 of title 38, United States Code;

(2) Not be debarred, suspended, or declared ineligible under Title 2 or Title 48 of the Code of Federal Regulations; and

(3) Be engaged or expect to be engaged in business activities making the item useful to it.

(c) *Use of acquired surplus personal property.* (1) Eligible concerns may acquire Federal surplus personal property from the SASP in the State(s) where the concern located and operates, provided the concern represents and agrees in writing:

(i) As to what the intended use of the surplus personal property is to be;

(ii) That it will use the surplus personal property to be acquired in the normal conduct of its business activities or be liable for the fair rental value from the date of its receipt;

(iii) That it will not sell or transfer the surplus personal property to be acquired to any party other than the Federal Government as required by GSA and SASP requirements and guidelines;

(iv) That, at its own expense, it will return the surplus personal property to a SASP if directed to do so by SBA, including where the concern has not used the property as intended within one year of receipt;

(v) That, should it breach its agreement not to sell or transfer the surplus personal property, it will be liable to the Federal Government for the established fair market value or the sale price, whichever is greater, of the property sold or transferred; and

(vi) That it will give GSA and SASP access to inspect the surplus personal property and all records pertaining to it.

(2) A concern receiving surplus personal property pursuant to this section assumes all liability associated with or stemming from the use of the property, and all costs associated with the use and maintenance of the property.

(d) *Costs.* Concerns acquiring surplus personal property from a SASP may be required to pay a service fee to the SASP in accordance with 41 CFR 102–37.280. In no instance will any SASP charge a concern more for any service than their established fees charged to other transferees.

(e) *Title.* Upon execution of the SASP distribution document, the firm receiving the property has only conditional title to the property during the applicable period of restriction. Full title to the property will vest in the donee only after the donee has met all of the requirements of this part and the requirements of GSA and the SASP that it received the property from.

PART 129—CONTRACTS FOR SMALL BUSINESSES LOCATED IN DISASTER AREAS, AND SURPLUS PERSONAL PROPERTY FOR SMALL BUSINESSES LOCATED IN DISASTER AREAS AND PUERTO RICO

■ 5. The authority citation for part 129 is revised to read as follows:

Authority: 15 U.S.C. 636(j)(13)(F)(ii), (iii), and 644(f).

■ 6. The heading of part 129 is revised to read as set forth above.

■ 7. Redesignate §§ 129.200, 129.300, 129.400, and 129.500, as 129.101, 129.102, 129.103, and 129.104, respectively;

■ 8. Redesignate § 129.100 and newly redesignated §§ 129.101, 129.102, 129.103, and 129.104 as subpart A;

■ 9. Add subpart A heading and subparts B and C to read as follows:

Subpart A—Contracts for Small Businesses Located in Disaster Areas

Subpart B—Surplus Personal Property for Small Businesses Located in Disaster Areas

Sec.

129.200 What definitions are important in this subpart?
129.201 How does a small business concern located in a disaster area obtain Federal surplus personal property?

Subpart C—Surplus Personal Property for Small Businesses Located in Puerto Rico

129.300 What definitions are important in this subpart?
129.301 How does a small business concern located in a Puerto Rico obtain Federal surplus personal property?

Subpart B—Surplus Personal Property for Small Businesses Located in Disaster Areas

§ 129.200 What definitions are important in this subpart?

Covered period means the 2-year period beginning on the date on which the President declared the applicable major disaster.

§ 129.201 How does a small business concern located in a disaster area obtain Federal surplus personal property?

(a) *General.* Pursuant to 15 U.S.C. 636(j)(13)(F)(ii) eligible small business concerns located in disaster areas may receive surplus Federal Government property from State Agencies for Surplus Property (SASPs). The procedures set forth in 41 CFR part 102–37 and this section will be used to transfer surplus personal property to eligible small business concerns.

(2) The property which may be transferred to SASPs for further transfer to eligible small business concerns includes all personal property which has become available for donation pursuant to 41 CFR 102–37.30.

(b) *Eligibility to receive Federal surplus personal property.* To be eligible to receive Federal surplus personal property, on the date of transfer a concern must:

(1) Be located in a disaster area and certify that it qualifies as a small business under its primary NAICS code;

(2) Not be debarred, suspended, or declared ineligible under Title 2 or Title 48 of the Code of Federal Regulations; and

(3) Be engaged or expect to be engaged in business activities making the item useful to it; and

(4) Not have received a transfer of property under § 124.405 of this chapter during the covered period. The 2-year period of the presidentially declared disaster does not affect eligibility for additional technology transfers or surplus personal property to a small business concern located in a disaster area for a subsequent presidentially declared disaster occurring within the original 2-year period of a prior presidentially declared disaster.

(c) *Use of acquired surplus personal property.* (1) Eligible concerns may acquire surplus Federal personal property from the SASP in the State(s) where the concern is located and

operates, provided the concern represents and agrees in writing:

(i) As to what the intended use of the surplus personal property is to be;

(ii) That it will use the property to be acquired in the normal conduct of its business activities or be liable for the fair rental value from the date of its receipt;

(iii) That it will not sell or transfer the property to be acquired to any party other than the Federal Government as required by GSA and SASP requirements and guidelines;

(iv) That, at its own expense, it will return the property to a SASP if directed to do so by SBA, including where the concern has not used the property as intended within one year of receipt;

(v) That, should it breach its agreement not to sell or transfer the property, it will be liable to the Federal Government for the established fair market value or the sale price, whichever is greater, of the property sold or transferred; and

(vi) That it will give GSA and SASP access to inspect the property and all records pertaining to it.

(2) A concern receiving surplus personal property pursuant to this section assumes all liability associated with or stemming from the use of the property.

(d) *Costs.* Concerns acquiring surplus personal property from a SASP must pay a service fee to the SASP in accordance with 41 CFR 102–37.280. In no instance will any SASP charge a concern more for any service than their established fees charged to other transferees.

(e) *Title.* Upon execution of the SASP distribution document, the firm receiving the surplus personal property has only conditional title only to the surplus personal property during the applicable period of restriction. Full title to the property will vest in the donee only after the donee has met all of the requirements of this part and the requirements of GSA and the SASP that it received the property from.

Subpart C—Surplus Personal Property for Small Businesses Located in Puerto Rico

§ 129.300 What definitions are important in this subpart?

Covered period means the period beginning on August 13, 2018 and ending on the date which the Oversight Board established under section 101 of the Puerto Rico Oversight, Management, and Economic Stability Act (48 U.S.C. 2121) terminates.

Located in Puerto Rico means a concern with a physical location in Puerto Rico and organized under the laws of Puerto Rico.

§ 129.301 How does a small business concern located in a Puerto Rico obtain Federal surplus personal property?

(a) *General.* Pursuant to 15 U.S.C. 636(j)(13)(F)(iii) eligible small business concerns located in Puerto Rico may receive surplus Federal Government property from the Puerto Rico State Agency for Surplus Property (SASPs). The procedures set forth in 41 CFR part 102–37 and this section will be used to transfer surplus personal property to eligible small business concerns.

(2) The property which may be transferred to SASPs for further transfer to eligible small business concerns includes all personal property which has become available for donation pursuant to 41 CFR 102–37.30.

(b) *Eligibility to receive Federal surplus personal property.* To be eligible to receive Federal surplus personal property, on the date of transfer a concern must:

(1) Be *located in Puerto Rico* and certify that it qualifies as a small business under its primary NAICS code;

(2) Not be debarred, suspended, or declared ineligible under Title 2 or Title 48 of the Code of Federal Regulations; and

(3) Be engaged or expect to be engaged in business activities making the item useful to it; and

(c) *Use of acquired surplus personal property.* (1) Eligible concerns may acquire surplus Federal personal property from the Puerto Rico SASP, provided the concern represents and agrees in writing:

(i) As to what the intended use of the surplus personal property is to be;

(ii) That it will use the property to be acquired in the normal conduct of its business activities or be liable for the fair rental value from the date of its receipt;

(iii) That it will not sell or transfer the property to be acquired to any party other than the Federal Government as required by GSA and SASP requirements and guidelines;

(iv) That, at its own expense, it will return the property to a SASP if directed to do so by SBA, including where the concern has not used the property as intended within one year of receipt;

(v) That, should it breach its agreement not to sell or transfer the property, it will be liable to the Federal Government for the established fair market value or the sale price, whichever is greater, of the property sold or transferred; and

(vi) That it will give GSA, and SASPS access to inspect the property and all records pertaining to it.

(2) A concern receiving surplus personal property pursuant to this section assumes all liability associated with or stemming from the use of the property.

(d) *Costs.* Concerns acquiring surplus personal property from a SASP must pay a service fee to the SASP in accordance with 41 CFR 102–37.280. In no instance will any SASP charge a concern more for any service than their established fees charged to other transferees.

(f) *Title.* Upon execution of the SASP distribution document, the firm receiving the surplus personal property has only conditional title to the surplus personal property during the applicable period of restriction. Full title to the surplus personal property will vest in the donee only after the donee has met all of the requirements of this part.

Dated: January 7, 2020.

Christopher M. Pilkerton,

Acting Administrator.

[FR Doc. 2020–00442 Filed 1–17–20; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0484; Product Identifier 2019–NM–065–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM); reopening of comment period.

SUMMARY: The FAA is revising an earlier proposal for all Airbus SAS Model A330–200, A330–200 Freighter, A330–300, A340–200, A340–300, A340–500, and A340–600 series airplanes. This action revises the notice of proposed rulemaking (NPRM) by including additional affected free fall actuators (FFAs) and reducing certain compliance times. The FAA is proposing this airworthiness directive (AD) to address the unsafe condition on these products. Since these actions would impose an additional burden over those in the NPRM, the FAA is reopening the comment period to allow the public the chance to comment on these changes.

DATES: The comment period for the NPRM published in the **Federal Register** on June 26, 2019 (84 FR 30055), is reopened.

The FAA must receive comments on this proposed AD by March 6, 2020.

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

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

For the material identified in this proposed AD that will be incorporated by reference (IBR), contact the European Union Aviation Safety Agency (EASA), Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +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–2019–0484.

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–2019–0484; 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: Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3229.

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–2019–0484; Product Identifier 2019–NM–065–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 received, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this NPRM.

Discussion

The FAA issued an NPRM to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A330–200, A330–200 Freighter, A330–300, A340–200, A340–300, A340–500, and A340–600 series airplanes. The NPRM published in the **Federal Register** on June 26, 2019 (84 FR 30055). The NPRM was prompted by a report that an airplane failed to extend its nose landing gear (NLG) using the free fall method, due to loss of the green hydraulic system. The NPRM proposed to require repetitive tests of affected FFAs, and replacement of any affected FFA that fails a test with a serviceable FFA; as specified in EASA AD 2019–0063, dated March 26, 2019 (''EASA AD 2019–0063'').

Actions Since the NPRM Was Issued

Since the NPRM was issued, the FAA has determined that it is necessary to include additional affected FFAs and reduce certain compliance times.

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0164, dated July 11, 2019 (''EASA AD 2019–0164'') (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A330–200, A330–200 Freighter, A330–300, A340–200, A340–300, A340–500, and A340–600 series airplanes. Airbus SAS Model A340–542 and A340–643 airplanes are not certified by the FAA and are not included on the U.S. type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability. EASA AD 2019–0164 supersedes EASA AD 2019–0063. You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0484.

This proposed AD was prompted by a report that an airplane failed to extend its NLG using the free fall method, due to the loss of the green hydraulic system. The FAA is proposing this AD to address detached magnets on both electrical motors of the FFAs, which could prevent landing gear extension by the free fall method, possibly resulting in loss of control of the airplane after landing. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0164 describes procedures for repetitive tests of affected FFAs and replacement of any affected FFA that fails a test with a serviceable FFA. EASA AD 2019–0164 also describes procedures for an optional terminating action (replacement of all affected FFAs), which would terminate the repetitive tests. 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.

Comments

The FAA gave the public the opportunity to participate in developing this proposed AD. The FAA has considered the comments received on the proposal; the following is the FAA's response to each comment.

Support for the NPRM

Patrick Imperatrice expressed his support for the NPRM.

Request for Single Compliance Time

Delta Air Lines (DAL) requested that the FAA change the compliance times specified in EASA AD 2019–0164 to a single compliance time: ''Within 90 days after the effective date of this AD.'' DAL stated that there is no need for multiple compliance times regardless of the affected part and affected airplane. DAL pointed out that based on the date of manufacture, the Airbus SAS Model A330–200 and –300 fleet has been operating for approximately 14 years. DAL stated that the FFA is a secondary system, only utilized in the event of a green hydraulic failure, and that based on a single occurrence of the unsafe condition in-flight, the risk of a failure is relatively low. DAL also pointed out that changing the compliance times to a single compliance time would reduce risk for non-compliance due to test planning if an FFA from a different affected group is installed at different positions on the same airplane.

The FAA disagrees with the request to change the compliance times to a single compliance time. The proposed changes would affect the entire fleet of Model A330 airplanes, and multiple operators. The compliance times specified in EASA AD 2019–0164 affect both FFAs that are not tested, and FFAs that are previously tested. Removing the compliance times for previously tested parts could put airplanes using those FFAs out of compliance. The FAA has determined that DAL has not provided enough justification to substantiate that the risk of a failure to the fleet should result in a change to the compliance times. The FAA has not changed this SNPRM in this regard.

Request for Different Compliance Intervals

DAL requested that the FAA change the repetitive testing intervals from flight hours to flight cycles. DAL specified that the affected FFAs are operated only during takeoff and landing. DAL provided no further justification for the requested change.

The FAA disagrees with the request to change the repetitive testing intervals from flight hours to flight cycles. The failure rate was originally calculated using flight hours, and the FAA has determined that it is appropriate to calculate the compliance time for repetitive testing intervals in flight hours, as specified in EASA AD 2019–0164. Converting the compliance times from flight hours to flight cycles in this SNPRM would necessitate obtaining additional information from EASA and Airbus to support these calculations, and could delay issuance of the final rule indefinitely. The FAA has not changed this SNPRM in this regard.

Request To Revise the Terminating Action Language

DAL requested that the FAA revise the terminating action language to require replacement of an affected FFA, with a serviceable FFA that is not an affected FFA. DAL stated that revising the terminating action language would better support the Part(s) Installation paragraph specified in EASA AD 2019–0164 that prohibits installation of affected FFAs on any airplane from the effective date of EASA AD 2019–0164. DAL pointed out that the ''Solution'' section of Airbus SAS Retrofit Information Letter (RIL) LR32M18008932, states that ''Any FFA PN [part number] AR02404 that fails the operational test will be upgraded into PN TY3409–01A according to Triumph SB [service bulletin] AR02404–32–L3409–1.'' DAL mentioned that Triumph SB AR02404–32–L3409–1 specifies reinforcement of affected FFAs with support rings to avoid magnet detachment.

The FAA disagrees with the request to revise the terminating action language to require replacement of an affected FFA with a serviceable FFA that is not an affected FFA. EASA AD 2019–0164 conclusively specifies what constitutes a ''serviceable part,'' as well as an ''affected part'' in the ''Definitions'' section. The FAA has determined that the Terminating Action and Part(s) Installation paragraphs of EASA AD 2019–0164 do not conflict and do not require revision. The FAA has not changed this SNPRM in this regard.

Request for Credit for Actions Accomplished Prior to the AD Effective Date

DAL requested that the FAA provide credit for accomplishing the actions specified in paragraph (g) of the proposed AD prior to the AD effective date. DAL provided no further justification for the request.

The FAA acknowledges the commenter's request and agrees to clarify. Paragraph (f) of this proposed AD states to accomplish the required actions within the compliance times specified, ''unless already done.'' Therefore, if operators have accomplished the actions required for compliance with this AD before the effective date of this AD, no further action is necessary. The FAA has not revised this SNPRM in this regard.

Request for Deviations to Triumph Reference Material (Referenced in Airbus Alert Operators Transmission (AOT) A32L012–18 (''AOT A32L012–18''))

DAL requested that the FAA include deviations to Triumph Service Bulletin AR02404–32–L3409–1, dated February 21, 2011 (referenced in AOT A32L012–18). DAL cited numerous typographical errors in various sections of Triumph Service Bulletin AR02404–32–L3409–1, dated February 21, 2011. DAL mentioned that a comment with the same request was acknowledged in EASA Proposed AD (PAD) No. 19–092, dated May 23, 2019 (closed for comments on June 20, 2019) (''EASA PAD No. 19–092''), but also pointed out that no change was made to EASA AD 2019–0164 once it was published.

The FAA disagrees with the request to include deviations to Triumph Service Bulletin AR02404–32–L3409–1, dated February 21, 2011. Note 1 of AOT A32L012–18 refers to Triumph Service Bulletin AR02404–32–L3409–1, dated February 21, 2011, to provide clarification that after the embodiment of Triumph Service Bulletin AR02404–32–L3409–1, dated February 21, 2011, the actuator part number is changed and is no longer affected. The proposed changes do not specifically facilitate or prevent the accomplishment of the required actions specified in EASA AD 2019–0164. EASA has communicated the requested corrections to Airbus, which can contact Triumph accordingly. The FAA has not revised this SNPRM in this regard.

Request To Require Only Paragraph 4.2.2, Inspection Requirements, of AOT A32L012–18

DAL requested that the FAA revise the NPRM to require only paragraph 4.2.2, Inspection Requirements, of AOT A32L012–18. DAL mentioned that a comment with the same request was acknowledged in EASA PAD No. 19–092, but also pointed out that no change was made to EASA AD 2019–0164 once it was published. DAL provided no further justification.

The FAA disagrees with the request to require only paragraph 4.2.2, Inspection Requirements, of AOT A32L012–18. The FAA is requiring accomplishment of EASA AD 2019–0164, which requires affected operators to resolve the unsafe condition by accomplishing the actions specified in AOT A32L012–18. As EASA noted in EASA PAD No. 19–092, it did not consider it necessary to point to paragraph 4.2.2, as it is obvious the actions are to be accomplished using the instructions in paragraph 4.2.2. The FAA has not revised this SNPRM in this regard.

Request To Revise the Aircraft Maintenance Manual (AMM) Based on AOT A32L012–18

DAL requested that various sections of the AMM be revised to include information specified in AOT A32L012–18. DAL mentioned that a comment with the same request was acknowledged in EASA PAD No. 19–092, but also pointed out that no revision to the AMM has been published. DAL provided no further justification.

The FAA acknowledges the request to revise various sections of the AMM based on AOT A32L012–18. However, the FAA does not control the revision schedule of the Airbus AMM. Additionally, the FAA is requiring accomplishment of EASA AD 2019–0164, which requires affected operators to resolve the unsafe condition by accomplishing the actions specified in AOT A32L012–18. The AMM is not required by this SNPRM or EASA AD 2019–0164 to accomplish the required

actions. The FAA has not revised this SNPRM in this regard.

Request To Specify Requirements or Special Instructions for a Special Tool

DAL requested the FAA require inspection of special tool Control Unit-Leg Free Fall Actuator, part number 97F32001001000 prior to use; or that operators be notified that during a mock-up for EASA AD 2019–0063 (superseded by EASA AD 2019–0164), DAL observed that the labels A and B on special tool Control Unit-Leg Free Fall Actuator, part number 97F32001001000, were reversed. DAL mentioned that a comment with the same request was acknowledged in EASA PAD No. 19–092, but also pointed out that no information, instructions, or requirements have been communicated regarding special tool Control Unit-Leg Free Fall Actuator, part number 97F32001001000. DAL provided no further justification.

The FAA disagrees with the request to include additional requirements or special instructions for special tool Control Unit-Leg Free Fall Actuator, part number 97F32001001000. However, the FAA agrees that clarification is necessary. The proposed changes do not specifically facilitate or prevent the accomplishment of the required actions specified in EASA AD 2019–0164. EASA has communicated the requested corrections to Airbus and any further communication regarding these issues should come from Airbus. The FAA has not revised this SNPRM in this regard.

Request To Include an Alternate Cotter Pin Part Number

DAL requested that the FAA specify an alternate cotter pin, part number MS24665–151, instead of part number MS24665–153, as specified in the Airbus A330 Illustrated Parts Catalog (IPC). DAL mentioned that a comment with the same request was acknowledged in EASA PAD No. 19–092, but also pointed out that no information, instructions, or requirements have been communicated regarding an alternate cotter pin as specified in the Airbus A330 IPC. DAL provided no further justification.

The FAA disagrees with the request to include specification for an alternate cotter pin, part number MS24665–151, instead of part number MS24665–153. The proposed changes do not specifically facilitate or prevent the accomplishment of the required actions specified in EASA AD 2019–0164. EASA has communicated the requested corrections to Airbus and any further communication regarding these issues should come from Airbus. The FAA has not revised this SNPRM in this regard.

Request To Review and Clarify Requirements of FFA Operational Check

DAL requested that the FAA review and clarify the requirements of the FFA operational check. DAL pointed out that, in the NPRM (84 FR 32661, July 9, 2019) for AD 2019–21–02, Amendment 39–19768 (84 FR 57313, October 25, 2019) (''AD 2019–21–02''), the FAA proposed to revise the existing maintenance program to incorporate Airbus A330 Airworthiness Limitations Section (ALS) Part 3, Certification Maintenance Requirements (CMR), Revision 06, dated October 15, 2018. AD 2019–21–02 specifies that accomplishing the actions terminates the requirements of AD 2016–26–05, Amendment 39–18763 (82 FR 1170, January 5, 2017) (''AD 2016–26–05''). DAL also mentioned that it has received an alternative method of compliance (AMOC) for AD 2016–26–05: FAA AMOC AIR–676–19–016, dated November 2, 2018, which approves incorporation of Maintenance Review Board Report (MRBR) Task 32.30.00/08 into the DAL maintenance program at Airbus A330 Airworthiness Limitations Section (ALS) Part 3, Certification Maintenance Requirements (CMR), Revision 06, dated October 15, 2018. DAL specified that the 3,400 FH interval requirement specified in MRBR Task 32.30.00/08 conflicts with the requirements of Airbus SAS Retrofit Information Letter (RIL) LR32M18008932.

The FAA agrees that clarification is necessary. FAA AD 2019–21–02, which corresponds with EASA AD 2019–0049, dated March 11, 2019, mandates revising the existing maintenance program to include Airbus A330 Airworthiness Limitations Section (ALS) Part 3, Certification Maintenance Requirements (CMR), Revision 06, dated October 15, 2018. Airbus A330 Airworthiness Limitations Section (ALS) Part 3, Certification Maintenance Requirements (CMR), Revision 06, dated October 15, 2018, contains task 323000–00001–1–C ''OPERATIONAL CHECK OF LANDING GEAR FREE–FALL SYSTEM'' to be performed every 3,400 FH. Task 323000–00001–1–C, ''OPERATIONAL CHECK OF LANDING GEAR FREE–FALL SYSTEM,'' is applicable to all Airbus SAS Model A330 airplanes fitted with FFA regardless of their part numbers. EASA AD 2019–0164 only affects airplanes fitted with landing gear FFA having certain part numbers specified in appendixes 3, 4, and 5 of AOT A32L012–18.

For the affected FFA, tables 1 and 2 of EASA AD 2019–0164 establish more restrictive compliance times, matching the compliance times specified in table 1 of Airbus SAS RIL LR32M18008932. These more restrictive compliance times have been established to prevent the failure of landing gear under freefall fitted with an affected FFA from the population of those manufactured in 1992 through 2005, inclusive. EASA AD 2019–0164 includes credit for compliance with Airbus A330 Airworthiness Limitations Section (ALS) Part 3, Certification Maintenance Requirements (CMR), Revision 06, dated October 15, 2018, task 323000–00001–1–C, ''OPERATIONAL CHECK OF LANDING GEAR FREE–FALL SYSTEM.'' Alignment of the compliance times for all affected FFAs installed on a specific airplane can be accomplished at the next inspection, using the required intervals. The FAA has not revised this SNPRM in this regard.

Request To Require EASA AD 2019–0164 as the Appropriate Service Information

DAL requested that the FAA require EASA AD 2019–0164 as the appropriate service information for the actions proposed in the NPRM. DAL pointed out that EASA AD 2019–0164 expands the affected population of FFAs and that the FAA NPRM does not adequately address the unsafe condition without this new service information.

The FAA agrees with the request to require EASA AD 2019–0164 as the appropriate service information for the actions proposed by this SNPRM. EASA AD 2019–0164 supersedes EASA AD 2019–0063, and includes additional affected FFAs and reduces compliance times. The FAA has revised this SNPRM accordingly.

FAA's Determination and Requirements of This SNPRM

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to a 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 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.

Certain changes described above expand the scope of the SNPRM. As a

result, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2019–0164 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD and except as discussed under ''Differences Between this Proposed AD and the MCAI.''

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 2019–0164 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2019–0164 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 proposed AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2019–0164. Service information specified in EASA AD 2019–0164 that is required for compliance with EASA AD 2019–0164 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0484 after the FAA final rule is published.

Interim Action

The FAA considers this proposed AD interim action. If final action is later identified, the FAA might consider further rulemaking then.

Costs of Compliance

The FAA estimates that this proposed AD affects 107 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
2 work-hours × $85 per hour = $170	$0	$170	$18,190

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
2 work-hours × $85 per hour = $170	$0 *	$170

* The FAA has received no definitive data that would enable us to provide parts cost estimates for the on-condition replacements 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 determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2019–0484; Product Identifier 2019–NM–065–AD.

(a) Comments Due Date

The FAA must receive comments by March 6, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS airplanes identified in paragraphs (c)(1) through (7) of this AD, certificated in any category.

(1) Model A330–201, –202, –203, –223, and –243 airplanes.

(2) Model A330–223F and –243F airplanes.

(3) Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(4) Model A340–211, –212, –213 airplanes.

(5) Model A340–311, –312, and –313 airplanes.

(6) Model A340–541 airplanes.

(7) Model A340–642 airplanes.

(d) Subject

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

(e) Reason

This AD was prompted by a report that an airplane failed to extend its nose landing gear (NLG) using the free fall method, due to the loss of the green hydraulic system. The FAA is issuing this AD to address detached magnets on both electrical motors of the free fall actuators (FFAs), which could prevent landing gear extension by the free fall method, possibly resulting in loss of control of the airplane after landing.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2019–0164, dated July 11, 2019 (''EASA AD 2019–0164'').

(h) Exceptions to EASA AD 2019–0164

(1) Where EASA AD 2019–0164 refers to its effective date or April 9, 2019 (the effective date of EASA AD 2019–0063, dated March 26, 2019), this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0164 does not apply to this AD.

(3) Where paragraph (3) of EASA AD 2019–0164 specifies credit for certain tasks ''provided the continuity test specified in AMM task A330–32–33–00–710–809, or AMM task A340–32–33–00–710–806, as applicable, is accomplished concurrently,'' this AD provides credit ''provided the continuity test is accomplished concurrently in accordance with the instructions of an FAA-approved maintenance or inspection program.''

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2019–0164 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) 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 (k)(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 2019–0164 that contains RC procedures and tests: Except as required by paragraph (j)(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.

(k) Related Information

(1) For information about EASA AD 2019–0164, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 89990 1000; 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 EASA AD 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. EASA AD 2019–0164 may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0484.

(2) For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3229.

Issued on January 3, 2020.

John Piccola, Jr.,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2020–00449 Filed 1–17–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0800; Product Identifier 2005–NE–24–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2005–23–09, which applies to all General Electric Company (GE) CF6–80E1A1, –80E1A2, –80E1A3, –80E1A4, and –80E1A4/B model turbofan engines. AD 2005–23–09 requires initial and repetitive fluorescent-penetrant inspections (FPI) of certain areas of high-pressure compressor (HPC) cases, part number (P/N) 1509M97G07 and P/N 2083M69G03. Since the FAA issued AD 2005–23–09, GE performed an updated lifing analysis on the HPC case. As a result, GE found additional locations on the cases requiring FPI, revised the inspection interval for performing FPI of the existing location, and added an additional P/N HPC case that requires inspection. This proposed AD would require an update of the Airworthiness Limitations Section (ALS) of GE Engine Manual GEK99376

and the operator's existing continuous airworthiness maintenance program (CAMP). 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 March 6, 2020.

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

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

For service information identified in this NPRM, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215; phone: 513–552–3272; email: *aviation.fleetsupport@ge.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–2019–0800; 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: Scott Stevenson, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7132; fax: 781–238–7199; email: *scott.m.stevenson@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–2019–0800; Product Identifier 2005–NE–24–AD'' at the beginning of your comments. The FAA specifically invite 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 2005–23–09, Amendment 39–14367 (70 FR 67901, November 9, 2005), (''AD 2005–23–09''), for all GE CF6–80E1A1, –80E1A2, –80E1A3, –80E1A4, and –80E1A4/B model turbofan engines. AD 2005–23–09 requires initial and repetitive FPI of certain areas of HPC cases, P/N 1509M97G07 and P/N 2083M69G03. AD 2005–23–09 resulted from the discovery that HPC cases, P/N 1509M97G07 and P/N 2083M69G03, were inadvertently left out of the ALS, Chapter 05–21–02, of GE Engine Manual, GEK 99376, Revision 17. The FAA issued AD 2005–23–09 to prevent failure of the HPC case aft mount flange, due to cracking.

Actions Since AD 2005–23–09 Was Issued

Since the FAA issued AD 2005–23–09, GE performed an updated lifing analysis on the HPC case. As a result, GE revised the inspection interval of the existing location for the FPI and found additional locations on the HPC case that require inspection. GE also found an additional HPC case, P/N 1509M97G05, that requires this inspection.

Related Service Information Under 1 CFR Part 51

The FAA reviewed TASK 05–21–02–200–001, dated September 15, 2015, from the ALS of the GE CF6–80E1 Engine Manual GEK99376, Revision 48, dated September 15, 2019. The service information describes procedures for performing FPIs of the HPC case. 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 we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would retain certain requirements of AD 2005–23–09. This proposed AD would require an update of the ALS of GE Engine Manual GEK99376 and the operator's existing CAMP.

Costs of Compliance

The FAA estimates that this proposed AD affects 20 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Update ALS of engine manual	2 work-hours × $85 per hour = $170	$0	$170	$3,400

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 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 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) 2005–23–09, Amendment 39–14367 (70 FR 67901, November 9, 2005), and adding the following new AD:

General Electric Company: Docket No. FAA–2019–0800; Product Identifier 2005–NE–24–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by March 6, 2020.

(b) Affected ADs

This AD replaces AD 2005–23–09, Amendment 39–14367 (70 FR 67901, November 9, 2005).

(c) Applicability

This AD applies to General Electric Company (GE) CF6–80E1A1, –80E1A2, –80E1A3, –80E1A4, and –80E1A4/B model turbofan engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.

(e) Unsafe Condition

This AD was prompted by GE performing an updated lifing analysis on the high-pressure compressor (HPC) case. Based on this analysis, GE found new locations on the case that require fluorescent penetrant inspection (FPI), identified a new inspection interval for the existing FPI location, and added another part-numbered HPC case that requires inspection. The FAA is issuing this AD to prevent failure of the HPC case. The unsafe condition, if not addressed, could result in uncontained release of the HPC case, engine fire, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

Within 180 days after the effective date of this AD, replace TASK 05–21–02–200–001 in GE CF6–80E1 Engine Manual GEK99376 and the operator's existing continuous airworthiness maintenance program with TASK 05–21–02–200–001, dated September 15, 2015, from the Airworthiness Limitations Section of GE CF6–80E1 Engine Manual GEK99376, Revision 48, dated September 15, 2019.

(h) Alternative Methods of Compliance (AMOCs)

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

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

(i) Related Information

(1) For more information about this AD, contact Scott Stevenson, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7132; fax: 781–238–7199; email: *scott.m.stevenson@faa.gov.*

(2) For service information identified in this AD, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215; phone: 513–552–3272; email: *aviation.fleetsupport@ge.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 January 2, 2020.

Robert J. Ganley,

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

[FR Doc. 2020–00010 Filed 1–17–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0008; Airspace Docket No. 19–ASO–10]

RIN 2120–AA66

Proposed Amendment of VOR Federal Airways V–7, V–52, and V–178 in the Vicinity of Central City, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend three VHF Omnidirectional Range (VOR) Federal airways, V–7, V–52, and V–178, in the vicinity of Central City, KY. The modifications are necessary due to the planned decommissioning of the VOR portion of the Central City, KY, VOR/Tactical Air Navigation (VORTAC) navigation aid (NAVAID), which provides navigation guidance for portions of the affected air traffic service (ATS) routes. The Central City VOR is being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Comments must be received on or before March 6, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2020–0008; Airspace Docket No. 19–ASO–10 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email: *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2020–0008; Airspace Docket No. 19–ASO–10) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2020–0008; Airspace Docket No. 19–ASO–10.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Blvd., Fort Worth, TX, 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

The FAA is planning decommissioning activities for the VOR portion of the Central City, KY, VORTAC in July, 2020. Central City VOR is one of the candidate VORs identified for discontinuance by the FAA's VOR MON program and listed in the final policy statement notice, ''Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),'' published in the **Federal Register** of July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082. Although the VOR portion of the Central City, KY, VORTAC NAVAID is planned for decommissioning, the co-located Distance Measuring Equipment (DME) is being retained. The ATS routes affected by the planned Central City VOR decommissioning are VOR Federal airways V–7, V–52, and V–178.

With the planned decommissioning of the Central City VOR, the remaining ground-based NAVAID coverage in the area is insufficient to enable the continuity of the effected ATS routes. As such, proposed modifications to the affected VOR Federal Airways would result in gaps in the airways. To overcome the airway gaps, instrument flight rules (IFR) traffic could use adjacent ATS route segments, including V–4, V–5, V–5/513, V–11/47/305, V–512, and area navigation route T–325, to circumnavigate the affected area. IFR traffic could also file point to point through the affected area using the existing airway fixes that will remain in place, as well as adjacent NAVAIDs, or receive air traffic control (ATC) radar vectors through the area. Visual flight rules pilots who elect to navigate via the airways through the affected area could also take advantage of the adjacent VOR Federal airways or ATC services listed previously.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying VOR Federal Airways V–7, V–52, and V–178. The planned decommissioning of the VOR portion of the Central City, KY, VORTAC NAVAID has made this action necessary. The proposed VOR Federal airway changes are outlined below.

V–7: V–7 currently extends between the Dolphin, FL, VORTAC and the Muscle Shoals, AL, VORTAC; and between the Central City, KY, VORTAC and the Sawyer, MI, VOR/DME. The airspace below 2,000 feet mean sea level (MSL) outside the United States is

excluded and the portion outside the United States has no upper limit. The FAA proposes to remove the airway segment overlying the Central City, KY, VORTAC between the Central City, KY, VORTAC and the Pocket City, IN, VORTAC. Concurrent changes to other portions of the airway are being proposed in separate NPRMs. The unaffected portions of the existing airway would remain as charted.

V–52: V–18 currently extends between the Des Moines, IA, VORTAC and the Livingston, TN, VOR/DME. The FAA proposes to remove the airway segment overlying the Central City, KY, VORTAC between the Pocket City, IN, VORTAC and the Bowling Green, KY, VORTAC. The unaffected portions of the existing airway would remain as charted.

V–178: V–178 currently extends between the Hallsville, MO, VORTAC and the Bluefield, WV, VOR/DME. The FAA proposes to remove the airway segment overlying the Central City, KY, VORTAC between the Cunningham, KY, VOR/DME and the New Hope, KY, VOR/DME. Concurrent changes to other portions of the airway are being proposed in separate NPRMs. The unaffected portions of the existing airway would remain as charted.

All radials in the route descriptions below are unchanged and stated in True degrees.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.11D dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways listed in this document would be subsequently published in the Order.

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

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–7 [Amended]

From Dolphin, FL; INT Dolphin 299° and Lee County, FL, 120° radials; Lee County; Lakeland, FL; Cross City, FL; Seminole, FL; Wiregrass, AL; INT Wiregrass 333° and Montgomery, AL, 129° radials; Montgomery; Vulcan, AL; to Muscle Shoals, AL. From Pocket City, IN; INT Pocket City 016° and Terre Haute, IN, 191° radials; Terre Haute; Boiler, IN; Chicago Heights, IL; INT Chicago Heights 358° and Falls, WI, 170° radials; Falls; Green Bay, WI; Menominee, MI; to Sawyer, MI. The airspace below 2,000 feet MSL outside the United States is excluded. The portion outside the United States has no upper limit.

* * * * *

V–52 [Amended]

From Des Moines, IA; Ottumwa, IA; Quincy, IL; St. Louis, MO; Troy, IL; INT Troy 099° and Pocket City, IN, 311° radials; to Pocket City. From Bowling Green, KY; to Livingston, TN.

* * * * *

V–178 [Amended]

From Hallsville, MO; INT Hallsville 183° and Vichy, MO, 321° radials; Vichy; Farmington, MO; Cape Girardeau, MO; to Cunningham, KY. From New Hope, KY; Lexington, KY; to Bluefield, WV.

* * * * *

Issued in Washington, DC, on January 7, 2020.

Rodger A. Dean Jr.,

Manager, Rules and Regulations Group.

[FR Doc. 2020–00545 Filed 1–17–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0006; Airspace Docket No. 17–ASW–26]

RIN 2120–AA66

Proposed Amendment of VOR Federal Airways V–17, V–18, V–62, V–94, V–163, and V–568 in the Vicinity of Glen Rose, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend six VHF Omnidirectional Range (VOR) Federal airways, V–17, V–18, V–62, V–94, V–163, and V–568, in the vicinity of Glen Rose, TX. The modifications are necessary due to the planned decommissioning of the VOR portion of the Glen Rose, TX, VOR/Tactical Air Navigation (VORTAC) navigation aid (NAVAID), which provides navigation guidance for portions of the affected air traffic service (ATS) routes. The Glen Rose VOR is being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Comments must be received on or before March 6, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2020–0006; Airspace Docket No. 17–ASW–26 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/*

air_traffic/publications/. For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email: *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2020–0006; Airspace Docket No. 17–ASW–26) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2020–0006; Airspace Docket No. 17–ASW–26.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Blvd., Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

The FAA is planning decommissioning activities for the VOR portion of the Glen Rose, TX, VORTAC in July, 2020. Glen Rose VOR is one of the candidate VORs identified for discontinuance by the FAA's VOR MON program and listed in the final policy statement notice, ''Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),'' published in the **Federal Register** of July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082. Although the VOR portion of the Glen Rose, TX, VORTAC NAVAID is planned for decommissioning, the co-located Distance Measuring Equipment (DME) is being retained. The ATS routes affected by the planned Glen Rose VOR decommissioning are VOR Federal airways V–17, V–18, V–62, V–94, V–163, and V–568.

With the planned decommissioning of the Glen Rose VOR, the remaining ground-based NAVAID coverage in the area is insufficient to enable the continuity of the effected ATS routes. As such, proposed modifications to the affected VOR Federal Airways would result in gaps in the airways. To overcome the airway gaps, instrument flight rules (IFR) traffic could file point to point through the affected area using the existing airway fixes that will remain in place, or receive air traffic control (ATC) radar vectors through the area. Visual flight rules pilots who elect to navigate via the airways could also take advantage of the ATC services listed previously.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying VOR Federal Airways V–17, V–18, V–62, V–94, V–163, and V–568. The planned decommissioning of the VOR portion of the Glen Rose, TX, VORTAC NAVAID has made this action necessary. The proposed VOR Federal airway changes are outlined below.

V–17: V–17 currently extends between the Brownsville, TX, VORTAC and the Goodland, KS, VORTAC. The FAA proposes to remove the airway segment overlying the Glen Rose, TX, VORTAC between the Waco, TX, VORTAC and the Millsap, TX, VORTAC. The unaffected portions of the existing airway would remain as charted.

V–18: V–18 currently extends between the Millsap, TX, VORTAC and the Charleston, SC, VORTAC. The FAA proposes to remove the airway segment overlying the Glen Rose, TX, VORTAC between the Millsap, TX, VORTAC and the Cedar Creek, TX, VORTAC. Concurrent changes to other portions of

the airway are being proposed in separate NPRMs. The unaffected portions of the existing airway would remain as charted.

V–62: V–62 currently extends between the Gallup, NM, VORTAC and the Glen Rose, TX, VORTAC. The FAA proposes to remove the airway segment overlying the Glen Rose, TX, VORTAC between the Abilene, TX, VORTAC and the Glen Rose, TX, VORTAC. The unaffected portions of the existing airway would remain as charted.

V–94: V–94 currently extends between the Blythe, CA, VORTAC and the Holly Springs, MS, VORTAC. The FAA proposes to remove the airway segment overlying the Glen Rose, TX, VORTAC between the Tuscola, TX, VOR/DME and the Cedar Creek, TX, VORTAC. The unaffected portions of the existing airway would remain as charted.

V–163: V–163 currently extends between the Matamoros, Mexico, VOR/DME and the Glen Rose, TX, VORTAC. The FAA proposes to remove the airway segment overlying the Glen Rose, TX, VORTAC between the Gooch Springs, TX, VORTAC and the Glen Rose, TX, VORTAC. Additionally, the FAA proposes to add exclusionary language to reflect the airspace within Mexico is excluded. The unaffected portions of the existing airway would remain as charted.

V–568: V–568 currently extends between the Corpus Christi, TX, VORTAC and the Wichita Falls, TX, VORTAC. The FAA proposes to remove the airway segment overlying the Glen Rose, TX, VORTAC between the Llano, TX, VORTAC and the Millsap, TX, VORTAC. Concurrent changes to other portions of the airway are being proposed in a separate NPRM. The unaffected portions of the existing airway would remain as charted.

All radials in the route descriptions below are unchanged and stated in True degrees.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.11D dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways listed in this document would be subsequently published in the Order.

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

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–17 [Amended]

From Brownsville, TX; Harlingen, TX; McAllen, TX; 29 miles, 12 AGL, 34 miles, 25 MSL, 37 miles, 12 AGL; Laredo, TX; Cotulla, TX; INT Cotulla 046° and San Antonio, TX, 198° radials; San Antonio; Centex, TX; to Waco, TX. From Millsap, TX; Bowie, TX; Ardmore, OK; Will Rogers, OK; Mitbee, OK; Garden City, KS; to Goodland, KS.

* * * * *

V–18 [Amended]

From Cedar Creek, TX; Quitman, TX; Belcher, LA; Monroe, LA; Magnolia, MS; Meridian, MS; Crimson, AL; Vulcan, AL; Talladega, AL; Atlanta, GA; Colliers, SC; to Charleston, SC.

* * * * *

V–62 [Amended]

From Gallup, NM; INT Gallup 089° and Santa Fe, NM, 268° radials; Santa Fe; Anton Chico, NM; Texico, NM; Lubbock, TX; to Abilene, TX.

* * * * *

V–94 [Amended]

From Blythe, CA; INT Blythe 094°and Gila Bend, AZ, 299° radials; Gila Bend; Stanfield, AZ; 55 miles, 74 miles, 95 MSL, San Simon, AZ; Deming, NM; Newman, TX; Salt Flat, TX; Wink, TX; Midland, TX; to Tuscola, TX. From Cedar Creek, TX; Gregg County, TX; Elm Grove, LA; Monroe, LA; Greenville, MS; to Holly Springs, MS.

* * * * *

V–163 [Amended]

From Matamoros, Mexico; Brownsville, TX; 27 miles standard width, 37 miles 7 miles wide (3 miles E. and 4 miles W. of centerline); Corpus Christi, TX; Three Rivers, TX; INT Three Rivers 345° and San Antonio, TX, 168° radials; San Antonio; to Gooch Springs, TX. Excluding the airspace within Mexico.

* * * * *

V–568 [Amended]

From Corpus Christi, TX; INT Corpus Christi 296° and Three Rivers, TX, 165° radials; Three Rivers; INT Three Rivers 327° and San Antonio, TX, 183° radials; San Antonio; Stonewall, TX; to Llano, TX. From Millsap, TX; to Wichita Falls, TX.

* * * * *

Issued in Washington, DC, on January 7, 2020.

Rodger A. Dean Jr.,

Manager, Rules and Regulations Group.

[FR Doc. 2020–00546 Filed 1–17–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0003; Airspace Docket No. 19–ACE–11]

RIN 2120–AA66

Proposed Amendment of VOR Federal Airways V–12, V–74, and V–516 in the Vicinity of Anthony, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend three VHF Omnidirectional Range (VOR) Federal airways, V–12, V–74, and V–516, in the vicinity of Anthony, KS. The modifications are necessary due to the planned decommissioning of the VOR portion of the Anthony, KS, VOR/Tactical Air Navigation (VORTAC) navigation aid (NAVAID), which provides navigation guidance for portions of the affected air traffic service (ATS) routes. The Anthony VOR is being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Comments must be received on or before March 6, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2020–0003; Airspace Docket No. 19–ACE–11 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email: *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2020–0003; Airspace Docket No. 19–ACE–11) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2020–0003; Airspace Docket No. 19–ACE–11.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Blvd., Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

The FAA is planning decommissioning activities for the VOR portion of the Anthony, KS, VORTAC in July, 2020. The Anthony VOR is one of the candidate VORs identified for discontinuance by the FAA's VOR MON program and listed in the final policy statement notice, ''Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),'' published in the **Federal Register** of July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082. Although the VOR portion of the Anthony, KS, VORTAC NAVAID is planned for decommissioning, the co-located DME is being retained. The ATS routes affected by the planned Anthony VOR decommissioning are VOR Federal airways V–12, V–74, and V–516.

With the planned decommissioning of the Anthony VOR, the remaining ground-based NAVAID coverage in the area is insufficient to enable the continuity of the affected ATS routes. As such, proposed modifications to the affected VOR Federal airways would result in gaps in the airways. To overcome the airway gaps, instrument flight rules (IFR) traffic could use adjacent ATS route segments, including V–73, V–77, V–256, and V–532, to circumnavigate the affected area. IFR traffic could also file point to point through the affected area using the existing airway fixes that will remain in place, as well as adjacent NAVAIDs, or

receive air traffic control (ATC) radar vectors through the area. Visual flight rules pilots who elect to navigate via the airways through the affected area could also take advantage of the adjacent VOR Federal airways or ATC services listed previously.

Additionally, the Amarillo, TX, VOR NAVAID listed in the V–12 description was actually decommissioned in 1999. The FAA published a rule in the **Federal Register** (64 FR 3210, January 21, 1999) for airspace docket 98–ASW–30 that replaced the decommissioned Amarillo, TX, VOR with the newly commissioned Panhandle, TX, VORTAC. Subsequent to that rule, the FAA published another rule in the **Federal Register** (64 FR 43069, August 9, 1999) for airspace docket 99–ACE–14 that erroneously published V–12 with the Amarillo, TX, VOR included instead of the correct Panhandle, TX, VORTAC. As such, the ''Amarillo, TX,'' NAVAID listed in the V–12 description should reflect the ''Panhandle, TX,'' NAVAID. This editorial correction to the V–12 description is also included in this proposed action.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying VOR Federal Airways V–12, V–74, and V–516. The planned decommissioning of the VOR portion of the Anthony, KS, VORTAC NAVAID has made this action necessary. The proposed VOR Federal airway changes are outlined below.

V–12: V–12 currently extends between the Gaviota, CA, VORTAC and the Shelbyville, IN, VOR/Distance Measuring Equipment (VOR/DME); and between the Allegheny, PA, VOR/DME and the Pottstown, PA, VORTAC. The FAA proposes to remove the airway segment between the Mitbee, OK, VORTAC and the Wichita, KS, VORTAC. Additionally, the Amarillo, TX, VOR listed in the airway description would be corrected to reflect the Panhandle, TX, VORTAC. The unaffected portions of the existing airway would remain as charted.

V–74: V–74 currently extends between the Garden City, KS, VORTAC and the Magnolia, MS, VORTAC. The FAA proposes to remove the airway segment between the Dodge City, KS, VORTAC and the Pioneer, OK, VORTAC. The unaffected portions of the existing airway would remain as charted.

V–516: V–516 currently extends between the Liberal, KS, VORTAC and the Oswego, KS, VOR/DME. The FAA proposes to remove the airway segment between the Liberal, KS, VORTAC and the Pioneer, OK, VORTAC. The unaffected portion of the existing airway would remain as charted.

All radials listed in the route descriptions below are unchanged and stated in True degrees.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.11D dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways listed in this document would be subsequently published in the Order.

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

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–12 [Amended]

From Gaviota, CA; San Marcus, CA; Palmdale, CA; 38 miles, 6 miles wide, Hector, CA; 12 miles, 38 miles, 85 MSL, 14 miles, 75 MSL, Needles, CA; 45 miles, 34 miles, 95 MSL, Drake, AZ; Winslow, AZ; 30 miles, 85 MSL, Zuni, NM; Albuquerque, NM; Otto, NM; Anton Chico, NM; Tucumcari, NM; Panhandle, TX; to Mitbee, OK. From Wichita, KS; Emporia, KS; INT Emporia 063° and Napoleon, MO, 243° radials; Napoleon; INT Napoleon 095° and Columbia, MO, 292° radials; Columbia; Foristell, MO; Troy, IL; Bible Grove, IL; to Shelbyville, IN. From Allegheny, PA; Johnstown, PA; Harrisburg, PA; INT Harrisburg 092° and Pottstown, PA, 278° radials; to Pottstown.

* * * * *

V–74 [Amended]

From Garden City, KS; to Dodge City, KS. From Pioneer, OK; Tulsa, OK; Fort Smith, AR; 6 miles, 7 miles wide (4 miles north and 3 miles south of centerline) Little Rock, AR; Pine Bluff, AR; Greenville, MS; to Magnolia, MS.

* * * * *

V–516 [Amended]

From Pioneer, OK; to Oswego, KS.

* * * * *

Issued in Washington, DC, on January 9, 2020.

Rodger A. Dean Jr.,

Manager, Rules and Regulations Group.

[FR Doc. 2020–00774 Filed 1–17–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0007; Airspace Docket No. 19–ASO–11]

RIN 2120–AA66

Proposed Revocation and Amendment of Multiple Air Traffic Service (ATS) Routes in the Vicinity of Newcombe, KY, and Hazard, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend five VHF Omnidirectional Range (VOR) Federal airways, V–4, V–53, V–115, V–119, and V–140; amend two low altitude Area Navigation (RNAV) routes, T–215 and T–323; and remove three VOR Federal airways, V–331, V–339, and V–478, in the vicinity of Newcombe, KY, and Hazard, KY. The Air Traffic Service (ATS) route modifications are necessary due to the planned decommissioning of the VOR portions of the Newcombe, KY, VOR/Tactical Air Navigation (VORTAC) and the Hazard, KY, VOR/Distance Measuring Equipment (VOR/DME) navigation aids (NAVAIDs). The NAVAIDs provide navigation guidance for portions of the affected air traffic service (ATS) routes. These VORs are being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Comments must be received on or before March 6, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2020–0007; Airspace Docket No. 19–ASO–11 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.* FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email: *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2020–0007; Airspace Docket No. 19–ASO–11) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2020–0007; Airspace Docket No. 19–ASO–11.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Blvd., Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

The FAA is planning decommissioning activities for the VOR portion of the Newcombe, KY, VORTAC and the Hazard, KY, VOR/DME in July, 2020. The VOR portion of the Newcombe, KY, and Hazard, KY, NAVAIDs are candidate VORs identified for discontinuance by the FAA's VOR MON program and listed in the final policy statement notice, ''Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),'' published in the **Federal Register** of July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082.

Although the VOR portion of the Newcombe, KY, and Hazard, KY, NAVAIDs are planned for decommissioning, the co-located DME portions of the NAVAIDs are being retained.

The ATS route dependencies to the Newcombe VORTAC are VOR Federal

airways V–4, V–119, V–331, and V–478. Similarly, the ATS route dependencies to the Hazard VOR/DME are VOR Federal airways V–53, V–115, V–140, V–331, and V–339.

With the planned decommissioning of the VOR portion of the Newcombe, KY, and Hazard, KY, NAVAIDs, the remaining ground-based NAVAID coverage in the areas is insufficient to enable the continuity of the affected VOR Federal Airways. As such, proposed modifications to the affected VOR Federal Airways would result in gaps in those airways. To overcome the airway gaps, instrument flight rules (IFR) traffic could use adjacent ATS routes, including V–35, V–97, V–128, V–310, and V–493, to circumnavigate the affected area. IFR traffic could also file point to point through the affected area using the existing airway fixes that will remain in place, as well as adjacent NAVAIDs, or receive air traffic control (ATC) radar vectors through the area. Visual flight rules pilots who elect to navigate via the airways through the affected area could also take advantage of the adjacent VOR Federal airways or ATC services listed previously.

Further, the FAA proposes to extend RNAV routes T–215 and T–323 through the affected area, with minor editorial amendments to the descriptions, to continue supporting enroute airspace users, as well as ongoing FAA NextGen efforts to transition the national airspace system to performance-based navigation. The editorial amendments to the existing T–215 and T–323 descriptions would not change the routes' structure, operational use, or charted depiction.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying VOR Federal airways V–4, V–53, V–115, V–119, and V–140; modifying low altitude RNAV routes T–215 and T–323; and removing VOR Federal airways V–331, V–339, and V–478. The planned decommissioning of the VOR portion of the Newcombe, KY, VORTAC and Hazard, KY, VOR/DME NAVAIDs has made this action necessary. The proposed VOR Federal airway changes are outlined below.

V–4: V–4 currently extends between the Tatoosh, WA, VORTAC and the Armel, VA, VOR/DME. The FAA proposes to remove the airway segment overlying the Newcombe, KY, VORTAC between the Lexington, KY, VOR/DME and the Charleston, WV, VORTAC. The unaffected portions of the existing airway would remain as charted.

V–53: V–53 currently extends between the Charleston, SC, VORTAC and the Brickyard, IN, VOR/DME. The airspace within R–3401B is excluded. The FAA proposes to remove the airway segment overlying the Hazard, KY, VOR/DME between the Holston Mountain, TN, VORTAC and the Lexington, KY, VOR/DME. The unaffected portions of the existing airway would remain as charted.

V–115: V–115 currently extends between the Crestview, FL, VORTAC and the Franklin, PA, VOR. The FAA proposes to remove the airway segment overlying the Hazard, KY, VOR/DME between the Volunteer, TN, VORTAC and the Charleston, WV, VORTAC. Concurrent changes to other portions of the airway are being proposed in a separate NPRM. The unaffected portions of the existing airway would remain as charted.

V–119: V–119 currently extends between the Newcombe, KY, VORTAC and the Rochester, NY, VOR/DME. The FAA proposes to remove the airway segment overlying the Newcombe, KY, VORTAC between the Newcombe, KY, VORTAC and the Henderson, WV, VORTAC. The unaffected portions of the existing airway would remain as charted.

V–140: V–140 currently extends between the Panhandle, TX, VORTAC and the Casanova, VA, VORTAC. The FAA proposes to remove the airway segment overlying the Hazard, KY, VOR/DME between the London, KY, VOR/DME and the Bluefield, WV, VOR/DME. The unaffected portions of the existing airway would remain as charted.

V–331: V–331 currently extends between the Newcombe, KY, VORTAC and the Hazard, KY, VOR/DME. The FAA proposes to remove the airway in its entirety.

V–339: V–339 currently extends between the Hazard, KY, VOR/DME and the Falmouth, KY, VOR/DME. The FAA proposes to remove the airway in its entirety.

V–478: V–478 currently extends between the Falmouth, KY, VOR/DME and the Beckley, WV, VOR/DME. The FAA proposes to remove the airway in its entirety.

The proposed low altitude RNAV route changes are outlined below.

T–215: T–215 currently extends between the Lexington, KY, VOR/DME and the GAMKE, IN, waypoint (WP). The FAA proposes to extend the route southeastward from the Lexington, KY, VOR/DME to the Holston Mountain, TN, VORTAC. Additionally, the type of facility for Lexington, KY, is corrected from ''VORTAC'' to ''VOR/DME'' and the geographic coordinates of each route point are updated to be expressed in degrees, minutes, seconds, and hundredths of a second.

T–323: T–323 currently extends between the CROCS, GA, WP and the HIGGI, NC, WP. The FAA proposes to extend the route northward from the HIGGI, NC, WP to the Hazard, KY, DME. Additionally, the geographic coordinates of each route point are updated to be expressed in degrees, minutes, seconds, and hundredths of a second.

All radials in the VOR Federal airway descriptions below are unchanged and stated in True degrees.

VOR Federal airways are published in paragraph 6010(a) and low altitude RNAV routes are published in paragraph 6011 of FAA Order 7400.11D dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The ATS routes listed in this document would be subsequently published in the Order.

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

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–4 [Amended]

From Tatoosh, WA; INT of Tatoosh 102° and Seattle, WA, 329° radials; Seattle; Yakima, WA; Pendleton, OR; Baker, OR; Boise, ID; INT Boise 130° and Burley, ID, 292° radials; Burley; Malad City, ID; Rock Springs, WY; Cherokee, WY; Laramie, WY; Gill, CO; Thurman, CO; Goodland, KS; Hill City, KS; Salina, KS; Topeka, KS; Kansas City, MO; Hallsville, MO; St. Louis, MO; Troy, IL; Centralia, IL; Pocket City, IN; Louisville, KY; to Lexington, KY. From Charleston, WV; Elkins, WV; Kessel, WV; INT Kessel 097° and Armel, VA, 292° radials; to Armel.

* * * * *

V–53 [Amended]

From Charleston, SC; Columbia, SC; Spartanburg, SC; Sugarloaf Mountain, NC; to Holston Mountain, TN. From Lexington, KY; Louisville, KY; INT Louisville 333° and Brickyard, IN, 170° radials; Brickyard. The airspace within R–3401B is excluded.

* * * * *

V–115 [Amended]

From Crestview, FL; INT Crestview 001° and Montgomery, AL, 204° radials; Montgomery; INT Montgomery 323° and Vulcan, AL, 177° radials; Vulcan; Choo Choo, GA; to Volunteer, TN. From Charleston, WV; Parkersburg, WV; Newcomerstown, OH; INT Newcomerstown 038° and Franklin, PA, 239° radials; to Franklin.

* * * * *

V–119 [Amended]

From Henderson, WV; Parkersburg, WV; INT Parkersburg 067° and Indian Head, PA, 254° radials; Indian Head; Clarion, PA; Bradford, PA; Wellsville, NY; Geneseo, NY; to Rochester, NY.

* * * * *

V–140 [Amended]

From Panhandle, TX; Burns Flat, OK; Kingfisher, OK; INT Kingfisher 072° and Tulsa, OK, 261° radials; Tulsa; Razorback, AR; Harrison, AR; Walnut Ridge, AR; Dyersburg, TN; Nashville, TN; Livingston, TN; to London, KY. From Bluefield, WV; INT Bluefield 071° and Montebello, VA, 250° radials; Montebello; to Casanova, VA.

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V–331 [Removed]

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V–339 [Removed]

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V–478 [Removed]

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6011. United States Area Navigation Routes.

* * * * *

T–215 Holston Mountain, TN (HMV) to GAMKE, IN [Amended]

Holston Mountain, TN (HMV)	VORTAC	(Lat. 36°26′13.40″ N, long. 82°07′46.56″ W)
HILTO,VA	WP	(Lat. 36°41′48.46″ N, long. 82°26′07.44″ W)
FLENR, VA	WP	(Lat. 36°56′44.27″ N, long. 82°43′42.75″ W)
RISTE, KY	WP	(Lat. 37°09′02.92″ N, long. 82°58′24.38″ W)
Hazard, KY (AZQ)	DME	(Lat. 37°23′28.52″ N, long. 83°15′46.83″ W)
HUGEN, KY	FIX	(Lat. 37°31′46.14″ N, long. 83°32′58.54″ W)
Lexington, KY (HYK)	VOR/DME	(Lat. 37°57′58.86″ N, long. 84°28′21.06″ W)
GAMKE, IN	WP	(Lat. 38°46′12.99″ N, long. 85°14′35.37″ W)

* * * * * * *

T–323 CROCS, GA to Hazard, KY (AZQ) [Amended]

CROCS, GA	WP	(Lat. 32°27′17.69″ N, long. 82°46′29.06″ W)
BOBBR, GA	WP	(Lat. 33°19′57.07″ N, long. 83°08′19.47″ W)
BIGNN, GA	WP	(Lat. 34°20′34.38″ N, long. 83°33′06.80″ W)
ZPPLN, NC	WP	(Lat. 34°59′47.42″ N, long. 83°49′37.73″ W)
HIGGI, NC	WP	(Lat. 35°26′46.57″ N, long. 83°46′41.05″ W)
KIDBE, TN	WP	(Lat. 35°51′16.23″ N, long. 83°40′19.66″ W)
ZADOT, TN	WP	(Lat. 36°35′32.17″ N, long. 83°28′40.09″ W)
WELLA, KY	WP	(Lat. 37°02′15.68″ N, long. 83°21′31.07″ W)
Hazard, KY (AZQ)	DME	(Lat. 37°23′28.52″ N, long. 83°15′46.83″ W)

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Issued in Washington, DC, on January 7, 2020.

Rodger A. Dean Jr.,

Manager, Rules and Regulations Group.

[FR Doc. 2020–00544 Filed 1–17–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–1105; Airspace Docket No. 19–AGL–17]

RIN 2120–AA66

Proposed Amendment of Multiple Air Traffic Service (ATS) Routes in the Northcentral United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend eleven VHF Omnidirectional Range (VOR) Federal airways, V–13, V–15, V–26, V–55, V–78, V–100, V–159, V–175, V–219, V–307, and V–505, and two low altitude Area Navigation (RNAV) routes, T–285 and T–354, in the Northcentral United States. The modifications are necessary due to the planned decommissioning of the VOR portion of the Park Rapids, MN, VOR/Distance Measuring Equipment (VOR/

DME); Siren, WI, VOR/DME; Sioux City, IA, VOR/Tactical Air Navigation (VORTAC); and Huron, SD, VORTAC navigation aids (NAVAIDs). The NAVAIDs provide navigation guidance for portions of the affected air traffic service (ATS) routes. The VORs are being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Comments must be received on or before March 6, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2019–1105; Airspace Docket No. 19–AGL–17 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.* FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email: *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2019–1105; Airspace Docket No. 19–AGL–17) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2019–1105; Airspace Docket No. 19–AGL–17.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Blvd., Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

The FAA is planning decommissioning activities for the VOR portion of the Park Rapids, MN, VOR/DME; Siren, WI, VOR/DME; Sioux City, IA, VORTAC; and Huron, SD, VORTAC in July, 2020. The VOR portion of the Park Rapids, MN; Siren, WI; Sioux City, IA; and Huron, SD, NAVAIDs are candidate VORs identified for discontinuance by the FAA's VOR MON program and listed in the final policy statement notice, ''Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),'' published in the **Federal Register** of July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082.

Although the VOR portion of the Park Rapids, MN; Siren, WI; Sioux City, IA; and Huron, SD, NAVAIDs are planned for decommissioning, the DME portion of the NAVAIDs are being retained.

The ATS route dependencies to the Park Rapids VOR/DME are VOR Federal airways V–55, V–82, V–175, and low altitude RNAV route T–354. Similarly, the ATS route dependencies to the Siren VOR/DME are VOR Federal airways V–13, V–55, V–505, and low altitude RNAV route T–354. And, the ATS route dependencies to the Sioux City VORTAC are VOR Federal airways V–15, V–100, V–159, V–175, V–219, and V–307. Lastly, the ATS route dependencies to the Huron VORTAC are VOR Federal airways V–15, V–26, V–78, V–159, and low altitude RNAV route T–285.

With the planned decommissioning of the VOR portion of the Park City, MN; Siren, WI; Sioux City, IA; and Huron, SD, NAVAIDs, the remaining ground-

based NAVAID coverage in the area is insufficient to enable the continuity of the affected VOR Federal Airways. As such, proposed modifications to the affected VOR Federal Airways would result in gaps in those airways. To overcome the airway gaps, instrument flight rules (IFR) traffic could use adjacent ATS routes, including V–24, V–80, V–120, V–148, V–170, V–171, V–181, V–218,V–263, V–398, V–410, T–330, T–354, and T–383, to circumnavigate the affected area. Additionally, IFR traffic could file point to point through the affected area using the existing airway fixes that will remain in place, or receive air traffic control (ATC) radar vectors through the area. Visual flight rules pilots who elect to navigate via the airways through the affected area could also take advantage of the adjacent VOR Federal airways or ATC services listed previously.

Further, the FAA proposes to retain T–285 and T–354 as they are charted today, with minor editorial amendments to the descriptions, to continue supporting enroute airspace users, as well as ongoing FAA NextGen efforts to transition the national airspace system to performance-based navigation. The editorial amendments to the T–285 and T–354 descriptions would reflect the Huron, SD (HON); Park Rapids, MN (PKD); and Siren, WI (RZN) route points as a DME facility due to the VOR portion of the NAVAIDs being decommissioned. Additionally, a number of other minor editorial corrections are proposed to comply with the FAA's aeronautical database and current route description policy guidance. The editorial amendments and corrections would not change the existing routes' structure, operational use, or charted depiction.

Lastly, the Duluth VORTAC NAVAID listed in the V–505 description is located in Duluth, Minnesota. As such, the state abbreviation for the NAVAID listed in the description should reflect ''MN'' instead of ''MI''. This editorial correction to the V–505 description is also included in this proposed action.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying VOR Federal airways V–13, V–15, V–26, V–55, V–78, V–100, V–159, V–175, V–219, V–307, and V–505, and low altitude RNAV routes T–285 and T–354. The planned decommissioning of the VOR portion of the Park Rapids, MN, VOR/DME; Siren, WI, VOR/DME; Sioux City, IA, VORTAC; and Huron, SD, VORTAC NAVAIDs has made this action necessary. The proposed VOR Federal airway changes are outlined below.

V–13: V–13 currently extends between the McAllen, TX, VOR/DME and the Thunder Bay, ON, Canada, VOR/DME. The airspace outside the United States is excluded. The FAA proposes to remove the airway segment overlying the Siren, WI, VOR/DME between the Farmington, MN, VORTAC and the Duluth, MN, VORTAC. The airspace outside the United States would continue to be excluded. The unaffected portions of the existing airway would remain as charted.

V–15: V–15 currently extends between the Hobby, TX, VOR/DME and the Neosho, MO, VOR/DME; and between the Sioux City, IA, VORTAC and the Minot, ND, VOR/DME. In a separate NPRM, the FAA proposed to remove the airway segment between the Hobby, TX, VOR/DME and the Navasota, TX, VOR/DME (83 FR 48730, September 27, 2018). The FAA now proposes to remove the airway segment overlying the Sioux City, IA, and Huron, SD, VORTACs between the Sioux City, IA, VORTAC and the Aberdeen, SC, VOR/DME. The unaffected portions of the existing airway would remain as charted.

V–26: V–26 currently extends between the Blue Mesa, CO, VOR/DME and the White Cloud, MI, VOR/DME. The FAA now proposes to remove the airway segment overlying the Huron, SD, VORTAC between the Pierre, SD, VORTAC and the Redwood Falls, MN, VOR/DME. The unaffected portions of the existing airway would remain as charted.

V–55: V–55 currently extends between the Dayton, OH, VOR/DME and the intersection of the Green Bay, WI, VORTAC 270° and Oshkosh, WI, VORTAC 339° radials; between the Eau Claire, WI, VORTAC and the Siren, WI, VOR/DME; and between the Park Rapids, MN, VOR/DME and the Bismarck, ND, VOR/DME. The FAA proposes to remove the airway segment overlying the Siren, WI, VOR/DME between the Eau Claire, WI, VORTAC and the Siren, WI, VOR/DME; and remove the airway segment overlying the Park Rapids, MN, VOR/DME between the Park Rapids, MN, VOR/DME and the Grand Forks, ND, VOR/DME. The unaffected portions of the existing airway would remain as charted.

V–78: V–78 currently extends between the Huron, SD, VORTAC and the Escanaba, MI, VOR/DME; and between the Pellston, MI, VORTAC and the Saginaw, MI, VOR/DME. The FAA proposes to remove the airway segment overlying the Huron, SD, VORTAC between the Huron, SD, VORTAC and the Watertown, SD, VORTAC. The unaffected portions of the existing airway would remain as charted.

V–100: V–100 currently extends between the Medicine Bow, WY, VOR/DME and the Litchfield, MI, VOR/DME. The FAA proposes to remove the airway segment overlying the Sioux City, IA, VORTAC between the O'Neill, NE, VORTAC and the Fort Dodge, IA, VORTAC. The unaffected portions of the existing airway would remain as charted.

V–159: V–159 currently extends between the Virginia Key, FL, VOR/DME and the Huron, SD, VORTAC. In a separate NPRM, the FAA proposed to remove the airway segment between the Vulcan, AL, VORTAC and the Holly Springs, MS, VORTAC (84 FR 28434, June 19, 2019). The FAA now proposes to remove the airway segment overlying the Sioux City, IA, VORTAC between the Omaha, IA, VORTAC and the Yankton, SD, VOR/DME; and remove the airway segment overlying the Huron, SD, VORTAC between the Mitchell, SD, VOR/DME and the Huron, SD, VORTAC. The unaffected portions of the existing airway would remain as charted.

V–175: V–175 currently extends between the Malden, MO, VORTAC and the Winnipeg, MB, Canada, VORTAC. The airspace within Canada is excluded. The FAA proposes to remove the airway segment overlying the Sioux City, IA, VORTAC between the Des Moines, IA, VORTAC and the Worthington, MN, VOR/DME; and remove the airway segment overlying the Park Rapids, MN, VOR/DME between the Alexandria, MN, VOR/DME and the Winnipeg, MB, Canada, VORTAC. The exclusion statement for the airspace within Canada would also be removed. The unaffected portions of the existing airway would remain as charted.

V–219: V–219 currently extends between the Hayes Center, NE, VORTAC and the Sioux City, IA, VORTAC. The FAA proposes to remove the airway segment overlying the Sioux City, IA, VORTAC between the Norfolk, NE, VOR/DME and the Sioux City, IA, VORTAC. The unaffected portions of the existing airway would remain as charted.

V–307: V–307 currently extends between the Harrison, AR, VOR/DME and the Sioux City, IA, VORTAC. The FAA proposes to remove the airway segment overlying the Sioux City, IA, VORTAC between the Omaha, IA, VORTAC and the Sioux City, IA, VORTAC. The unaffected portions of the existing airway would remain as charted.

V–505: V–505 currently extends between the Des Moines, IA, VORTAC and the International Falls, MN, VOR/DME. The FAA proposes to remove the airway segment overlying the Siren, WI, VOR/DME between the Gopher, MN, VORTAC and the Duluth, MN, VORTAC. Additionally, an editorial correction is included to change the state abbreviation for the Duluth VORTAC listed in the description from ''MI'' to ''MN''. The unaffected portions of the existing airway would remain as charted.

The proposed low altitude RNAV route changes are outlined below.

T–285: T–285 currently extends between the North Platte, NE, VOR/DME and the Huron, SD, VORTAC. In a separate NPRM, the FAA proposed to replace the Winner, SD, VOR route point with a waypoint (WP) being established (named LESNR) overhead the Winner VOR location (84 FR 64795, November 25, 2019). The FAA now proposes to change the Huron, SD (HON) route point from being listed as ''VORTAC'' to ''DME''. Additionally, the North Platte, NE, VOR/DME ''LBF'' identifier and Huron DME ''HON'' identifier would be added to the first line of the route description; the North Platte NAVAID type listed in the description would be corrected from ''VORTAC'' to ''VOR/DME''; and the geographic coordinates of each route point would be updated to be expressed in degrees, minutes, seconds, and hundredths of a second to comply with the FAA's aeronautical database and route description policy guidance. The existing RNAV route would remain as charted.

T–354: T–354 currently extends between the Park Rapids, MN, VOR/DME and the Siren, WI, VOR/DME. The FAA proposes to change the Park Rapids, MN (PKD), and Siren, WI (RZN), route points from being listed as ''VOR/DME'' to ''DME''. Additionally, a route segment between the BYZIN, ND, waypoint and the Park Rapids, MN, DME facility would be added to extend T–354 northwestward to join T–330 at the BYZIN waypoint to provide enroute structure between the Park Rapids VOR/DME and the Grand Forks VOR/DME that would be removed by the proposed V–55 amendment above. The existing RNAV route would remain as charted with the addition of the route segment proposed between the BYZIN, ND, waypoint and the Rapid City, MN, DME facility.

All radials listed in the route descriptions below are unchanged and stated in True degrees.

VOR Federal airways are published in paragraph 6010(a) and low altitude RNAV routes are published in paragraph 6011 of FAA Order 7400.11D dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The ATS routes listed in this document would be subsequently published in the Order.

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

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–13 [Amended]

From McAllen, TX; INT McAllen 060° radial and Corpus Christi, TX, 178° radials; Corpus Christi; INT Corpus Christi 039° and Palacios, TX, 241° radials; Palacios; Humble, TX; Lufkin, TX; Belcher, LA; Texarkana, AR; Rich Mountain, OK; Fort Smith, AR; INT Fort Smith 006° and Razorback, AR, 190° radials; Razorback; Neosho, MO; Butler, MO; Napoleon, MO; Lamoni, IA; Des Moines, IA; Mason City, IA; to Farmington, MN. From Duluth, MN; to Thunder Bay, ON, Canada. The airspace outside the United States is excluded.

* * * * *

V–15 [Amended]

From Hobby, TX; Navasota, TX; College Station, TX; Waco, TX; Cedar Creek, TX; Bonham, TX; McAlester, OK; Okmulgee, OK; to Neosho, MO. From Aberdeen, SD; Bismarck, ND; to Minot, ND.

* * * * *

V–26 [Amended]

From Blue Mesa, CO; Montrose, CO; 13 miles 112 MSL, 131 MSL, Grand Junction, CO; Meeker, CO; Cherokee, WY; Muddy Mountain, WY; 14 miles, 37 miles 75 MSL, 84 miles 90 MSL, Rapid City, SD; Philip, SD; to Pierre, SD. From Redwood Falls, MN; Farmington, MN; Eau Claire, WI; Waussau, WI; Green Bay, WI; INT Green Bay 116° and White Cloud, MI, 302° radials; to White Cloud.

* * * * *

V–55 [Amended]

From Dayton, OH; Fort Wayne, IN; Goshen, IN; Gipper, MI; Keeler, MI; Pullman, MI; Muskegon, MI; INT Muskegon 327° and Green Bay, WI, 116° radials; Green Bay; to INT Green Bay 270° and Oshkosh, WI, 339° radials. From Grand Forks, ND; INT Grand Forks 239° and Bismarck, ND, 067° radials; to Bismarck.

* * * * *

V–78 [Amended]

From Watertown, SD; Darwin, MN; Gopher, MN; INT Gopher 091° and Eau Claire, WI, 290° radials; Eau Claire; Rhinelander, WI; Iron Mountain, MI; to Escanaba, MI. From Pellston, MI; Alpena, MI; INT Alpena 232° and Saginaw, MI, 353° radials; to Saginaw.

* * * * *

V–100 [Amended]

From Medicine Bow, WY; Scottsbluff, NE; Alliance, NE; Ainsworth, NE; to O'Neill, NE. From Fort Dodge, IA; Waterloo, IA; Dubuque, IA; Rockford, IL; INT Rockford 074° and Janesville, WI, 112° radials; INT Janesville 112° and Northbrook, IL, 291° radials;

Northbrook; INT Northbrook 095° and Keeler, MI, 271° radials; Keeler; to Litchfield, MI.

* * * * *

V–159 [Amended]

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

* * * * *

V–175 [Amended]

From Malden, MO; Vichy, MO; Hallsville, MO; Macon, MO; Kirksville, MO; to Des Moines, IA. From Worthington, MN; Redwood Falls, MN; to Alexandria, MN.

* * * * *

V–219 [Amended]

From Hayes Center, NE; INT Hayes Center 059° and Wolbach, NE, 251° radials; Wolbach; to Norfolk, NE.

* * * * *

V–307 [Amended]

From Harrison, AR; Neosho, MO; Oswego, KS; Chanute, KS; Emporia, KS; INT Emporia 336° and Pawnee City, NE, 194° radials; Pawnee City; to Omaha, IA.

* * * * *

V–505 [Amended]

From Des Moines, IA; Fort Dodge, IA, excluding the airspace at and above 11,000 feet MSL between 27 miles and 64 miles northwest of Des Moines VOR during the time that the Boone MOA is activated; Mason City, IA; INT Mason City 349° and Gopher, MN, 188° radials; to Gopher. From Duluth, MN; INT Duluth 331° and Hibbing, MN, 120° radials; Hibbing; INT Hibbing 319° and International Falls, MN, 182° radials; to International Falls.

* * * * *

6011. United States Area Navigation Routes.

* * * * *

T–285 North Platte, NE (LBF) to Huron, SD (HON) [Amended]

North Platte, NE (LBF)	VOR/DME	(Lat. 41°02′55.34″ N, long. 100°44′49.55″ W)
Thedford, NE (TDD)	VOR/DME	(Lat. 41°58′53.99″ N, long. 100°43′08.55″ W)
MARSS, NE	Fix	(Lat. 42°27′48.92″ N, long. 100°36′15.32″ W)
Valentine, NE (VTN)	NDB	(Lat. 42°51′41.85″ N, long. 100°32′58.73″ W)
LKOTA, SD	WP	(Lat. 43°15′28.00″ N, long. 100°03′14.00″ W)
Winner, SD (ISD)	VOR	(Lat. 43°29′16.50″ N, long. 99°45′41.00″ W)
Huron, SD (HON)	DME	(Lat. 44°26′24.30″ N, long. 98°18′39.89″ W)

* * * * * * *

T–354 BYZIN, MN to Siren, WI (RZN) [Amended]

BYZIN, MN	WP	(Lat. 47°29′03.97″ N, long. 96°13′28.09″ W)
Park Rapids, MN (PKD)	DME	(Lat. 46°53′53.34″ N, long. 95°04′15.21″ W)
BRNRD, MN	WP	(Lat. 46°20′53.81″ N, long. 94°01′33.54″ W)
Siren, WI (RZN)	DME	(Lat. 45°49′13.60″ N, long. 92°22′28.26″ W)

* * * * *

Issued in Washington, DC, on January 13, 2020.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–00773 Filed 1–17–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0002; Airspace Docket No. 19–ACE–10]

RIN 2120–AA66

Proposed Amendment of VOR Federal Airways V–125, V–178, V–313, and V–429 in the Vicinity of Cape Girardeau, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend four VHF Omnidirectional Range (VOR) Federal airways, V–125, V–178, V–313, and V–429, in the vicinity of Cape Girardeau, MO. The modifications are necessary due to the planned decommissioning of the VOR portion of the Cape Girardeau, MO, VOR/Distance Measuring Equipment (VOR/DME) navigation aid (NAVAID), which provides navigation guidance for portions of the affected air traffic service (ATS) routes. The Cape Girardeau VOR is being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Comments must be received on or before March 6, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2020–0002; Airspace Docket No. 19–ACE–10 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.* FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email: *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2020–0002; Airspace Docket No. 19–ACE–10) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2020–0002; Airspace Docket No. 19–ACE–10.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Blvd., Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

The FAA is planning decommissioning activities for the VOR portion of the Cape Girardeau, MO, VOR/DME in July, 2020. The Cape Girardeau VOR is one of the candidate VORs identified for discontinuance by the FAA's VOR MON program and listed in the final policy statement notice, ''Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),'' published in the **Federal Register** of July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082. Although the VOR portion of the Cape Girardeau, MO, VOR/DME NAVAID is planned for decommissioning, the co-located DME is being retained. The ATS routes affected by the planned Cape Girardeau VOR decommissioning are VOR Federal airways V–125, V–178, V–313, and V–429.

With the planned decommissioning of the Cape Girardeau VOR, the remaining ground-based NAVAID coverage in the area is insufficient to enable the continuity of the affected ATS routes. As such, proposed modifications to the affected VOR Federal airways would result in gaps in the airways. To overcome the airway gaps, instrument flight rules (IFR) traffic could use adjacent ATS route segments, including V–9, V–67, V–190, V–305, and V–540, to circumnavigate the affected area. IFR traffic could also file point to point through the affected area using the existing airway fixes that will remain in place, as well as adjacent NAVAIDs, or receive air traffic control (ATC) radar vectors through the area. Visual flight rules pilots who elect to navigate via the airways through the affected area could also take advantage of the adjacent VOR Federal airways or ATC services listed previously.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying VOR Federal Airways V–125, V–178, V–313, and V–429. The planned decommissioning of the VOR portion of the Cape Girardeau, MO, VOR/DME NAVAID has made this action necessary. The proposed VOR Federal airway changes are outlined below.

V–125: V–125 currently extends between the Cape Girardeau, MO, VOR/DME and the St Louis, MO, VOR/Tactical Air Navigation (VORTAC). The FAA proposes to remove the airway segment between the Cape Girardeau, MO, VOR/DME and the intersection of the Cape Girardeau, MO, VOR/DME 347° and St Louis, MO, VORTAC 148° radials (NIKEL fix). Additionally, the NIKEL fix would be amended in the airway description to describe it as the intersection of the Farmington, MO, VORTAC 046°(T)/047°(M) and Marion, IL, VOR/DME 282°(T)/286°(M) radials. The unaffected portion of the existing airway would remain as charted.

V–178: V–178 currently extends between the Hallsville, MO, VORTAC and the Bluefield, WV, VOR/DME. The FAA proposes to remove the airway segment between the Farmington, MO, VORTAC and the Cunningham, KY, VOR/DME. Concurrent changes to other portions of the airway are being proposed in separate NPRMs. The unaffected portions of the existing airway would remain as charted.

V–313: V–313 currently extends between the Malden, MO, VORTAC and the Pontiac, IL, VOR/DME. The FAA proposes to remove the airway segment between the Malden, MO, VORTAC and the Centralia, IL, VORTAC. The unaffected portions of the existing airway would remain as charted.

V–429: V–429 currently extends between the Cape Girardeau, MO, VOR/DME and the Bible Grove, IL, VORTAC; and between the Champaign, IL, VORTAC and the Joliet, IL, VOR/DME. The FAA proposes to remove the airway segment between the Cape Girardeau, MO, VOR/DME and the Marion, IL, VOR/DME. The unaffected portions of the existing airway would remain as charted.

All radials in the route descriptions below that are unchanged are stated in True degrees only. Radials that are stated in True (T) and Magnetic (M) degrees are new computations based on available NAVAIDS.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.11D dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways listed in this document would be subsequently published in the Order.

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

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–125 [Amended]

From INT Farmington, MO, 046°(T)/047°(M) and Marion, IL, 282°(T)/286°(M) radials; to St Louis, MO.

* * * * *

V–178 [Amended]

From Hallsville, MO; INT Hallsville 183° and Vichy, MO, 321° radials; Vichy; to Farmington, MO. From Cunningham, KY; Central City, KY; New Hope, KY; Lexington, KY; to Bluefield, WV.

* * * * *

V–313 [Amended]

From Centralia, IL; Adders, IL; to Pontiac, IL.

* * * * *

V–429 [Amended]

From Marion, IL; INT Marion 011° and Bible Grove, IL, 207° radials; to Bible Grove. From Champaign, IL; Roberts, IL; to Joliet, IL.

* * * * *

Issued in Washington, DC, on January 9, 2020.

Rodger A. Dean Jr.,

Manager, Rules and Regulations Group.

[FR Doc. 2020–00775 Filed 1–17–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0010; Airspace Docket No. 17–ASW–18]

RIN 2120–AA66

Proposed Revocation of Jet Route J–105 and Amendment of VOR Federal Airways V–15, V–63, V–272, and V–583 in the Vicinity of McAlester, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to remove one Jet Route, J–105, and amend four VHF Omnidirectional Range (VOR) Federal airways, V–15, V–63, V–272, and V–583, in the vicinity of McAlester, OK. The modifications are necessary due to the planned decommissioning of the VOR portion of the McAlester, OK, VOR/Tactical Air Navigation (VORTAC) navigation aid (NAVAID), which provides navigation guidance for portions of the affected air traffic service (ATS) routes. The McAlester VOR is being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Comments must be received on or before March 6, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2020–0010; Airspace Docket No. 17–ASW–18 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email: *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2020–0010; Airspace Docket No. 17–ASW–18) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2020–0010; Airspace Docket No. 17–ASW–18.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Blvd., Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

The FAA is planning decommissioning activities for the VOR portion of the McAlester, OK, VORTAC in July, 2020. McAlester VOR is one of the candidate VORs identified for discontinuance by the FAA's VOR MON program and listed in the final policy statement notice, ''Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),'' published in the **Federal Register** of July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082. Although the VOR portion of the McAlester, OK, VORTAC NAVAID is planned for decommissioning, the co-located Distance Measuring Equipment (DME) is being retained. The ATS routes affected by the planned McAlester VOR decommissioning are Jet Route J–105 and VOR Federal airways V–15, V–63, V–272, and V–583.

With the planned decommissioning of the McAlester VOR, the remaining ground-based NAVAID coverage in the area is insufficient to enable the continuity of the effected ATS routes. As such, proposed modifications to the affected Jet Route and VOR Federal Airways would result in removal of the jet route and gaps in the airways. To overcome the jet route removal and airway gaps, instrument flight rules (IFR) traffic could use adjacent Jet Routes, including J–26, J–35, J–87, J–89, J–101, and J–181, or VOR Federal airways, including V–13, V–161, V–210, V–315, V–532, and V–573, to circumnavigate the affected area. Additionally, IFR traffic could file point to point through the affected area using the existing airway fixes that will remain in place, or receive air traffic control (ATC) radar vectors through the area. Visual flight rules pilots who elect to navigate via the airways through the affected area could also take advantage of the adjacent VOR Federal airways or ATC services listed previously.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by removing Jet Route J–105 and modifying VOR Federal Airways V–15, V–63, V–272, and V–583. The planned decommissioning of the VOR portion of the McAlester, OK, VORTAC NAVAID has made this action necessary. The proposed Jet route and VOR Federal airway changes are outlined below.

J–105: J–105 currently extends between the Ranger, TX, VORTAC and the Badger, WI, VOR/DME. The FAA proposes to remove the jet route in its entirety.

V–15: V–15 currently extends between the Hobby, TX, VOR/DME and the Neosho, MO, VOR/DME; and between the Sioux City, IA, VORTAC and the Minot, ND, VOR/DME. The FAA proposes to remove the airway segment overlying the McAlester, OK, VORTAC between the Bonham, TX, VORTAC and the Okmulgee, OK, VOR/DME. Concurrent changes to other portions of the airway are being proposed in separate NPRMs. The unaffected portions of the existing airway would remain as charted.

V–63: V–63 currently extends between the Bowie, TX, VORTAC and the Oshkosh, WI, VORTAC; and between the Wausau, WI, VORTAC and the Houghton, MI, VOR/DME. The FAA proposes to remove the airway segment overlying the McAlester, OK, VORTAC between the Texoma, OK, VOR/DME and the Razorback, AR, VORTAC. The unaffected portions of the existing airway would remain as charted.

V–272: V–272 currently extends between the Dalhart, TX, VORTAC and the Fort Smith, AR, VORTAC. The FAA proposes to remove the airway segment overlying the McAlester, OK, VORTAC between the Will Rogers, OK, VORTAC and the Fort Smith, AR, VORTAC. The unaffected portions of the existing airway would remain as charted.

V–583: V–583 currently extends between the Centex, TX, VORTAC and the McAlester, OK, VORTAC. The FAA proposes to remove the airway segment overlying the McAlester, OK, VORTAC between the Paris, TX, VOR/DME and the McAlester, OK, VORTAC. Concurrent changes to other portions of the airway are being proposed in a separate NPRM. The unaffected portions of the existing airway would remain as charted.

All radials in the route descriptions below are unchanged and stated in True degrees.

Jet Routes are published in paragraph 2004 and VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.11D dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Jet Route and VOR Federal airways listed in this document would be subsequently published in the Order.

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

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 2004 Jet Routes.

* * * * *

J–105 [Removed]

* * * * *

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–15 [Amended]

From Hobby, TX; Navasota, TX; College Station, TX; Waco, TX; Cedar Creek, TX; to Bonham, TX. From Okmulgee, OK; to Neosho, MO. From Sioux City, IA; INT Sioux City 340° and Sioux Falls, SD, 169° radials; Sioux Falls; Huron, SD; Aberdeen, SD; Bismarck, ND; to Minot, ND.

* * * * *

V–63 [Amended]

From Bowie, TX; to Texoma, OK. From Razorback, AR; Springfield, MO; Hallsville, MO; Quincy, IL; Burlington, IA; Moline, IL; Davenport, IA; Rockford, IL; Janesville, WI; Badger, WI; to Oshkosh, WI. From Wausau, WI; Rhinelander, WI; to Houghton, MI. Excluding that airspace at and above 10,000 feet MSL from 5 NM north to 46 NM north of Quincy, IL, when the Howard West MOA is active.

* * * * *

V–272 [Amended]

From Dalhart, TX; Borger, TX; Burns Flat, OK; to Will Rogers, OK.

* * * * *

V–583 [Amended]

From Centex, TX; INT Centex 061° and College Station, TX, 273° radials; College Station; Leona, TX; Frankston, TX; Quitman, TX; to Paris, TX.

* * * * *

Issued in Washington, DC, on January 7, 2020.

Rodger A. Dean Jr.,

Manager, Rules and Regulations Group.

[FR Doc. 2020–00547 Filed 1–17–20; 8:45 am]

BILLING CODE 4910–13–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Chapter II

[Docket No. 2019–7]

Online Publication

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notification of inquiry; extension of comment period.

SUMMARY: The U.S. Copyright Office is extending the deadline for the submission of written reply comments in response to its December 4, 2019 notification of inquiry regarding online publication.

DATES: The comment period for the notification of inquiry published December 4, 2019, at 84 FR 66328, is extended. Written comments must be received no later than 11:59 p.m. Eastern Time on March 19, 2020. Written reply comments must be submitted no later than 11:59 p.m. Eastern Time on April 16, 2020.

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov.* Specific instructions for submitting comments are available on the Copyright Office's website at *https://www.copyright.gov/rulemaking/online-publication/.* If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at *regans@copyright.gov,* Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice, by email at *rkas@copyright.gov,* or Jordana Rubel, Associate General Counsel, by email at *jrubel@copyright.gov.* Each can be contacted by telephone by calling (202) 707–3000.

SUPPLEMENTARY INFORMATION: On December 4, 2019, the U.S. Copyright Office issued a notification of inquiry (''NOI'') regarding online publication. 84 FR 66328 (Dec. 4, 2019). The Office solicited public comments on a broad range of issues concerning application of the statutory definition of publication to the online context.

To ensure that members of the public have sufficient time to comment, and to ensure that the Office has the benefit of a complete record, the Office is extending the deadline for the submission of comments to no later than 11:59 p.m. Eastern Time on March 19, 2020. The Office is also extending the deadline for the submission of reply comments to no later than 11:59 p.m. Eastern Time on April 16, 2020.

Dated: January 13, 2020.

Regan A. Smith,

General Counsel and Associate Register of Copyrights.

[FR Doc. 2020–00653 Filed 1–17–20; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2019–0711; FRL–10004–13–Region 7]

Air Plan Approval; Missouri; Construction Permits By Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Missouri State Implementation Plan (SIP) received on March 7, 2019. The submission revises a Missouri regulation that creates a process for exempting certain sources from construction permit obligations by establishing conditions under which these sources can construct and operate without going through the State's formal construction permitting process. Specifically, the revisions to the rule provide crematories and animal incinerators a compliance option and modify restrictions on what these units can incinerate, matches Federal sulfur limits on Number 2 diesel oil, removes ''restrictive'' words, adds definitions specific to the rule, and makes other minor edits. The revisions do not impact the stringency of the SIP or air quality. Approval of these revisions will ensure consistency between State and federally-approved rules.

DATES: Comments must be received on or before February 20, 2020.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R07–OAR–2019–0711 to *https://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Written Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Tracey Casburn, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551–7016; email address *casburn.tracey@epa.gov.*

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

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I. Written Comments
II. What is being addressed in this document?
III. Have the requirements for approval of a SIP revision been met?
IV. What action is EPA taking?
V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

I. Written Comments

Submit your comments, identified by Docket ID No. EPA–R07–OAR–2019–0711, at *https://www.regulations.gov.* 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, 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.*

II. What is being addressed in this document?

The State revised title 10, division 10 of the code of state regulations, 10 CSR 10–6.062 ''Construction Permits by Rule'', which creates a process for exempting certain sources from construction permit obligations by establishing conditions under which these sources can construct and operate without going through the State's formal construction permitting process. Specifically, the revisions to the rule provide crematories and animal incinerators a compliance option and modify restrictions on what these units can incinerate, matches Federal sulfur limits on Number 2 diesel oil, remove ''restrictive'' words, add definitions specific to the rule, and make other minor edits. 10 CSR 10–6.062 is SIP approved in the Code of Federal Regulations at 40 CFR 52.1320(c). The State submitted its revisions to 10 CSR 10–6.062 to the EPA as a SIP revision on March 7, 2019. In this action, the EPA is proposing to approve these revisions to the Missouri SIP.

The revisions do not impact air quality. The EPA's analysis of the revisions can be found in the technical support document (TSD) included in this docket.

III. Have the requirements for approval of a SIP revision been met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice of the revisions from August 1, 2018, to October 4, 2018, and held a public hearing on September 27, 2018. The State received and addressed four comments from three sources, which includes EPA. As explained in more detail in the TSD which is part of this docket, the SIP revision submission meets the substantive requirements of the Clean Air Act (CAA), including section 110 and implementing regulations.

IV. What action is EPA taking?

The EPA is proposing to amend the Missouri SIP by approving the State's request to revise 10 CSR 10–6.062, ''Construction Permits by Rule.'' Approval of these revisions will ensure consistency between State and federally-approved rules. The EPA has determined that these changes will not adversely impact air quality.

The EPA is processing this as a proposed action because we are soliciting comments on the action. Final rulemaking will occur after consideration of any comments.

V. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Missouri Regulations described in the proposed amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. 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. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, if they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; 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 rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Construction permit by rule, Crematories and animal incinerators, Incorporation by reference, Number 2. diesel.

Dated: January 9, 2020.

James Gulliford,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart—AA Missouri

■ 2. In § 52.1320, the table in paragraph (c) is amended by revising the entry ''10–6.062'' to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
*	*	*	*	*
10–6.062	Construction Permits By Rule	3/30/2019	[Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule].	
*	*	*	*	*

* * * * *

[FR Doc. 2020–00517 Filed 1–17–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 86 and 1036

[EPA–HQ–OAR–2019–0055; FRL–10004–16–OAR]

RIN 2060–AU41

Control of Air Pollution From New Motor Vehicles: Heavy-Duty Engine Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is soliciting pre-proposal comments on a rulemaking effort known as the Cleaner Trucks Initiative (CTI). This advance notice describes EPA's plans for a new rulemaking that would establish new emission standards for oxides of nitrogen (NO_X) and other pollutants for highway heavy-duty engines. It also describes opportunities to streamline and improve certification procedures to reduce costs for engine manufacturers. The EPA is seeking input on this effort from the public, including all interested stakeholders, to inform the development of a subsequent notice of proposed rulemaking.

DATES: Comments must be received on or before February 20, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2019–0055, at *http://www.regulations.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, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Public Participation: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2019–0055, at *http://www.regulations.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. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Docket. EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2019–0055. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at Air and Radiation Docket and Information Center, EPA Docket Center, EPA/DC, EPA WJC West Building, 1301 Constitution Ave. NW, Room 3334, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Brian Nelson, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4278; email address: *nelson.brian@epa.gov.*

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I. Introduction

On November 13, 2018, EPA announced plans to undertake a new rulemaking—the Cleaner Trucks Initiative (CTI)—to update standards for oxides of nitrogen (NO_X) emissions from highway heavy-duty vehicles and engines.[1] Although NO_X emissions in the U.S. have dropped by more than 40 percent over the past decade, we project that heavy-duty vehicles continue to be one of the largest contributors to the mobile source NO_X inventory in 2028.[2]

[1] EPA's regulations generally classify vehicles with Gross Vehicle Weight Ratings (GVWRs) above 8,500 pounds (*i.e.,* Class 2b and above) as heavy-duty vehicles, including large pick-up trucks and vans, a variety of ''work trucks'' designed for vocational applications, and combination tractor-trailers.

[2] U.S. Environmental Protection Agency. ''Air Emissions Modeling: 2016v1 Platform.'' Available online at: *https://www.epa.gov/air-emissions-modeling/2016v1-platform.*

Reducing NO_X emissions from highway heavy-duty trucks and buses is thus an important component of improving air quality nationwide and reducing public health and welfare effects associated with these pollutants, especially for vulnerable populations and lifestages, and in highly-impacted regions.

Section 202(a)(1) of the Clean Air Act (the Act) requires the EPA to set emission standards for air pollutants, including oxides of nitrogen (NO_X), from new motor vehicles or new motor vehicle engines, which the Administrator has found cause air pollution that may endanger public health or welfare. Under section 202(a)(3)(A) of the Act, NO_X (and certain other) emission standards for heavy-duty vehicles and engines are to ''reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to cost, energy, and safety factors associated with the application of such technology.'' Section 202(a)(3)(C) requires that standards apply for no less than 3 model years and apply no earlier than 4 years after promulgation.

Given the continued contribution of heavy-duty trucks to the NO_X inventory, more than 20 organizations, including state and local air agencies from across the country, petitioned EPA in the summer of 2016 to develop more stringent NO_X emission standards for on-road heavy-duty engines.[3] Among the reasons stated by the petitioners for EPA rulemaking was the need for NO_X emission reductions to reduce adverse health and welfare impacts and to help areas attain the National Ambient Air Quality Standards (NAAQS). EPA subsequently met with a wide range of stakeholders in listening sessions, during which certain themes were consistent across the range of stakeholders.[4] For example, it became clear that there is broad support for federal action in collaboration with the California Air Resources Board (CARB). So-called ''50-state'' standards enable technology suppliers and manufacturers to efficiently produce a single set of reliable and compliant products. There was broad acknowledgement of the value of aligning implementation of new NO_X standards with existing milestones for greenhouse gas (GHG) standards under the Heavy-Duty Phase 2 GHG and fuel efficiency program (''Phase 2'') (81 FR 73478, October 25, 2016). Such alignment would ensure that the GHG and fuel reductions achieved under Phase 2 are maintained and allow the regulated industry to implement GHG and NO_X technologies into their products at the same time.[5]

EPA responded to the petition on December 20, 2016, noting that an opportunity exists to develop a new, harmonized national NO_X reduction strategy for heavy-duty highway engines.[3] EPA emphasized the importance of scientific and technological information when determining the appropriate level and form of a future low NO_X standard and highlighted the following potential components of the action:

- Lower NO_X emission standards
- Improvements to test procedures and test cycles to ensure emission reductions occur in the real world, not only over the currently applicable certification test cycles
- Updated certification and in-use testing protocols
- Longer periods of mandatory emissions-related component warranties
- Consideration of longer regulatory useful life, reflecting actual in-use activity
- Consideration of rebuilding[6]
- Incentives to encourage the transition to current- and next-generation cleaner technologies as soon as possible

Since then, EPA has assembled a team to gather scientific and technical data needed to inform our proposal. We intend the CTI to be a holistic rethinking of emission standards and compliance. Within this broad goal, we will be looking to the following high-level principles to inform our approach to this rulemaking:

- Our goal should be to reduce in-use emissions under a broad range of operating conditions[7]
- We should consider and enable effective technological solutions while carefully considering the cost impacts
- Our compliance and enforcement provisions should be fair and effective
- Our regulations should incentivize early compliance and innovation
- We should ensure a coordinated 50-state program
- We should actively engage with interested stakeholders

While these principles have been reflected in previous heavy-duty rulemakings, we nevertheless believe it is helpful to reemphasize them here as a reminder to both the agency and commenters. We welcome comment on these principles, as well as other key principles on which this rule should be based.

It is important to emphasize that this discussion represents EPA's early views and considerations on possible CTI elements. We request comment on all aspects of this advance notice. We plan to consider what we learn from the comments as we develop a Notice of Proposed Rulemaking (NPRM). Additional information can be found in the docket for this rulemaking.

II. Background

A. History of Emission Standards for Heavy-Duty Engines

EPA began regulating emissions from heavy-duty vehicles and engines in the 1970s.[8] [9] EPA created 40 CFR part 86 in 1976 to reorganize emission standards and certification requirements for light-duty and heavy-duty highway vehicles and engines. In 1985, EPA adopted new standards for heavy-duty highway engines, codifying the standards in 40

[3] Brakora, Jessica. ''Petitions to EPA for Revised NO_X Standards for Heavy-Duty Engines'' Memorandum to Docket EPA–HQ–OAR–2019–0055. December 4, 2019.

[4] Stakeholders included: Emissions control technology suppliers; engine and vehicle manufacturers; a labor union that represents heavy-duty engine, parts, and vehicle manufacturing workers; a heavy-duty trucking fleet trade association; an owner-operator driver association; a truck dealers trade association; environmental, non-governmental organizations; states and regional air quality districts; tribal interests; California Air Resources Board (CARB); and the petitioners.

[5] The major implementation milestones for the Heavy-duty Phase 2 engine and vehicle standards are in model years 2021, 2024, and 2027.

[6] As used here, the term ''rebuilding'' generally includes practices known commercially as ''remanufacturing''. Under 40 CFR part 1068, rebuilding refers to practices that fall short of producing a ''new'' engine.

[7] We address this goal in the context of National Ambient Air Quality Standards (NAAQS) nonattainment in Section II.D.

[8] EPA's regulations address heavy-duty engines and vehicles separately from light-duty vehicles. Vehicles with GVWR above 8,500 pounds (Class 2b and above) are classified as heavy-duty. For criteria pollutants such as NO_X, EPA generally applies the standards to the engines rather than the entire vehicles. However, for complete heavy-duty vehicles below 14,000 pounds GVWR, EPA applies standards to the whole vehicle rather than the engine; this is referred to as chassis-certification and is very similar to certification of light-duty vehicles.

[9] Emission standards for heavy-duty highway engines were first adopted by the Department of Health, Education, and Welfare in the 1960s. These standards and the corresponding certification and testing procedures were codified at 45 CFR part 1201. In 1972, shortly after EPA was created as a federal agency, EPA published new standards and updated procedures while migrating the regulations to 40 CFR part 85 as part of the effort to consolidate all the EPA regulations in a single location.

CFR part 86, subpart A. Since then, EPA has adopted several rules to set new and more stringent criteria pollutant standards for highway heavy-duty engine and vehicle emission control programs and to add or revise certification procedures.[10]

In the 1990s, EPA adopted increasingly stringent NO_X, hydrocarbon, and particulate matter (PM) standards. In 1997 EPA finalized standards for heavy-duty highway diesels (62 FR 54693, October 21, 1997), effective with the 2004 model year, including a combined non-methane hydrocarbon (NMHC) and NO_X standard that represented a reduction of NO_X emissions by 50 percent. These NO_X reductions also resulted in significant reductions in secondary nitrate particulate matter.

In early 2001, EPA finalized the 2007 Heavy-Duty Engine and Vehicle Rule (66 FR 5002, January 18, 2001) to continue addressing NO_X and PM emissions from both diesel and gasoline-fueled highway heavy-duty engines. This rule established a comprehensive national program that regulated a heavy-duty engine and its fuel as a single system, with emission standards taking effect beginning with model year 2007 and fully phasing in by model year 2010. These standards projected the use of high-efficiency catalytic exhaust emission control devices. To ensure proper functioning of these technologies, which could be damaged by sulfur, EPA also mandated reducing the level of sulfur in highway diesel fuel by 97 percent by mid-2006. These actions resulted in engines that emit PM and NO_X emissions at levels 90 percent and 95 percent below emission levels from then-current highway heavy-duty engines, respectively. The PM standard for new highway heavy-duty engines was set at 0.01 grams per brake-horsepower-hour (g/hp-hr) by 2007 model year and the NO_X and NMHC standards of 0.20 g/hp-hr and 0.14 g/hp-hr, respectively, were set to phase in between 2007 and 2010. In finalizing this rule, EPA estimated that the emission reductions would achieve significant health and environmental impacts, and total monetized $PM_{2.5}$- and ozone-related benefits of the program would exceed $70 billion, versus program costs of $4 billion (1999$).

In 2009, as advanced emissions control systems were being introduced to meet the 2007/2010 standards, EPA promulgated a final rule to require that these advanced emissions control systems be monitored for malfunctions via an onboard diagnostic (OBD) system (74 FR 8310, February 24, 2009). The rule, which has been fully phased in, required engine manufacturers to install OBD systems that monitor the functioning of emission control components on new engines and alert the vehicle operator to any detected need for emission related repair. It also required that manufacturers make available to the service and repair industry information necessary to perform repair and maintenance service on OBD systems and other emission related engine components.

Also in 2009, EPA and Department of Transportation's National Highway Traffic Safety Administration (NHTSA) began working on a joint regulatory program to reduce greenhouse gas emissions (GHGs) and fuel consumption from heavy-duty vehicles and engines.[11] By utilizing regulatory approaches recommended by the National Academy of Sciences, the first phase (''Phase 1'') of the GHG and fuel efficiency program was finalized in 2011 (76 FR 57106, September 15, 2011).[12] The Phase 1 program, spanning implementation from model years 2014 to 2018, included separate standards for highway heavy-duty vehicles and heavy-duty engines. The program offered flexibility allowing manufacturers to attain these standards through a mix of technologies, and the use of various emissions credit averaging and banking programs.

In 2016, EPA and NHTSA finalized the Heavy-Duty Phase 2 GHG and fuel efficiency program (81 FR 73478, October 25, 2016). Phase 2 includes technology-advancing performance-based standards that will phase in over the long-term, with initial standards for most vehicles and engines commencing in model year 2021, increasing in stringency in model year 2024, and culminating in model year 2027 standards. Phase 2 builds on and advances the Phase 1 program and includes standards based not only on currently available technologies but also on technologies under development or not yet widely deployed. To ensure adequate time for technology development, Phase 2 provided up to 10 years lead time to allow for the development and phase in of these controls, further encouraging innovation and providing transitional flexibility.

B. NO_X Emissions From Current Heavy-Duty Engines

For heavy-duty vehicles, EPA generally applies non-GHG emission standards to engines rather than the entire vehicles. However, most of the Class 2b and 3 pickup trucks and vans (vehicles with a Gross Vehicle Weight Rating (GVWR) between 8,500 and 14,000 pounds) are certified as complete heavy-duty vehicles; this is referred to as chassis-certification and is very similar to certification of light-duty vehicles. In fact, these chassis-certified vehicles are covered by standards in EPA's Tier 3 program, which primarily covers light-duty vehicles (79 FR 23414, April 28, 2014; 80 FR 0978, February 19, 2015). We do not intend to propose changes to the standards or test procedures for chassis-certified heavy-duty vehicles. Instead, the CTI will focus on engine-certified products.

1. Diesel Engines

As outlined in the previous section, the current heavy-duty engine emission standards reduced PM and NO_X tailpipe emissions by over 90 percent for emissions measured using the specified test procedures, but their impact on in-use emissions during real-world operation is less clear. The diesel particulate filters (DPFs) that manufacturers are using to control PM emissions have reduced PM emissions to very low levels during virtually all types of operation. However, while the selective catalytic reduction (SCR) systems used to control NO_X emissions can achieve very low levels during most operation, there remain operating modes where the SCR systems are much less effective.[13] [14] For example, NO_X emissions can be significantly higher during engine warm-up, idling, and certain other types of operation that result in low load on the engine or

[10] U.S. Environmental Protection Agency. ''EPA Emission Standards for Heavy-Duty Highway Engines and Vehicles,'' Available online: *https://www.epa.gov/emission-standards-reference-guide/epa-emission-standards-heavy-duty-highway-engines-and-vehicles.* (last accessed December 4, 2019)

[11] Greenhouse gas emissions from heavy-duty engines are primarily carbon dioxide (CO_2), but also include methane (CH_4) and nitrous oxide (N_2O). Because CO_2 is formed from the combustion of fuel, it is directly related to fuel consumption. References in this notice to increasing or decreasing CO_2 can be taken to be qualitative references to fuel consumption as well.

[12] The National Academies' Committee to Assess Fuel Economy Technologies for Medium- and Heavy-Duty Vehicles; National Research Council; Transportation Research Board. ''Technologies and Approaches to Reducing the Fuel Consumption of Medium- and Heavy-Duty Vehicles.'' 2010. Available online: *https://www.nap.edu/catalog/12845/technologies-and-approaches-to-reducing-the-fuel-consumption-of-medium-and-heavy-duty-vehicles.*

[13] Hamady, Fakhri, Duncan, Alan. ''A Comprehensive Study of Manufacturers In-Use Testing Data Collected from Heavy-Duty Diesel Engines Using Portable Emissions Measurement System (PEMS)''. 29th CRC Real World Emissions Workshop, March 10–13, 2019.

[14] Sandhu, Gurdas, et al. ''Identifying Areas of High NO_X Operation in Heavy-Duty Vehicles''. 28th CRC Real-World Emissions Workshop, March 18–21, 2018.

transitioning from low to high loads. Moreover, deterioration of emission controls in-use, along with tampering and mal-maintenance, can result in additional NO_X emissions. In addition to tailpipe emissions, diesel engines with unsealed crankcases generally emit a small amount of exhaust-related emissions when venting blowby gases from the crankcase. Each of these sources of higher emissions presents an opportunity for additional reduction and we introduce potential solutions in Section III.A.1.

2. Gasoline Engines

Heavy-duty gasoline engines rely on three-way catalysts (TWC) to simultaneously reduce HC, CO, and NO_X. This is the same type of technology used for passenger cars and light-duty trucks. Once the TWC has reached its light-off temperature,[15] it can achieve very low emission levels if the fuel-air ratio of the engine is properly controlled and calibrated. However, the application of TWC technology to heavy-duty gasoline engines and vehicles is less optimized for emissions than for light-duty. Accordingly, from start-up until the system reaches its light-off temperature, emissions are elevated. Technologies and strategies that accelerate TWC light-off could reduce start-up emissions from heavy-duty gasoline engines.

Additionally, the maximum temperature thresholds that today's heavy-duty TWCs are designed to tolerate could be exceeded by gasoline engine exhaust temperatures during high-load stoichiometric operation. Consequently, heavy-duty manufacturers often implement enrichment-based strategies for engine and catalyst protection at high load. Enrichment, which is accomplished by injecting additional fuel and temporarily shifting to a rich fuel-air ratio, has long been used in gasoline engine operation to cool excessive exhaust gas temperatures to protect vital engine and exhaust components such as exhaust valves, manifolds, and catalysts. However, enrichment also results in higher emissions, including HC, CO, and PM. Technologies or strategies that expand the TWC operating temperature range could reduce the need for enrichment and further reduce emissions from heavy-duty gasoline engines.

C. Existing Heavy-Duty Compliance Cost Elements

Manufacturers have incurred significant costs over the years to reduce emissions from heavy-duty engines and costs will be an important aspect of the CTI as we consider new standards and other compliance provisions. This Section C is an overview of current types of costs, which is intended to provide context for later discussions throughout this ANPR.

The majority of the costs to comply with emission standards are directly related to the emission control technologies used by manufacturers. Technology costs include both the pre-production costs for activities such as research and development (R&D) and the costs to produce and warranty emission control components. Vehicle owners and operators may also incur costs related to compliance with emission standards if the requirements impact operating costs. EPA will evaluate technology and operating costs as part of the technological feasibility and cost analysis for new standards in the NPRM.

The remaining compliance costs for manufacturers are primarily associated with testing, reporting and recordkeeping to demonstrate and assure compliance. As a part of the CTI, we intend to evaluate these costs and identify opportunities to lower them by streamlining our compliance processes. (See Section III.F.) These non-technological costs occur in three broad categories:

1. Pre-certification emission testing.
2. Certification reporting.
3. Post-certification testing, reporting, and recordkeeping.

The Clean Air Act requires manufacturers wishing to sell heavy-duty engines in the U.S. to obtain emission Certificates of Conformity each year. To do so, manufacturers must submit an application for certification to EPA for each family of engines.[16] As specified in 40 CFR 86.007–21 and 1036.205, manufacturers must include a significant amount of information and emission test results to demonstrate to EPA that their engines will meet the applicable emission standards and related requirements.

Although most compliance costs occur before and during certification, manufacturers incur additional costs after certification. Manufacturers may be required to test a sample of production engines during the model year, as well as vehicles in actual use (see Sections III.B and III.C). Manufacturers must also submit end-of-year production reports. Finally, manufacturers must maintain compliance records for up to eight years.

D. The Need for Additional NO_X Control

As noted in the Introduction, emissions of criteria pollutants have been declining over time due to federal, state, and local regulations and voluntary programs.[17] However, there continues to be a need for additional NO_X emission reductions in spite of the significant technological progress made to-date.[18] NO_X is a criteria pollutant, as well as a precursor to ozone and $PM_{2.5}$, and as such NO_X emissions contribute to ambient pollution that adversely affects human health (including vulnerable populations and lifestages, which are relevant to both children's health and environmental justice issues) and the environment. EPA has set primary and secondary NAAQS for each of these pollutants designed to protect public health and welfare. As of September 30, 2019, more than 128 million people lived in counties designated nonattainment for the ozone or $PM_{2.5}$ NAAQS, and additional people live in areas with a risk of exceeding those NAAQS in the future.[19] Reductions in NO_X emissions will help areas attain and maintain the ozone and $PM_{2.5}$ NAAQS and help prevent future nonattainment. Reducing NO_X emissions will result in improved health outcomes attributable to lower ozone and particulate matter concentrations in communities across the United States.

Human health impacts of concern are associated with exposures to NO_X, ozone, and $PM_{2.5}$.[20 21 22 23] Short-term

[15] The ''light-off'' temperature is nominally the temperature at which a catalyst becomes hot enough to begin functioning effectively.

[16] An engine family is a group of engines with similar emission characteristics as defined in 40 CFR 86.001–24 and related sections.

[17] EPA publishes an annual air trends report in the form of an interactive web application (*https://gispub.epa.gov/air/trendsreport/2019/*).

[18] Davidson, K., Zawacki, M. Memorandum to Docket EPA–HQ–OAR–2019–0055. ''Health and Environmental Effects of NO_X, Ozone and PM'' October 22, 2019.

[19] EPA publishes information on nonattainment areas on its green book website (*https://www3.epa.gov/airquality/greenbook/popexp.html*). This data comes from the Summary Nonattainment Area Population Exposure Report, current as of September 30, 2019.

[20] U.S. EPA. Integrated Science Assessment (ISA) For Oxides Of Nitrogen—Health Criteria (Final Report, 2016). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–15/068, 2016.

[21] U.S. EPA. Integrated Science Assessment (ISA) of Ozone and Related Photochemical Oxidants (Final Report, Feb 2013). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–10/076F, 2013.

[22] U.S. EPA. Integrated Science Assessment (ISA) For Particulate Matter (Final Report, Dec 2009). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–08/139F, 2009.

[23] There is an ongoing review of the PM NAAQS, EPA intends to finalize the Integrated Science

Continued

exposures to NO_2 (an oxide of nitrogen) can aggravate respiratory diseases, particularly asthma, leading to respiratory symptoms, hospital admissions and emergency department visits. Long-term exposures to NO_2 have been shown to contribute to asthma development and may also increase susceptibility to respiratory infections. Ozone exposure reduces lung function and causes respiratory symptoms, such as coughing and shortness of breath. Ozone exposure also aggravates asthma and lung diseases such as emphysema, leading to increased medication use, hospital admissions, and emergency department visits. Exposures to $PM_{2.5}$ can cause harmful effects on the cardiovascular system, including heart attacks and strokes. These effects can result in emergency department visits, hospitalizations and, in some cases, premature death. PM exposures are also linked to harmful respiratory effects, including asthma attacks. Moreover, many groups are at greater risk than healthy people from these pollutants, including: People with heart or lung disease, outdoor workers and the lifestages of older adults and children. Environmental impacts of concern are associated with these pollutants and include light extinction, decreased tree growth, foliar injury, and acidification and eutrophication of aquatic and terrestrial systems.

Heavy-duty vehicles continue to be a significant source of NO_X emissions now and into the future. While the mobile source NO_X inventory is projected to decrease over time, recent emissions modeling indicates that heavy-duty vehicles will continue to be one of the largest contributors to mobile source NO_X emissions nationwide in 2028.[24] Many state and local agencies have asked the EPA to further reduce NO_X emissions, specifically from heavy-duty engines; the importance of reducing heavy-duty NO_X emissions has been highlighted in the June 3, 2016 petition (see Section I) that was submitted to EPA and in other correspondence from stakeholders.[25] [26] [27] [28] Pollution formed from NO_X emissions can occur and be transported far from the source of the emissions themselves, and heavy-duty trucks can travel regionally and nationally. Air quality modeling indicates that heavy-duty diesel NO_X emissions are contributing to substantial concentrations of ozone and $PM_{2.5}$ across the U.S. For example, heavy-duty diesel engine NO_X emissions are important contributors to modeled ozone and $PM_{2.5}$ concentrations across the U.S. in 2025.[29] Another recent air quality modeling analysis indicates that transport of ozone produced in NO_X-sensitive environments impacts ozone concentrations in downwind areas, often several states away.[30] A national program to reduce NO_X emissions from heavy-duty engines would allow all states to benefit from the emission reductions and maximize the benefit for downwind states.

E. California Heavy-Duty Highway Low NO_X Program Development

In this section, we present a summary of the current efforts by the state of California to establish new, lower emission standards for highway heavy-duty engines and vehicles. For the past several decades, EPA and the California Air Resources Board (CARB) have worked together to reduce air pollutants from highway heavy-duty engines and vehicles by establishing harmonized emission standards for new engines and vehicles. For much of this time period, EPA has taken the lead in establishing emission standards through notice and comment rulemaking, after which CARB would adopt the same standards and test procedures. For example, EPA adopted the current heavy-duty engine NO_X and PM standards in a 2001 final rule, and CARB subsequently adopted the same emission standards. EPA and CARB often cooperate during the implementation of highway heavy-duty standards. Thus, for many years the regulated industry has been able to design a single product line of engines and vehicles which can be certified to both EPA and CARB emission standards (which have been the same) and sold in all 50 states.

Given the significant ozone and PM air quality challenges in the state of California, CARB has taken a number of steps to establish standards beyond the current EPA requirements to further reduce NO_X emissions from heavy-duty vehicles and engines in their state. CARB's optional (voluntary) low NO_X program, started in 2013, was created to encourage heavy-duty engine manufacturers to introduce technologies that emit NO_X at levels below the current US 2010 standards. Under this optional program, manufacturers can certify their engines to one of three levels of stringency that are 50, 75, and 90 percent below the existing US 2010 standards, the lowest optional standard being 0.02 grams NO_X per horsepower-hour (g/hp-h), which is a 90 percent reduction from today's federal standards.[31] To date, only natural gas and liquefied petroleum gas engines have been certified to the optional standards.

In May 2016, CARB published its Mobile Source Strategy outlining their approach to reduce in-state emissions from mobile sources and meet their air quality targets.[32] In November 2016, CARB held its first Public Workshop on their plans to update their heavy-duty engine and vehicle programs.[33] CARB's 2016 Workshop kicked off a technology demonstration program (the CARB ''Low NO_X Demonstration Program''), and announced plans to update emission standards, laboratory-based and in-use test procedures, emissions warranty, durability demonstration requirements, and regulatory useful life provisions. The initiatives introduced in their 2016 Workshop have since become components of CARB's Heavy-Duty ''Omnibus'' Low NO_X Rulemaking.

CARB's goal for its Low NO_X Demonstration Program was to investigate the feasibility of reducing NO_X emissions to levels significantly below today's US 2010 standards. Southwest Research Institute (SwRI)

Assessment in late 2019 (*https://www.epa.gov/naaqs/particulate-matter-pm-standards-integrated-science-assessments-current-review*). There is an ongoing review of the ozone NAAQS, EPA intends to finalize the Integrated Science Assessment in early 2020 (*https://www.epa.gov/naaqs/ozone-o3-standards-integrated-science-assessments-current-review*).

[24] U.S. Environmental Protection Agency. ''Air Emissions Modeling: 2016v1 Platform''. Available online at: *https://www.epa.gov/air-emissions-modeling/2016v1-platform.*

[25] Ozone Transport Commission. Correspondence Regarding EPA's Tampering Policy. August 28, 2019. Available online: *https://otcair.org/upload/Documents/Correspondence/EPA%20Tampering%20Policy%20Letter.pdf.*

[26] National Association of Clean Air Agencies letter to U.S. EPA, June 21, 2018.

[27] South Coast Air Quality Management District. ''South Coast Air Quality Management District's Support for Petitions for Further NO_X Reductions from Heavy-Duty Trucks and Locomotives'' Letter to U.S. EPA, June 15, 2018.

[28] NESCAUM. ''The Northeast's Need for NO_X Reductions.'' Presented at SAE Government Industry Meeting, April 2019.

[29] Zawacki et al., 2018. Mobile source contributions to ambient ozone and particulate matter in 2025. Vol 188, pg 129–141. Available online: *https://doi.org/10.1016/j.atmosenv.2018.04.057.*

[30] U.S. Environmental Protection Agency: Air Quality Modeling Technical Support Document for the Final Cross State Air Pollution Rule Update. August 2016. Available online: *https://www.epa.gov/sites/production/files/2017-05/documents/aq_modeling_tsd_final_csapr_update.pdf.*

[31] California Code of Regulations, Title 13, section 1956.8.

[32] California Air Resources Board. ''Mobile Source Strategy''. May 2016. Available online: *https://ww3.arb.ca.gov/planning/sip/2016sip/2016mobsrc.pdf.*

[33] California Air Resources Board. ''Heavy-Duty Low NO_X: Meetings & Workshops''. Available online: *https://ww2.arb.ca.gov/our-work/programs/heavy-duty-low-nox/heavy-duty-low-nox-meetings-workshops.*

was contracted to perform the work, which was split into three ''Stages''.[34] In Stage 1, SwRI demonstrated an engine technology package capable of achieving a 90 percent NO_X emissions reduction on today's regulatory test cycles.[35] In Stage 1b, SwRI applied an accelerated aging process to age the Stage 1 aftertreatment components to evaluate their performance. SwRI developed and evaluated a new low load-focused engine test cycle for Stage 2. In Stage 3, SwRI is evaluating a new engine platform and different technology package to ensure emission performance. EPA has been closely following CARB's Low NO_X Demonstration Program as a member of the Low NO_X Advisory Group for the technology development work. The CARB Low NO_X Advisory Group, which includes representatives from heavy-duty engine and aftertreatment industries, as well as from federal, state, and local governmental agencies, receives updates from SwRI on a bi-weekly basis.[36]

CARB has published several updates related to their Omnibus Rulemaking. In June 2018, CARB approved their ''Step 1'' update to California's emission control system warranty regulations.[37] Starting in model year (MY) 2022, the existing 100,000-mile warranty for all diesel engines would lengthen to 110,000 miles for engines certified as light heavy-duty, 150,000 miles for medium heavy-duty engines, and 350,000 for heavy heavy-duty engines. In November 2018, CARB approved revisions to the onboard diagnostics (OBD) requirements that include implementation of real emissions assessment logging (REAL) for heavy-duty engines and other vehicles.[38] In April 2019, CARB published a ''Staff White Paper'' to present their staff's assessment of the technologies they believed were feasible for medium and heavy heavy-duty diesel engines in the 2022–2026 timeframe.[39]

CARB staff are expected to present the Heavy-Duty NO_X Omnibus proposal to their governing board for final approval in 2020. It is expected to include updates to their engine standards, certification test procedures, and heavy-duty in-use testing program that would take effect in model year 2024, with additional updates to warranty, durability, and useful life provisions and further reductions in standards beginning in model year 2027.

While we are not requesting comment on whether CARB should adopt these updates, we are requesting comment on the extent to which EPA should adopt similar provisions, and whether similar EPA requirements should reflect different stringency or timing. Commenters supporting EPA requirements that differ from the expected CARB program are encouraged to address how such differences could be implemented to maintain a national program to the extent possible. For example, how important would it be to harmonize test procedures, even if we adopt different standards? Also, how might standards be aligned if stringencies are harmonized, but timing differs?

III. Potential Solutions and Program Elements

EPA's current certification and compliance programs for heavy-duty engines began in the 1970s—a period that predates advanced emission controls and electronic engine controls. Although we have made significant modifications to these programs over the years, we believe it is an appropriate time to reconsider their fundamental structures and refocus them to reflect twenty-first century technology and approaches.

As described previously, the CTI can be summarized as a holistic approach to implementing our Clean Air Act obligations. One of our high-level principles, discussed in the Introduction, is to consider and enable effective solutions and give careful consideration to the cost impacts. Within that principle, we have identified the following key goals:[40]

- Our program should not undermine the industry's plans to meet the CO_2 and fuel consumption requirements of the Heavy-duty Phase 2 program and should not adversely impact safety
- CTI should leverage ''smart'' communications and computing technology
- CTI will provide sufficient lead time and stability for manufacturers to meet new requirements
- CTI should streamline and modernize regulatory requirements
- CTI should support improved vehicle reliability

Commenters are encouraged to address these goals. We also welcome comments on other potential goals that should be considered for the CTI.

Keeping with our goal of providing appropriate lead time for new standards and stability of product designs, and also meeting CAA requirements, we are considering implementation of new standards beginning in model year 2027, which is also the implementation year for the final set of Heavy-Duty Phase 2 standards. This would provide four to six full model years of lead time and would allow manufacturers to implement a single redesign, aligning the final step of the Phase 2 standards with the potential new CTI requirements.

As part of our early developmental work for this rulemaking, EPA has identified technologies that we currently believe could be used to reduce NO_X emissions from heavy-duty engines in the 2027 timeframe. Our early feasibility assessments for these technologies are discussed below along with potential updates to test procedures and other regulatory provisions.

Although our focus in this rulemaking is primarily on future model years, we also seek comment on the extent to which the technologies and solutions could be used by state, local, or tribal governments in reducing emissions from the existing, pre-CTI heavy-duty fleet. EPA's Clean Diesel Program, which includes grants and rebates funded under the Diesel Emissions Reduction Act (DERA), is just one example of a partnership between EPA and stakeholders that provides incentives for upgrades and retrofits to the existing fleet of on-road and

[34] Southwest Research Institute. ''Update on Heavy-Duty Low NO_X Demonstration Programs at SwRI''. September 26, 2019. Available online: *https://ww3.arb.ca.gov/msprog/hdlownox/files/workgroup_20190926/guest/swri_hd_low_nox_demo_programs.pdf.*

[35] Southwest Research Institute. ''Evaluating Technologies and Methods to Lower Nitrogen Oxide Emissions from Heavy-Duty Vehicles: Final Report''. April 2017. Available online: *https://ww3.arb.ca.gov/research/apr/past/13-312.pdf.*

[36] California Air Resources Board. ''Evaluating Technologies and Methods to Lower Nitrogen Oxide Emissions from Heavy-Duty Vehicles''. May 10, 2017. Available online: *https://ww3.arb.ca.gov/research/veh-emissions/low-nox/low-nox.htm.*

[37] California Air Resources Board. ''HD Warranty 2018'' June 28, 2018. Available online: *https://ww2.arb.ca.gov/rulemaking/2018/hd-warranty-2018.*

[38] California Air Resources Board. ''Heavy-Duty OBD Regulations and Rulemaking''. Available online: *https://ww2.arb.ca.gov/resources/documents/heavy-duty-obd-regulations-and-rulemaking.*

[39] California Air Resources Board. ''California Air Resources Board Staff Current Assessment of the Technical Feasibility of Lower NO_X Standards and Associated Test Procedures for 2022 and Subsequent Model Year Medium-Duty and Heavy-Duty Diesel Engines''. April 18, 2019. Available online: *https://ww3.arb.ca.gov/msprog/hdlownox/white_paper_04182019a.pdf.*

[40] Our identification of these key components to consider is informed by section 202(a) of the Clean Air Act which directs EPA to establish emission standards for heavy-duty engines that ''reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available'' and to consider ''cost, energy, and safety factors associated with the application of such technology.''

nonroad diesel vehicles and equipment to lower air pollution.[41]

A. Emission Control Technologies

This section addresses technologies that, based on our current understanding, would be available in the 2024 to 2030 timeframe to reduce emissions and ensure robust in-use compliance.[42] Although much of the discussion focuses on the current state of the technology, the planned NPRM analysis necessarily will be based on our projections of future technology development and availability in accordance with the Clean Air Act.

The discussions below primarily concern the feasibility and effectiveness of the technologies. We request comment on each of the technologies discussed. Commenters are encouraged to address all aspects of these technologies including: Costs, emission reduction effectiveness, impact on fuel consumption/CO_2 emissions, market acceptance factors, reliability, and the feasibility of the technology being available for widespread adoption in the 2027 and later timeframe. We also welcome comments on other technologies not discussed here. Finally, to the extent emission reductions will be limited by the manufacturers' engineering resources, we encourage commenters to address how we should prioritize or phase-in different requirements.

1. Diesel Engine Technologies Under Consideration

The following discussion introduces the technologies and emission reduction strategies we are considering for the CTI, including thermal management technologies that can be used to better achieve and maintain adequate catalyst temperatures, and next generation catalyst configurations and formulations to improve catalyst performance across a broader range of engine operating conditions. Where possible, we note the technologies and strategies we are evaluating in our diesel technology feasibility demonstration program at EPA's National Vehicle and Fuels Emissions Laboratory. A description of additional technologies we are following is available in the docket.[43] From a regulatory perspective, EPA's evaluation of the effectiveness of technologies includes their emission reduction potential, as well as their durability over the engine's regulatory useful life and potential impact on CO_2 emissions.

The costs associated with the technologies in our demonstration program will also be considered, along with other relevant factors, in the overall feasibility analysis presented in the NPRM. Our assessment of costs is currently underway and will be an important component of the NPRM. Our current understanding of likely technology costs is based largely on survey data, catalyst costs published by the International Council for Clean Transportation (ICCT),[44] and catalyst volume and other emission component characteristics that engine manufacturers have submitted to EPA and claimed to be CBI. We have initiated a cost study based on a technology teardown approach that will apply the peer-reviewed methodology previously used for light-duty vehicles.[45] This teardown analysis may still be underway during the planned timeline for the NPRM. We welcome comment including any available data on the cost, effectiveness, and limitations of the SCR and other emission control systems considered. We also request comment, including any available data, regarding the technical feasibility and cost of commercializing emerging technologies expected to enter the heavy-duty market by model year 2027.

Modern diesel engines rely heavily upon catalytic aftertreatment to meet emission standards—oxidation catalysts reduce hydrocarbons (HC) and carbon monoxide (CO), DPFs reduce PM, and SCR catalysts reduce NO_X. Current designs typically include the diesel oxidation catalyst (DOC) function as part of the broader DPF/SCR system.[46] While DPFs remain effective at controlling PM during all types of operation,[47] SCR systems (including the DOC function) are effective only when the exhaust temperature is sufficiently high. All three types of aftertreatment have the potential to lose effectiveness if the catalysts degrade. Potential technological solutions to these issues are discussed below, with a focus on the SCR system.

SCR works by injecting into the exhaust a urea-water solution, which decomposes to form gaseous ammonia (NH_3). NH_3 is a strong reducing agent that reacts to convert NO_X to N_2 and H_2O over a range of catalytic materials. The DOC, located upstream of the SCR, uses a platinum (Pt) and palladium (Pd) catalyst to oxidize a portion of the exhaust NO to NO_2.[48] This oxidation facilitates the ''fast'' SCR reaction pathway that improves the SCR's NO_X reduction kinetics when exhaust temperatures are below 250 °C and is highly-efficient above 250 °C. An ammonia slip catalyst (ASC) is typically used immediately downstream of the SCR to prevent emissions of unreacted NH_3 into the environment.

Compression-ignition engine exhaust temperatures are low during cold starts, sustained idle, or low vehicle speed and light load. This impacts emissions because urea decomposition to NH_3 and subsequent NO_X reduction over the SCR catalyst significantly decreases at exhaust temperatures of less than 190 °C. Thus, technologies that accelerate warm-up from a cold start, and maintain catalyst temperature above 200 °C can help achieve further NO_X reduction from SCR systems under those conditions. Technologies that improve urea decomposition to NH_3 at temperatures below 200 °C can also be used to reduce NO_X emissions under cold start, light load, and low speed conditions. Additional discussion of is available in the docket.[49]

i. Advanced Catalyst Formulations

Catalysts continue to evolve as engine manufacturers demand formulations that are optimized for their specific performance requirements. Improvements to DOC and DPF washcoat[50] materials that increase active surface area and stabilize active materials have allowed a reduction in content of platinum group metals and a reduction in DOC size between MY2010 and MY2019. Increased usage of silicon carbide as DPF substrate material has

[41] U.S. Environmental Protection Agency. ''Clean Diesel and DERA Funding'' Available online: *https://www.epa.gov/cleandiesel* (accessed December 12, 2019).

[42] Although we are targeting model year 2027 for new standards, our technology evaluations are considering a broader timeframe to be more comprehensive.

[43] Mikulin, John. ''Opposed-Piston Diesel Engines'' Memorandum to Docket EPA–HQ–OAR–2019–0055. November 20, 2019.

[44] Dallmann, T., Posada, F., Bandivadekar, A. ''Costs of Emission Reduction Technologies for Diesel Engines Used in Non-Road Vehicles and Equipment'' International Council on Clean Transportation. July 11, 2018. Available online: *https://theicct.org/sites/default/files/publications/Non_Road_Emission_Control_20180711.pdf.*

[45] Kolwich, G., Steier, A., Kopinski, D., Nelson, B. et al., ''Teardown-Based Cost Assessment for Use in Setting Greenhouse Gas Emissions Standards,'' SAE Int. J. Passeng. Cars—Mech. Syst. 5(2):1059–1072, 2012, *https://doi.org/10.4271/2012-01-1343.*

[46] McDonald, Joseph. ''Diesel Exhaust Emission Control Systems,'' Memorandum to Docket EPA–HQ–OAR–2019–0055. November 13, 2019.

[47] PM emissions can increase briefly during active regeneration of the DPF; however, such events are infrequent.

[48] The DOC also synergistically converts additional NO to NO_2, promoting low-temperature soot oxidation over the DPF.

[49] McDonald, Joseph. ''Diesel Exhaust Emission Control Systems,'' Memorandum to Docket EPA–HQ–OAR–2019–0055. November 13, 2019.

[50] The wash-coat is a high surface area catalytic coating that is applied to a noncatalytic substrate. The wash-coat includes the active catalytic sites.

allowed the use of smaller DPF substrates that reduce exhaust backpressure and improve system packaging onto the vehicle.

Copper (Cu) exchanged zeolites have demonstrated hydrothermal stability, good low temperature performance, and represent a large fraction of the transition-metal zeolite SCR catalysts used in heavy-duty applications since 2010.[51] Improvements to both the coating processes and the substrates onto which the zeolites are coated have improved the low-temperature and high-temperature NO_X conversion, improved selectivity of NO_X reduction to N_2 (*i.e.,* reduced selectivity to N_2O), and improved the hydrothermal stability. Improvements in SCR catalyst coatings over the past decade have included:[52 53 54 55 56]

- Optimization of Silicon/Aluminum (Al) and Cu/Al ratios
- Increased Cu content and Cu surface area
- Optimization of the relative positioning of Cu^{2+} ions within the zeolite structure
- The introduction of specific co-cations
- Co-exchanging of more than one type of metal ion into the zeolite structure

In the absence of more stringent NO_X standards, these improvements have been realized primarily as reductions in SCR system volume, reductions in system cost, and improvements in durability since the initial introduction of metal-exchanged zeolite SCR in MY2010. We request comment on the extent to which advanced catalyst formulations can be used to lower emissions further, and whether they would have any potential impact on CO_2 emissions.

ii. Passive Thermal Management

Passive thermal management involves modifying components to increase and maintain the exhaust gas temperatures without active management. It is done primarily through insulation of the exhaust system and/or reducing its thermal mass (so it requires less exhaust energy to reach the light-off temperature).[57] Passive thermal management strategies generally have little to no impact on CO_2 emissions. The use of passive exhaust thermal management strategies in light-duty gasoline applications has led to significant improvements in emission performance. Some of these improvements could be applied to SCR systems used in heavy-duty applications as well.

Reducing the mass of the exhaust system and insulating between the turbocharger outlet and the inlet of the SCR system would reduce the amount of thermal energy lost through the walls. Moving the SCR catalyst nearer to the turbocharger outlet effectively reduces the available mass prior to the SCR inlet, minimizing heat loss and reducing the amount of energy needed to warm components up to normal operating temperatures. Using a smaller sized initial SCR with a lower density substrate reduces its mass and reduces catalyst warmup time. Dual-walled manifolds and exhaust pipes utilizing a thin inner wall and an air gap separating the inner and outer wall may be used to insulate the exhaust system and reduce the thermal mass, minimizing heat lost to the walls and decreasing the time necessary to reach operational temperatures after a cold start. Mechanical insulation applied to the exterior of exhaust components, including exhaust catalysts, is readily available and can minimize heat loss to the environment and help retain heat within the catalyst as operation transitions to lighter loads and lower exhaust temperatures. Integrating the DOC, DPF, and SCR substrates into a single exhaust assembly can also assist with retaining heat energy.

EPA is evaluating several passive thermal management strategies in the diesel technology feasibility demonstration program, including a light-off SCR located closer to the exhaust turbine (see Section III.A.1.v), use of an air-gap exhaust manifold and downpipe, and use of an insulated and integrated single-box system for the DOC, DPF, and downstream SCR/ASC. We will evaluate their combined ability to reduce the time to reach light-off temperature and achieve higher exhaust temperatures that should contribute to NO_X reductions during low-load operation. We welcome comment on the current adoption of passive thermal management strategies, including any available data on the cost, effectiveness, and limitations.

iii. Active Thermal Management

Active thermal management involves using the engine and associated hardware to maintain and/or increase exhaust temperatures. This can be accomplished through a variety of means, including engine throttling, heated aftertreatment systems, and flow bypass systems. Combustion phasing can also be used for thermal management and is discussed in the following section.

Diesel engines operate at very low fuel-air ratios (*i.e.,* with considerable excess air) at light-load conditions. This causes relatively cool exhaust to flow through the exhaust system at low loads, which cools the catalyst substrates. This is particularly true at idle. It is also significant at moderate-to-high engine speeds with little or no engine power, such as when a vehicle is coasting down a hill. Air flow through the engine can be reduced by induction and/or exhaust throttling. All heavy-duty diesel engines are equipped with an electronic throttle control (ETC) within the induction system and most are equipped with a variable-geometry-turbine (VGT) turbocharger, and these systems can be used to throttle the induction and exhaust system, respectively, at light-load conditions. However, throttling reduces volumetric efficiency, and thus has a trade-off relative to CO_2 emissions.

Heat can be added to the exhaust and aftertreatment systems by burning fuel in the exhaust system or by using electrical heating (both of which can increase the SCR efficiency). Burner systems use an additional diesel fuel injector in the exhaust to combust fuel and create additional heat energy in the exhaust system. Electrically heated catalysts use electric current applied to a metal foil monolithic structure in the exhaust to add heat to the exhaust system. In addition, heated higher-pressure urea dosing systems improve the decomposition of urea at low exhaust temperatures and thus allow urea injection to occur at lower exhaust temperature (*i.e.,* at less than 180 °C). At light-load conditions with relatively high flow/low temperature exhaust, considerable fuel energy or electric energy would be needed for these systems. This would likely cause a considerable increase in CO_2 emissions with conventional designs.

[51] Lambert, C.K. ''Perspective on SCR NO_X control for diesel vehicles.'' Reaction Chemistry & Engineering, 2019, 4, 969.

[52] Fan, C., et al. (2018). ''The influence of Si/Al ratio on the catalytic property and hydrothermal stability of Cu-SSZ-13 catalysts for NH3-SCR.'' Applied Catalysis A: General 550: 256–265.

[53] Fedyko, J. M. and H.-Y. Chen (2015). Zeolite Catalyst Containing Metals. U. S. Patent No. US20150078989A1, Johnson Matthey Public Limited Company, London.

[54] Cui, Y., et al. (2020). ''Influences of Na+ co-cation on the structure and performance of Cu/SSZ-13 selective catalytic reduction catalysts.'' Catalysis Today 339: 233–240.

[55] Fedyko, J. M. and H.-Y. Chen (2019). Zeolite Catalyst Coating Containing Metals. U.S. Patent No. US 20190224657A1, Johnson Matthey Public Limited Company, London, UK.

[56] Wang, A., et al. (2019). ''NH3-SCR on Cu, Fe and Cu+ Fe exchanged beta and SSZ-13 catalysts: Hydrothermal aging and propylene poisoning effects.'' Catalysis Today 320: 91–99.

[57] Hamedi, M., Tsolakis, A., and Herreros, J., ''Thermal Performance of Diesel Aftertreatment: Material and Insulation CFD Analysis,'' SAE Technical Paper 2014–01–2818, 2014, doi:10.4271/2014–01–2818.

Exhaust flow bypass systems can be used to manage the cooling of exhaust during cold start and low load operating conditions. For example, significant heat loss occurs as the exhaust gases flow through the turbocharger turbine. Turbine bypass valves allow exhaust gas to bypass the turbine and avoid this heat loss at low loads when turbocharging requirements are low. In addition, an EGR flow bypass valve would allow exhaust gases to bypass the EGR cooler when it is not required.

We welcome comment on active thermal management strategies, including any available data on the cost, effectiveness, and limitations, as well as information about its projected use for the 2024 to 2030 timeframe.

iv. Variable Valve Actuation (VVA)

Both gasoline and diesel engines control the flow of air and exhaust into and out of the engine by opening and closing camshaft-actuated intake and exhaust valves at specific times during the combustion cycle. VVA includes a family of valvetrain designs that alter the timing and/or lift of the intake valve, exhaust valve. These adjustments can reduce pumping losses, increase specific power, and control the level of residual gases in the cylinder. They can also reduce NO_X emissions as discussed below.

VVA has been adopted in light-duty vehicles to increase an engine's efficiency and specific power. It has also been used as a thermal management technology to open exhaust valves early to increase heat rejection to the exhaust and heat up exhaust catalysts more quickly. The same early exhaust valve opening (EEVO) has been applied to the Detroit DD8 [58] to aid in DPF regeneration, but a challenge with this strategy for maintaining aftertreatment temperature is that it reduces cycle thermal efficiency, and thus can contribute to increased CO_2 emissions.

During low-load operation of diesel engines, exhaust temperatures can drop below the targeted catalyst temperatures and the exhaust flow can thus cause catalyst cooling. Cylinder deactivation (CDA), late intake valve closing (LIVC), and early intake valve closing (EIVC) are three VVA strategies that can also be used to reduce airflow through the exhaust system at light-load conditions, and have been shown to reduce the CO_2 emissions trade-off compared to use of the ETC and/or VGT for throttling.[59] [60]

Since we are particularly concerned with catalyst performance at low loads, EPA is evaluating two valvetrain-targeted thermal management strategies that reduce airflow at light-load conditions (*i.e.,* less than 3–4 bar BMEP): CDA and LIVC. Both strategies force engines to operate at a higher fuel-air ratio in the active cylinders, which increases exhaust temperatures, with the benefit of little or no CO_2 emission increase and with potential for CO_2 emission decreases under some operating conditions. The key difference between these two strategies is that CDA completely removes airflow from a few cylinders with the potential for exhaust temperature increases of up to 60 °C at light loads, while LIVC reduces airflow from all cylinders with up to 40 °C hotter exhaust temperatures.

We recognize that one of the challenges of CDA is that it requires proper integration with the rest of the vehicle's driveline. This can be difficult in the vocational vehicle segment where the engine is often sold by the engine manufacturer (to a chassis manufacturer or body builder) without knowing the type of transmission or axle used in the vehicle or the precise duty cycle of the vehicle. The use of CDA requires fine tuning of the calibration as the engine moves into and out of deactivation mode to achieve acceptable noise, vibration, and harshness (NVH). Additionally, CDA could be difficult to apply to vehicles with a manual transmission because it requires careful gear change control.

We are in the process of evaluating CDA as part of our feasibility demonstration. In addition to laboratory demonstrations of CDA's emission reduction potential, we are evaluating the cost to develop, integrate, and calibrate the hardware. We plan to evaluate both dynamic CDA with individual cylinder control that requires fully-variable valve actuation hardware, and fixed CDA that can be achieved by much simpler valve deactivation hardware commonly used in exhaust braking technology. The relatively simple fixed CDA system would be lower cost and we expect it would apply to a smaller range of operation with less potential for CO_2 benefits.

We believe that LIVC may provide emission reductions similar to fixed CDA with the added benefits of no NVH concerns and that a production-level system could be cost-competitive to CDA. Thus, we will continue to evaluate it as a potential technological alternative to CDA.[61] We welcome comment on CDA and LIVC strategies for NO_X reduction, including any available data on the cost, effectiveness, and technology limitations.

v. Dual-SCR Catalyst System

Another NO_X reduction strategy we are evaluating is an alternative aftertreatment configuration known as a light-off or dual SCR system, which is a variation of passive thermal management. This system maintains a layout similar to the conventional SCR configuration discussed earlier, but integrates an additional small-volume SCR catalyst, close-coupled to the turbocharger's exhaust turbine outlet (Figure 1). This small SCR catalyst could be configured with or without an upstream DOC.

The benefits of this design result from its ability to warm up faster as a result of being closer to the engine. Such upstream SCR catalysts are also designed to have smaller substrates with lower density, both of which reduce the thermal inertia and allow them to warm up even faster. The upstream system would reach a temperature where urea injection could very soon after engine startup, followed quickly by catalyst light-off. These designs also require less input of heat energy into the exhaust to maintain exhaust temperatures during light-load operation. The urea injection to the close-coupled, light-off SCR can also be terminated once the second, downstream SCR reaches operational temperature, thus allowing additional NO_X to reach the DOC and DPF to promote passive regeneration (soot oxidation) on the DPF.

[58] Detroit. ''DETROIT DD8'' Available online: *https://demanddetroit.com/engines/dd8/.*

[59] Ding, C., Roberts, L., Fain, D., Ramesh, A.K., Shaver, G.M., McCarthy, J., et al. (2015). ''Fuel efficient exhaust thermal management for compression ignition engines via cylinder deactivation and flexible valve actuation.'' Int. J .Eng. Res. doi:10.1177/1468087415597413.

[60] Neely, G.D., Sharp, C.A., Pieczko, M.S., McCarthy, J.E. (2019). ''Simultaneous NO_X and CO_2 Reduction for Meeting Future CARB Standards Using a Heavy Duty Diesel CDA NVH Strategy.'' SAE International Journal of Engines, Paper No. JENG–2019–0075.

[61] McDonald, Joseph. ''Engine Modeling of LIVC for Heavy-duty Diesel Exhaust Thermal Management at Light-load Conditions'' Memorandum to Docket EPA–HQ–OAR–2019–0055. November 21, 2019.

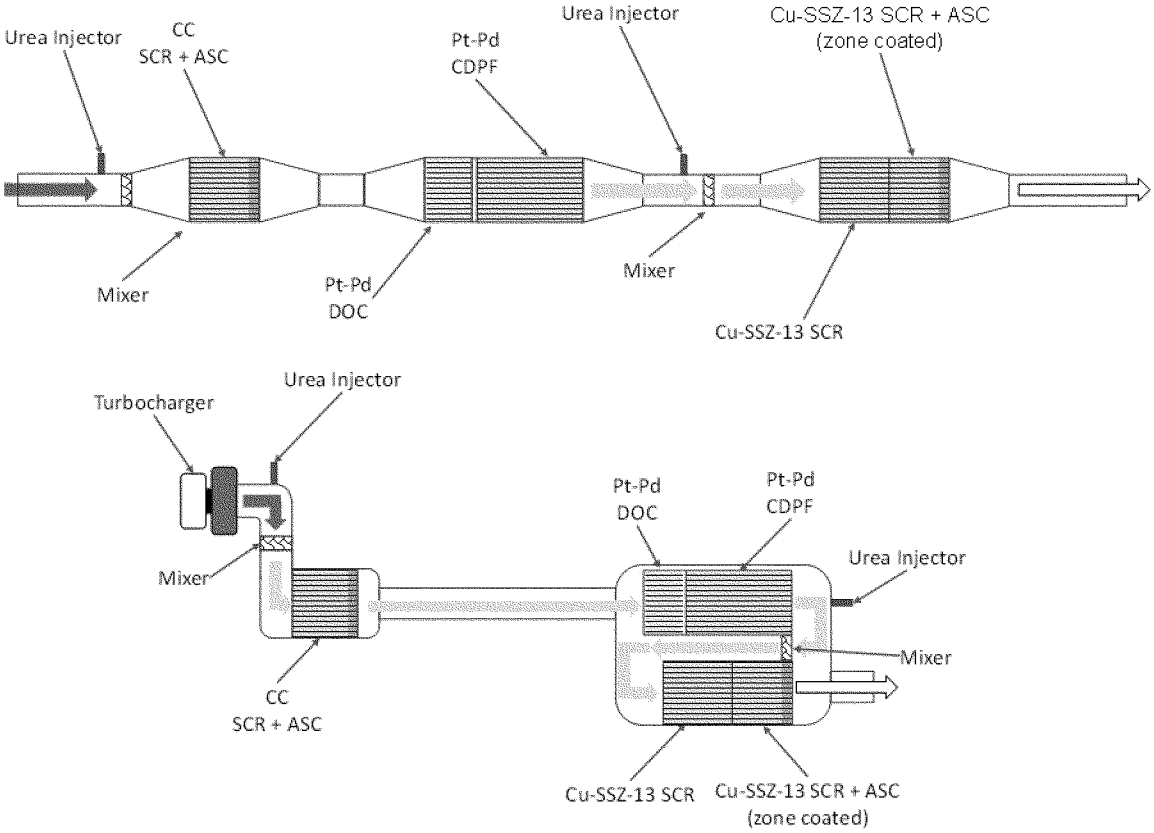

Figure 1: Potential layout of a 2027+ dual-SCR system in an in-line configuration (top) and comparable components integrated to improve passive thermal management (bottom).

EPA is evaluating this dual-SCR catalyst system technology as part of our diesel technology feasibility demonstration program. One concern that has been raised about this technology is the durability challenge associated with placing an SCR catalyst upstream of the DPF. To address this concern, a dual-SCR system is currently being aged at SwRI to an equivalent of 850,000 miles to better understand the impacts of catalyst degradation at much longer in-use operation than captured by today's regulatory useful life. We are utilizing an accelerated aging process [62] to thermally and chemically age the catalyst and will test catalyst performance at established checkpoints to measure the emission reduction performance as a function of miles. We plan to test this dual-SCR system individually as well as in combination with the thermal management strategies described in this section.

One of the design constraints that will be explored with EPA's evaluation of advanced SCR technology is nitrous oxide (N_2O) emissions. N_2O emissions are affected by the temperature of the SCR catalyst, SCR catalyst formulation, diesel exhaust fluid dosing rates and the makeup of NO and NO_2 upstream of the SCR catalyst. Limiting N_2O emissions is important because N_2O is a greenhouse gas and because highway heavy-duty engines are subject to the 0.10 g/hp-hr standard set in HD GHG Phase 1 rule.

vi. Aftertreatment Durability

The aging mechanisms of diesel exhaust aftertreatment systems are complex and include both chemical and hydrothermal changes. Aging mechanisms on a single component can also cascade into impacts on multiple catalysts and catalytic reactions within the system. Some aging impacts are fully reversible (*i.e.,* the degradation can be undone under certain conditions). Other aging impacts are only partially reversible, irreversible, or can only be reversed with some form of intervention (*e.g.,* changes to engine calibration to alter exhaust temperature and/or composition). A docket memo entitled ''Diesel Exhaust Emission Control Systems'' provides a more detailed summary of hydrothermal and chemical aging of diesel exhaust catalysts.[63]

Our holistic approach in CTI includes a reevaluation of current useful life values (see Section III.D), which could necessitate further improvements to prevent the loss of aftertreatment function at higher mileages. These potential improvements fall into the following categories:

- Designing excess capacity into the catalyst (*e.g.,* increased catalyst volume, increased catalyst cell density, increased surface area for active materials in washcoating) so physical or chemical degradation of the catalyst does not reduce its performance.
- Continued improvements to catalyst materials (such as the washcoat and substrate) to make them more durable (see more detailed discussion in section III.A.1.i).
  - Use of additives and other improvements specifically to prevent thermal or chemical breakdown of the zeolite structure within SCR coatings.

[62] See Section III.F.4 for a description of the accelerated aging process used.

[63] McDonald, Joseph. ''Diesel Exhaust Emission Control Systems'' Memorandum to Docket EPA–HQ–OAR–2019–0055. November 13, 2019.

○ Use of washcoat additives and other improvements to increase PGM dispersion, reduce PGM particle size, reduce PGM mobility and reduce agglomeration within the DOC and DPF washcoatings.

- Direct fuel dosing downstream of the light-off SCR during active DPF regeneration to reduce exposure of the light-off SCR to fuel compounds and contaminants.
- Improvements to catalyst housings and substrate matting material to minimize vibration and prevent leaks of exhaust gas.
- Adjusting engine calibration and emissions control system design to minimize operation that would damage the catalyst (*e.g.,* improved control of DPF active regeneration, increased passive DPF regeneration, fuel dosing downstream of initial light-off SCR).
- Use of specific engine calibration strategies to remove sulfur compounds from the SCR system.
- Use of exhaust system designs that facilitate periodic DPF ash maintenance.
- Diagnosis and prevention of upstream engine malfunctions that can potentially damage exhaust aftertreatment components.

Increased SCR catalyst capacity with incrementally improved zeolite coatings would be the primary strategies for improving NO_X control for a longer useful life. SCR capacity can be increased by approximately one-third through the use of a light-off SCR substrate combined with a downstream substrate with a volume roughly equivalent to the average volume of today's systems and with moderately increased catalytic activity due to continued incremental improvements to chabazite and other zeolite coatings used for SCR. Total SCR volume would thus increase by approximately one-third relative to today's systems. SCR capacity can also be increased in the downstream SCR system through the use of thin-wall (4 to 4.5 mil), high cell density (600 cells-per-square-inch) substrates.

Chemical aging of the DOC, DPF, and SCR can be reduced by the presence of an upstream light-off SCR. Transport and adsorption of S, P, Ca, Zn, Mg, Na, and K compounds and other catalyst poisons are more severe for the initial catalyst within an emissions control system and tend to reduce in severity for catalysts positioned further downstream. Further evolutionary improvements to the DOC washcoating materials to increase PGM dispersion and reduce PGM mobility and agglomeration would be anticipated for meeting increased useful life requirements.

The primary strategy for maintaining DPF function to a longer useful life would be through design of integrated systems that facilitate easier removal of the DPF for ash cleaning at regular maintenance intervals. Accommodation of DPF removal for ash maintenance is already incorporated into existing diesel exhaust system designs.[64] Improvements to catalyst housings and substrate matting material could be expected for all catalyst substrates within the system. Integration into a box-muffler type system could also be expected within the 2027 timeframe for all catalyst components (except for the initial close-coupled SCR) in order to improve passive thermal management.

vii. Closed Crankcases

During combustion, gases can leak past the piston rings sealing the cylinder and into the crankcase. These gases are called blowby gases and generally include unburned fuel and other combustion products. Blowby gases that escape from the crankcase are considered crankcase emissions.[65] Current regulations restrict the discharge of crankcase emissions directly into the ambient air, and blowby gases from gasoline engine crankcases have been controlled for many years by sealing the crankcase and routing the gases into the intake air through a positive crankcase ventilation (PCV) valve. However, there have been concerns about applying a similar technology for diesel engines. For example, high PM emissions venting into the intake system could foul turbocharger compressors. As a result of this concern, diesel-fueled and other compression-ignition engines equipped with turbochargers (or other equipment) were not required to have sealed crankcases.[66] For these engines, manufacturers are allowed to vent the crankcase emissions to ambient air as long as they are measured and added to the exhaust emissions during all emission testing.

Because all new highway heavy-duty diesel engines on the market today are equipped with turbochargers, they are not required to have closed crankcases under the current regulations. Manufacturer compliance data indicate a portion of current highway heavy-duty diesel engines have closed crankcases, which suggests that some heavy-duty engine manufacturers have developed systems for controlling crankcase emissions that do not negatively impact the turbocharger. EPA is considering provisions to require a closed crankcase ventilation system for all highway compression-ignition engines to prevent crankcase emissions from being emitted directly to the atmosphere. These emissions could be routed upstream of the aftertreatment system or back into the intake system. Our reasons for considering this requirement are twofold.

While the exception in the current regulations for certain compression-ignition engines requires manufacturers to quantify their engines' crankcase emissions during certification, they report non-methane hydrocarbons in lieu of total hydrocarbons. As a result, methane emissions from the crankcase are not quantified. Methane emissions from diesel-fueled engines are generally low; however, they are a concern for compression-ignition-certified natural gas-fueled heavy-duty engines because the blowby gases from these engines have a higher potential to include methane emissions. EPA proposed to require that all natural gas-fueled engines have closed crankcases in the Heavy-Duty Phase 2 GHG rulemaking, but opted to wait to finalize any updates to regulations in a future rulemaking (81 FR at 73571, October 25, 2016).

In addition to our concern of unquantified methane emissions, we believe another benefit to closed crankcases would be better in-use durability. We know that the performance of piston seals reduces as the engine ages, which would allow more blowby gases and could increase crankcase emissions. While crankcase emissions are included in the durability tests that estimate an engine's deterioration, those tests were not designed to capture the deterioration of the crankcase. These unquantified age impacts continue throughout the operational life of the engine. Closing crankcases could be a means to ensure those emissions are addressed long-term to the same extent as other exhaust emissions.

EPA is conducting emissions testing of open crankcase systems and will be developing the technology costs associated with a closed crankcase ventilation system. We request comment, including any available data, on the appropriateness and costs of requiring closed crankcases for all heavy-duty compression-ignited engines.

viii. Fuel Quality

EPA has long recognized the importance of fuel quality on motor vehicle emissions and has regulated fuel quality to enable compliance with emission standards. In 1993 EPA

[64] Eberspacher. ''1BOX Product Literature.''

[65] 40 CFR 86.402–78.

[66] 40 CFR 86.007–11(c).

limited diesel sulfur content to a maximum of 500 ppm and put into place a minimum cetane index of 40. Starting in 2006 with the establishment of more stringent heavy-duty highway PM, NO_X, and HC emission standards, EPA phased-in a 15-ppm maximum diesel fuel sulfur standard to enable heavy-duty diesel truck compliance with the more stringent emission standards.

Recently an engine manufacturer raised concerns to EPA regarding the metal content of highway diesel fuel.[67] The engine manufacturer observed higher than normal concentrations of alkali and alkaline earth metals (*i.e.,* Na, K, Ca, and Mg) in its highway diesel fuel samples. These metals can lead to fouling of the aftertreatment control systems and an associated increase in emissions. The engine manufacturer claims that biodiesel is the source of the high metal content in diesel fuel, and that higher biodiesel blends, such as B20, are the principal problem. The engine manufacturer states that the engine's warranty will be voided if biodiesel blends greater than 5 percent (B5) are used.

Over the last decade, biodiesel content in diesel fuel has increased under the Renewable Fuels Standard. In 2010, less than 400 million gallons of biodiesel were consumed, whereas in 2018, over 2 billion gallons of biodiesel were being blended into diesel fuel. While the average biodiesel content in diesel fuel was around 3.5 percent in 2018, biodiesel is being blended on per batch basis into highway diesel fuel at levels ranging from 0 to 20 volume percent.

EPA compared data collected by the National Renewable Energy Laboratory (NREL) on the metal content of biodiesel to that provided by the engine manufacturer. The NREL data showed fewer samples exceeding the maximum metals concentration limits contained in ASTM D6751–18, although in both cases the small sample sizes could be biasing the results.[68] Numerous studies have collected and analyzed emission data from diesel engines operated on biodiesel blended diesel with controlled amounts of metal content.[69] Some of these studies show an impact on emissions, while others do not.

EPA has also heard concerns from some stakeholders that water in highway diesel fuel meeting the ASTM D975 water and sediment limit of 0.05 volume percent can cause premature failure of fuel injectors due to corrosion from the presence of dissolved alkali and alkaline earth metals.

EPA requests comment on concerns regarding metal and water contamination in highway diesel fuel and on the potential role of biodiesel in this contamination. EPA seeks data on the levels of these contaminants in fuels, including the prevalence of contamination, and on the associated degradation and failure of engines and aftertreatment function.

2. Gasoline Engine Technologies Under Consideration

Automobile manufacturers have made progress reducing NO_X, CO and HC from gasoline-fueled passenger cars and light-duty trucks. Similar to the DOC and SCR catalysts described previously, three-way catalysts perform at a very high level once operating temperature is achieved. There is a short window of operation following a cold start when the exhaust temperature is low and the three-way catalyst has not reached light-off, resulting in a temporary spike in CO, HC, and NO_X. A similar reduction in catalyst efficiency can occur due to sustained idle or creep-crawl operation that vehicles may experience in dense traffic if the catalyst configuration does not maintain temperatures above the light-off temperature. Gasoline engines generally operate near stoichiometric fuel-air ratios, creating optimal conditions for a three-way catalyst to simultaneously convert CO, NO, and HC to CO_2, N_2, and H_2O. However, as introduced in Section II.B.2, heavy-duty engine manufacturers often implement enrichment-based strategies for engine and catalyst protection at high load, which reduces the effectiveness of the three-way catalyst and increases emissions. The following section describes technologies we believe can address these emissions increases.

i. Technologies To Reduce Exhaust Emissions

As mentioned in Section II.B.2, most chassis-certified heavy-duty vehicles are subject to EPA's light-duty Tier 3 program and these vehicles have adopted many of the emissions technologies from their light-duty counterparts (79 FR 23414, April 28, 2014). To meet these Tier 3 emission standards, manufacturers have reduced the time for the catalyst to reach operational temperature by implementing cold-start strategies to reduce light-off time and moved the catalyst closer to the exhaust valve. Manufacturers have not widely adopted the same strategies for their engine-certified products. In particular, we believe there are opportunities to reduce cold-start and low-load emissions from engine-certified heavy-duty gasoline engines by adopting the following strategies to accelerate light-off and keep the catalyst warm:

- Close-couple the catalyst to the engine
- Improved catalyst material and loading
- Improved exhaust system insulation

Additionally, we believe material improvements to the catalyst, manifolds, and exhaust valves could increase their ability to withstand higher exhaust temperatures and would therefore reduce the need for enrichment-based protection modes that result in elevated emissions under high-load operation. Catalyst technology continues to advance to meet engine manufacturers' demand for earlier and sustained light-off for low-load emission control, as well as increased maximum temperature thresholds allowing catalysts to withstand close-coupling and elevated exhaust temperatures during high load.

Similar to EPA's diesel engine demonstration project, we are testing heavy-duty gasoline engines and technologies that are available today on a range of Class 3 to 7 vehicles. The three engines in this test program represent a majority of the heavy-duty gasoline market and include both engine- and chassis-certified configurations. Emissions performance of engine- and chassis-certified configurations are being evaluated using chassis-dynamometer and real-world portable emissions measurement system (PEMS) testing. Early testing showed significant differences in emissions performance between engine-certified and chassis-certified configurations (primarily as a result of differences in catalyst location).[70]

Moving the catalyst into a close-coupled configuration is one approach adopted for chassis-certified gasoline engines to warm-up and activate the catalyst during cold-start and light load operation. Close-coupled locations may increase the catalysts' exposure to high exhaust temperatures, especially for heavy-duty applications that operate frequently in high-load operation. However, this can be overcome by adopting improved catalyst materials or identifying an optimized, closer-coupled catalyst location that enhances

[67] Recker, Alissa, ''Fuel Quality Impacts on Aftertreatment and Engine;'' Daimler Trucks, July 29, 2019.

[68] Wyborny, Lester. ''References Regarding Metals in Diesel and Biodiesel Fuels.'' Memorandum to Docket EPA–HQ–OAR–2019–0055. November 11, 2019

[69] *Id.*

[70] Mitchell, George, ''EPA's Medium Heavy-Duty Gasoline Vehicle Emissions Investigation''. February 2019.

warm-up without extended time at high temperatures. We welcome comment on other performance characteristics of engine and aftertreatment technologies from chassis-certified vehicles when applied to engine-certified products, specifically placing the catalyst in a location more consistent with chassis-certified applications.

We also welcome comment on heavy-duty gasoline engine technology costs. We plan to develop our technology cost estimates for the NPRM based on information from light-duty and chassis-certified heavy-duty pick-up trucks and vans that are regulated under EPA's Tier 3 program.[71]

Finally, we believe there may be opportunity for further reductions in PM from heavy-duty gasoline engines. Gasoline PM forms under high-load, rich fuel-air operation and is more prevalent as engines age and parts wear. Strategies to reduce or eliminate fuel-air enrichment under high-load operation would reduce PM formation. In addition, gasoline particulate filters (GPF), which serve the same function as DPFs on diesel engines, may be an effective means of PM reduction for heavy-duty gasoline engines as well.[72] We request comment on the need for more stringent PM standards for heavy-duty gasoline engines.

ii. Technologies To Address Evaporative Emissions

As exhaust emissions from gasoline engines continue to decrease, evaporative emissions become an increasingly significant contribution to overall HC emissions from gasoline-fueled vehicles. To evaluate the evaporative emission performance of current production heavy-duty gasoline vehicles, EPA tested two heavy-duty vehicles over running loss, hot soak, three-day diurnal, on-board refueling vapor recovery (ORVR) and static test procedures. These engine-certified ''incomplete'' vehicles meet the current heavy-duty evaporative running loss, hot soak, three-day diurnal emission requirements. However, as they are certified as incomplete vehicles, they are not required to control refueling emissions and do not have ORVR systems. Results from the refueling testing confirm that these vehicles have much higher refueling emissions than gasoline vehicles with ORVR controls.[73] [74]

EPA is evaluating the opportunity to extend the usage of the refueling evaporative emission control technologies already implemented in complete heavy-duty gasoline vehicles to the engine-certified incomplete gasoline vehicles in the over-14,000 lb. GVWR category. The primary technology we are considering is the addition of ORVR, which was first introduced to the chassis-certified light-duty and heavy-duty applications beginning in MY 2000 (65 FR 6698, February 10, 2000). An ORVR system includes a carbon canister, which is an effective technology designed to capture HC emissions during refueling events when liquid gasoline displaces HC vapors present in the vehicle's fuel tank as the tank is filled. Instead of releasing the HC vapors into the ambient air, ORVR systems recover these HC vapors and store them for later use as fuel to operate the engine.

The fuel systems on these over-14,000 pound GVWR incomplete heavy-duty gasoline vehicles are similar to complete heavy-duty vehicles that are already required to incorporate ORVR. These incomplete vehicles may have slightly larger fuel tanks than most chassis-certified (complete) heavy-duty gasoline vehicles and are somewhat more likely to have dual fuel tanks. These differences may require a greater ORVR system storage capacity and possibly some unique accommodations for dual tanks (*e.g.,* separate fuel filler locations), but we expect they will maintain a similar design. We are aware that some engine-certified products for over-14,000 GVWR gasoline vehicles are sold as incomplete chassis without complete fuel systems. Thus, the engine-certifying entity currently may not know or be in control of the filler system location and integration limitations for the final vehicle body configuration. This dynamic has been addressed for other emission controls through a process called delegated assembly—where the certifying manufacturer delegates certain assembly obligations to a downstream manufacturer.[75]

We request comment on EPA expanding our ORVR requirements to incomplete heavy-duty vehicles. We are particularly interested in the challenges of multiple manufacturers to appropriately implement ORVR systems on the range of gasoline-fueled vehicle products in the market today. We also seek comment on refueling test procedures, including the appropriateness of engineering analysis to adapt existing test procedures that were developed for complete vehicles to apply for incomplete vehicles.

3. Emission Monitoring Technologies

As heavy-duty engine performance has become more sophisticated, the industry has developed increasingly advanced sensors on board the vehicle to monitor the performance of the engine and emission controls. For the CTI, we are particularly interested in recent developments in the performance of zirconia NO_X sensors that manufacturers are currently using to measure NO_X concentrations and control SCR urea dosing. EPA has identified applications where we believe the use of these and other onboard sensors could enhance and potentially streamline existing EPA programs. We discuss those applications in Section III.F.

We recognize that one of the challenges to relying on sensors for these applications is the availability of NO_X sensors that are continuously operational and accurate at low concentration levels. As a result, we are beginning a study to assess the accuracy, repeatability, noise, interferences, and response time of current NO_X sensors. However, we encourage commenters to submit information to help us project whether the state of NO_X sensor technology in the 2027 timeframe would be sufficient to enable such programs. We also request comment on the durability of NO_X sensors, as well as specific maintenance or operational strategies that could be considered to substantially extend the life of these components and any regulatory barriers to implementing these strategies.

In addition to the performance of onboard NO_X sensors, we are following the industry's increasing adoption of telematics systems that could enable the manufacturer to communicate with the vehicle's onboard computer in real-time. We request comment on the prevalence of telematics, the range of information that can be shared over-the-air, and limitations of the technology today. As we describe in Section III.F.3, the combination of advanced onboard sensors and telecommunications could

[71] EPA. ''Control of Air Pollution from Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards Final Rule Regulatory Impact Analysis'' EPA–420–R–14–005, February 2014, available online at: *https://nepis.epa.gov/Exe/ZyPDF.cgi/P100ISWM.PDF?Dockey=P100ISWM.PDF.*

[72] Jiacheng Yang, Patrick Roth, Thomas D. Durbin, Kent C. Johnson, David R. Cocker, III, Akua Asa-Awuku, Rasto Brezny, Michael Geller, and Georgios Karavalakis (2018) ''Gasoline Particulate Filters as an Effective Tool to Reduce Particulate and Polycyclic Aromatic Hydrocarbon Emissions from Gasoline Direct Injection (GDI) Vehicles: A Case Study with Two GDI Vehicles'' Environmental Science & Technology doi: 10.1021/acs.est.7b05641.

[73] SGS-Aurora, Eastern Research Group, ''Light Heavy-Duty Gasoline Vehicle Evaporative Emissions Testing.'' EPA–420–R–19–017. December 2019.

[74] U.S. Environmental Protection Agency. ''Summary of ''Light Heavy-Duty Gasoline Vehicle Evaporative Emissions Test Program'' '' EPA–420–S–19–002. December 2019.

[75] See 40 CFR 1068.260 and 1068.261.

facilitate the ability to determine tailpipe NO_X emissions of the vehicle in-use to reduce compliance burden in the future. We also request comment on the potential for alternative communication approaches to be used. For example, for vehicles not equipped with telematics, would manufacturers still be able to collect data from the vehicle during service at their dealerships?

Finally, we request comment on whether and how improved communication systems could be leveraged by manufacturers or in state, local, or tribal government programs to promote emission reductions from the heavy-duty fleet.

4. Hybrid, Battery-Electric, and Fuel Cell Vehicles

Hybrid technologies that recover and store braking energy have been used extensively in light-duty applications as fuel saving features. They are also being adopted in certain heavy-duty applications, and their heavy-duty use is projected to increase significantly over the next several years as a result of the HD Phase 2 GHG standards. However, the HD Phase 2 rule also identified plug-in hybrid vehicles (where the battery can be charged from an external power source), battery-electric vehicles (where the vehicle has no engine), and fuel cell vehicles (where the power supply is not an internal combustion engine, or ICE) as more advanced technologies that were not projected to be adopted in the heavy-duty market without additional incentives (81 FR 73497, October 25, 2016).

Hybrid technologies range from mild hybrids that recover braking energy for accessory use (often using a supplemental 48V electrical battery), to fully-hybrid vehicles with integrated electric motors at the wheels capable of propelling the vehicle with the engine turned off; and their emissions impact varies by integration level and design. Existing heavy-duty hybrid technologies have the potential to decrease or increase NO_X emissions, depending on how they are designed. For example, a hybrid system can reduce NO_X emissions if it eliminates idle operation or uses the recovered electrical energy to heat aftertreatment components. In contrast, it can increase NO_X emissions if it reduces the engine's ability to maintain sufficiently high aftertreatment temperatures during low-load operation.

Since battery-electric and hydrogen fuel cell vehicles do not have ICEs, they have zero tailpipe emissions of NO_X. We request comment on whether, and if so how, the CTI should project use of these more advanced technologies as NO_X reduction technologies. These technologies as well as the more conventional hybrid technologies are collectively referred to as advanced powertrain technologies for the remainder of this discussion.

We are focused on three objectives related to these advanced powertrain technologies in CTI:

1. To reflect market adoption of these technologies in the 2027 and beyond timeframe as accurately as possible in the baseline analysis (*i.e.,* without reflecting potential responses from CTI requirements),

2. To address barriers to market adoption due to EPA emissions certification requirements,

3. To understand whether and how any incentives may be appropriate given the substantial tailpipe emission reduction potential of these technologies.

The choice of which powertrain technology to select for a particular heavy-duty vehicle application depends on factors such as number of miles traveled per day, accessibility of refueling infrastructure (*i.e.,* charging stations, hydrogen fuel cell refilling stations), and driver preferences (*e.g.,* noise level associated with electric versus ICEs).To address the first focus area, we are currently conducting stakeholder outreach and reviewing published projections of advanced emissions technologies. Our initial review of information suggests that there are a wide range of advanced powertrain technologies available today, including limited production of more than 100 battery-electric or fuel cell vehicle models offering zero tailpipe emissions.[76] Looking forward, a variety of factors will influence the extent to which hybrid and zero emissions heavy-duty vehicles are available for purchase and enter the market.[77] [78] Of these, the lifetime total cost of ownership (TCO), which includes maintenance and fuel costs, is likely a primary factor. Initial information suggests that TCO for light- and medium heavy-duty battery-electric vehicles could reach cost parity with diesel in the early 2020s, while heavy heavy-duty battery-electric or hydrogen vehicles are likely to reach cost parity with diesel closer to the 2030 timeframe.[79] The TCO for hybrid technologies, and its relation to diesel vehicles, will vary based on the specifics of the hybrid system (*e.g.,* cost and benefits of a 48V battery versus an integrated electric motor).

Beyond TCO, considerations such as noise levels, vehicle weight, payload capacity, operational range, charging/refueling time, safety, and other driver preferences may influence the rate of market entry.[80] [81] State and local activities, such as the Advanced Clean Trucks rulemaking underway in California could also influence the market trajectory for battery-electric and fuel cell technologies.[82] EPA requests comment on the likely market trajectory for advanced powertrain technologies in the 2020 through 2045 timeframe. Commenters are encouraged to provide data supporting their perspectives on reasonable adoption rates EPA could use for hybrid, battery-electric, and fuel cell heavy-duty vehicles relative to the full heavy-duty vehicle fleet in specific time periods (*e.g.,* early 2020s, late 2020s, 2030, 2040, 2050).

For addressing potential barriers to market, stakeholders previously expressed concern that the engine-focused certification process for criteria pollutant emissions does not provide a pathway for hybrid powertrains to demonstrate NO_X reductions from hybrid operations during certification. As such, we plan to propose an update to our powertrain test procedure for hybrids, previously developed as part of the HD Phase 2 rulemaking for greenhouse gas emissions, so that it can be applied to criteria pollutant certification.[83] [84] We are interested in whether a hybrid powertrain test procedure addresses concerns with certifying the full range of heavy-duty hybrid products, or if other options might be useful for specific products, such as mild hybrid systems. If

[76] ICCT (2019) ''Estimating the infrastructure needs and costs for the launch of zero-emissions trucks''; available online at: *https://theicct.org/publications/zero-emission-truck-infrastructure.*

[77] McKinsey (2017) ''New reality: electric trucks and their implications on energy demand''; available online at: *https://www.mckinsey.com/industries/oil-and-gas/our-insights/a-new-reality-electric-trucks.*

[78] NACFE (2018) Guidance Report: Electric Trucks—Where They Make Sense; available online at: *https://nacfe.org/report-library/guidance-reports/.*

[79] ICCT (2019) ''Estimating the infrastructure needs and costs for the launch of zero-emissions trucks''; available online at: *https://theicct.org/publications/zero-emission-truck-infrastructure.*

[80] McKinsey (2017) ''New reality: electric trucks and their implications on energy demand''; available online at: *https://www.mckinsey.com/industries/oil-and-gas/our-insights/a-new-reality-electric-trucks.*

[81] NACFE (2018) Guidance Report: Electric Trucks—Where They Make Sense; available online at: *https://nacfe.org/report-library/guidance-reports/.*

[82] For more information on this proposed rulemaking in California see: *https://ww2.arb.ca.gov/rulemaking/2019/advancedcleantrucks?utm_medium=email&utm_source=govdelivery.*

[83] 40 CFR 1036.505.

[84] 40 CFR 1036.510.

stakeholders view alternative options as useful, then we request input on what those options might include.

We are also aware that current OBD requirements necessitate close cooperation between engine and hybrid system manufacturers for certification, and the process has proven sufficiently burdensome such that few alliances have been pursued to-date. We are interested in better understanding this potential barrier to heavy-duty hybrid systems, and any potential opportunities EPA could consider to address it.

Finally, related to the area of incentives, we are exploring simple approaches, such as emission credits, targeted for specific market segments for which technology development may be more challenging (*e.g.,* extended range battery-electric or fuel cell technologies). We request comment on any barriers or incentives that EPA could consider in order to better encourage emission reductions from these advanced powertrain technologies. Commenters are encouraged to provide information on the potential impacts of regulatory barriers or incentives for all the advanced powertrain technologies discussed here (hybrids, battery-electric, fuel cell), including the extent to which these technologies may lower NO_X and other criteria pollutant emissions.

5. Alternative Fuels

In the case of alternative fuels, we have typically applied the gasoline- and diesel-fueled engine standards to the alternatively-fueled engines based on the combustion cycle of the alternatively-fueled engine: Applying the gasoline-fueled standards to spark-ignition engines and the diesel-fueled standards to compression-ignition engines. This approach is often called ''fuel neutral.''

Most heavy-duty vehicles today are powered by diesel engines. These engines have been optimized over many years to be reliable, durable, and fuel efficient. Diesel fuel also has the advantage of being very stable and having a high energy density. Gasoline-fueled engines are the second-most popular choice, especially for light and medium heavy-duty vehicles. They tend to be lighter and less expensive than diesel engines although less durable and less fuel efficient. We do not expect a shift in the market between diesel and gasoline as a result of the CTI and we are requesting comment on the extent to which CTI could have such effects.

With relatively low natural gas prices (compared to their peak values) in recent years, the heavy-duty industry has become increasingly interested in engines that are fueled with natural gas. It has some emission advantages over diesel, with lower engine-out levels of both NO_X and PM. Several heavy-duty CNG engines have been certified with NO_X levels better than 90 percent below US 2010 standards. However, because natural gas must be distributed and stored under pressure, there are additional challenges to using it as a heavy-duty fuel. We request comment on how natural gas should be treated in the CTI, including the possible provision of incentives.

Dimethyl ether (DME) is a related alternative fuel that also shows some promise for compression-ignition engines. It can be readily synthesized from natural gas and can be stored at lower pressures. We request comment on the extent to which the CTI should consider DME.

LPG is also used in certain lower weight-class urban applications, such as airport shuttle buses, school buses, and emergency response vehicles. LPG use is not extensive, nor do we project it to grow significantly in the CTI timeframe. However, given its emission advantages over diesel, we request comment on how LPG should be treated in the CTI, particularly for vocational heavy-duty engines and vehicles.

B. Standards and Test Cycles

EPA emission standards have historically applied with respect to emissions measured while the engine or vehicle is operating over a specific duty cycle. The primary advantage of this approach is that it provides very repeatable emission measurements. In other words, the results should be the same no matter when or where the test is performed, as long as the specified test procedures are used. For heavy-duty, these tests are generally performed on the engine without the vehicle.

We continue to consider these pre-production upfront demonstrations as the cornerstone of ensuring in-use emission compliance. On the other hand, tying standards to specific test cycles opens the possibility of emission controls being designed more to the test procedures than to in-use operation. Since 2004, we have applied additional in-use standards for diesel engines that allow higher emission levels but are not limited to a specific duty cycle, and instead measure emissions over real-world, non-prescribed driving routes that cover a range of in-use operation.

In this section we describe the updates we are considering for our duty-cycle program. We do not include specific values, but welcome comments and data which will assist EPA in developing appropriate standards to propose that could apply to the updated procedures we present. We also welcome comments on the relative importance of laboratory-based test cycle standards and standards that can be evaluated with the whole vehicle.

1. Emission Standards for RMC and FTP Cycles

Heavy-duty engines are subject to brake-specific (g/hp-hr) standards for emissions of NO_X, PM, NMHC, and CO. These standards must be met by all diesel engines over both the Federal Test Procedure (FTP) cycle and the Ramped-Modal Cycle (RMC). Gasoline engines are only subject to testing over an FTP cycle designed for spark-ignition engines. The FTP cycles, which date back to the 1970s, are composites of a cold-start and a hot-start transient duty cycle designed to represent urban driving. The cold-start emissions are weighted by one-seventh and the hot-start emissions are weighted by six-sevenths.[85] The RMC is a more recent cycle for diesel engines that is a continuous cycle with ramped transitions between the thirteen steady-state modes.[86] The RMC does not include engine starting and is intended to represent fully warmed-up operating modes not emphasized in the FTP, such as sustained high speeds and loads.

Based on available information, it is clear that application of the diesel technologies discussed in Sections III.A.1 should enable emission reductions of at least 50 percent compared to current standards over the FTP and RMC cycles.[87] [88] Some estimates suggest that emission reductions of 90 percent may be achievable across the heavy-duty engine market by model year 2027. We request information that would help us determine the appropriate levels of any new emission standards for the FTP and RMC cycles.

We are considering changes to the weighting factors for the FTP cycle for heavy-duty engines. We have historically developed our test cycles and weighting factors to reflect real-

[85] See 40 CFR 86.007–11 and 40 CFR 86.08–10.

[86] See 40 CFR 1065.505.

[87] California Air Resources Board, ''Staff White Paper: California Air Resources Board Staff Current Assessment of the Technical Feasibility of Lower NO_X Standards and Associated Test Procedures for 2022 and Subsequent Model Year Medium-Duty and Heavy-Duty Diesel Engines''. April 18, 2019. Available online: *https://ww3.arb.ca.gov/msprog/hdlownox/white_paper_04182019a.pdf.*

[88] Manufacturers of Emission Controls Association. ''Technology Feasibility for Model Year 2024 Heavy-Duty Diesel Vehicles in Meeting Lower NO_X Standards''. June 2019. Available online: *http://www.meca.org/resources/MECA_MY_2024_HD_Low_NOx_Report_061019.pdf.*

world operation. However, we recognize both engine technology and in-use operation can change over time. The current FTP weighting of cold-start and hot-start emissions was adopted in 1980 (45 FR 4136, January 21, 1980). It reflects the overall ratio of cold and hot operation for heavy-duty engines generally and does not distinguish by engine size or intended use. Given the importance of this weighting factor, we request comment on the appropriateness of the current weighting factors across the engine categories.[89] We are also interested in comment on how to address any challenges manufacturers may encounter to implement changes to the weighting factors.

We have also observed an industry trend toward engine down-speeding—that is, designing engines to do more of their work at lower engine speeds where frictional losses are lower. To address this trend for EPA's CO_2 standards testing, we adopted new RMC weighting factors for CO_2 emissions in the Phase 2 final rule (81 FR 73550, October 25, 2016). Since we believe these new weighting factors better reflect in-use operation of current and future heavy-duty engines, we request comment on applying these new weighting factors for NO_X and other criteria pollutants as well.

2. New Emission Test Cycles and Standards

Review of in-use data has indicated that SCR-based emission controls systems for diesel engines are not functional over a significant fraction of real-world operation due to low aftertreatment temperatures, which are often the result of extended time at low load and idle operation.[90] [91] [92] Our current in-use testing procedures (described in Section III.C) were not designed to capture this type of operation. Test data collected as part of EPA's manufacturer-run in-use testing program indicate that low-load operation could account for more than half of the NO_X emissions from a vehicle over a given shift-day.[93]

EPA is considering the addition of a low-load test cycle and standard that would require diesel engine manufacturers to maintain the emission control system's functionality during operation where the catalyst temperatures have historically been below their operational temperature. The addition of a low-load duty-cycle could complement the expanded operational coverage of in-use testing requirements we are also considering. We have been following CARB's low-load cycle development in ''Stage 2'' of their Low NO_X Demonstration program. SwRI and NREL developed several candidate cycles with average power and duration characteristics intended to test today's diesel engine emission controls under three low-load operating conditions: Transition from high- to low-load, sustained low-load, and transition from low- to high-load.[94] In September 2019, CARB selected the 90-minute ''LLC Candidate #7'' as the final cycle they are considering for their Low NO_X Demonstration program.[95] EPA requests comment on the addition of a low-load cycle, the appropriateness of CARB's Candidate #7 low-load cycle, or other engine operation a low-load cycle should encompass, if adopted.

In addition to adding a low-load cycle, CARB currently has an idle test procedure and accompanying standard of 30 g/h for diesel engines to be ''Clean Idle Certified''.[96] We request comment on the need or appropriateness of setting a federal idle standard for diesel engines.

As mentioned previously, heavy-duty gasoline engines are currently subject to FTP testing, but not RMC testing. We request comment on including additional test cycles that may encourage manufacturers to improve the emissions performance of their heavy-duty gasoline engines in operating conditions not covered by the FTP cycle. In particular, we are considering proposing an RMC procedure to include the sustained high speeds and high loads that often produce high HC and PM emissions. We may also propose a low-load or idle cycle to address high CO from gasoline engines under those conditions. CARB's low-load cycle was designed to assess diesel engine aftertreatment systems under low-load operation. We request comment on the need for a low-load or idle cycle in general, and suitability of CARB's diesel-targeted low-load and clean idle cycles for evaluating the emissions performance of heavy-duty gasoline engines as well.

In addition to proposing changes to the test cycles, we are considering updates to the engine mapping test procedure for heavy-duty gasoline engines. The current test procedure, which is the same for all engine sizes, is intended to generate a ''torque curve'' that represents the peak torque at any specific engine speed point.[97] Historically, that goal was easily achieved due to the simplicity of the heavy-duty gasoline engine hardware and controls. Modern heavy-duty gasoline engines are more complex, with interactive features such as spark advance, fuel-air ratio, and variable valve timing that temporarily alter torque levels to meet supplemental goals (*e.g.,* torque management for transmissions shifts). These features can lead to lower-than-peak torque levels with the current engine mapping procedure. We are assessing a potential requirement that the torque curve established during the mapping procedure must represent the highest torque level possible for the test fuel. This could be achieved by various approaches, including disabling temporary conditions or operational states in the electronic controls during the mapping, or using a different order of speed and load points (*e.g.,* sweeping up, down, or sampling at a speed point over a longer time to allow stabilization) to generate peak values. We seek comment on the need to update our current engine mapping procedure for gasoline engines.

C. In-Use Emission Standards

Heavy-duty diesel engines are currently subject to Not-To-Exceed (NTE) standards that are not limited to specific test cycles, which means they can be evaluated during in-use operation. In-use data are collected by manufacturers as described in Section III.F.3. The data is then analyzed pursuant to 40 CFR 86.1370 and 40 CFR 86.1912 to generate a set of engine-specific NTE events—that is, 30-second

[89] For instance, cold-start operation for line-haul tractors may represent significantly less than 1/7 of their total in-use operation, yet cold-start operation may represent a higher fraction of operation for other vocational vehicles.

[90] Hamady, Fakhri, Duncan, Alan. ''A Comprehensive Study of Manufacturers In-Use Testing Data Collected from Heavy-Duty Diesel Engines Using Portable Emissions Measurement System (PEMS)''. 29th CRC Real World Emissions Workshop, March 10–13, 2019.

[91] Sandhu, Gurdas, et al. ''Identifying Areas of High NO_X Operation in Heavy-Duty Vehicles''. 28th CRC Real-World Emissions Workshop, March 18–21, 2018.

[92] Sandhu, Gurdas, et al. ''In-Use Emission Rates for MY 2010+ Heavy-Duty Diesel Vehicles''. 27th CRC Real-World Emissions Workshop, March 26–29, 2017.

[93] Sandhu, Gurdas, et al. ''Identifying Areas of High NO_X Operation in Heavy-Duty Vehicles''. 28th CRC Real-World Emissions Workshop, March 18–21, 2018.

[94] California Air Resources Board. ''Heavy-Duty Low NO_X Program Public Workshop: Low Load Cycle Development''. Sacramento, CA. January 23, 2019. Available online: *https://ww3.arb.ca.gov/msprog/hdlownox/files/workgroup_20190123/02-llc_ws01232019-1.pdf.*

[95] California Air Resources Board. ''Heavy-Duty Low NO_X Program: Low Load Cycle'' Public Workshop. Diamond Bar, CA. September 26, 2019. Available online: *https://ww3.arb.ca.gov/msprog/hdlownox/files/workgroup_20190926/staff/03_llc.pdf.*

[96] 13 CCR § 1956.8 (6)(C)—Optional NO_X idling emission standard.

[97] 40 CFR 1065.510.

intervals for which engine speeds and loads remain in the control area. There is no specified test cycle for these standards; the express purpose of the NTE test procedure is to apply the standard to engine operation conditions that could reasonably be expected to be seen by that engine in normal vehicle operation and use, including a wide range of real ambient conditions.

EPA refers to the range of engine operation where the engine must comply with the NTE standards as the ''NTE zone.'' The NTE zone excludes operating points below 30% of maximum torque or below 30% of maximum power. The NTE zone also excludes speeds below 15% of the European Stationary Cycle speed. Finally, the NTE procedure also excludes certain operation at high altitudes, high intake manifold humidity, or at aftertreatment temperatures below 250° C. Data collected in-use is considered a valid NTE event if it occurs within the NTE zone, lasts 30 seconds or longer, and does not occur during any of the exclusion conditions mentioned previously (engine, aftertreatment, or ambient).[98]

NTE standards have been successful in broadening the types of operation for which manufacturers design their emission controls to remain effective. However, our analysis of existing in-use test data indicates that less than five percent of a typical time-based dataset are valid NTE events that are subject to the in-use NTE standards; the remaining data are excluded. Furthermore, we found that emissions are high during many of the excluded periods of operation, such as when the aftertreatment temperature drops below the catalyst light-off temperature. For example, 96 percent of tests from 2014, 2015, and 2016 in-use testing orders passed with NO_X emissions for valid NTE events well below the 0.3 g/hp-h NTE standard. When we used the same data to calculate NO_X emissions over *all* operation measured, not limited to valid NTE events, the NO_X emissions were more than double (0.5 g/hp-h).[99] The results were higher when we analyzed the data to only consider NO_X emissions that occur during low load events. These results suggest there may be great potential to improve in-use performance by considering more of the engine operation when we evaluate in-use compliance.

The European Union ''Euro VI'' emission standards for heavy-duty engines require in-use testing starting with model year 2014 engines.[100] [101] Manufacturers must check for ''in-service conformity'' by operating their engines over a mix of urban, rural, and freeway driving on prescribed routes using portable emission measurement system (PEMS) equipment to measure emissions. Compliance is determined using a work-based windows approach where emissions data are evaluated over segments or ''windows.'' A window consists of consecutive 1 Hz data points that are summed until the engine performs an amount of work equivalent to the European transient engine test cycle (World Harmonized Transient Cycle). EPA and others have compared the performance of U.S.-certified engines and Euro VI-certified engines and concluded that the European engines' NO_X emissions are comparable to U.S. 2010 standards-certified engines under city and highway operation, but lower in light-load conditions.[102] This suggests that manufacturers respond to the Euro VI test procedures by designing their emission controls to perform well over broader operation. EPA intends the CTI to expand our in-use procedures to capture nearly all real-world operation. We are considering an approach similar to the European in-use program, with key distinctions that improve upon the Euro VI approach, as discussed below.

Most importantly, we are not currently intending to propose prescribed routes for our in-use compliance test program. Our current program requires data to be collected in real-world operation and we would consider it an unnecessary step backward to change that aspect of the procedure. In what we believe to be an improvement to a work-based window, we are considering a moving average window (MAW) approach consisting of time-based windows. Instead of basing window size on an amount of work, we are evaluating window sizes ranging from 180 to 300 seconds.[103] The time-based windows would be intended to equally weight each data point collected.

We also recognize that it would be difficult to develop a single standard that would be appropriate to cover the entire range of operation that heavy-duty engines experience. For example, a numerical standard that would be technologically feasible under worst case conditions such as idle, would necessarily be much higher than the levels that are feasible when the aftertreatment is functioning optimally. Thus, we are considering separate standards for distinct modes of operation. Our current thinking is to group the second-by-second in-use data into one of three bins using a ''normalized average CO_2 rate'' from the certification test cycles to identify the boundaries.[104] Data points with a normalized average CO_2 rate greater than 25 percent (equivalent to the average power of the current FTP) could be classified as medium-/high-load operation and binned together. We are considering two options for identifying idle data points. The first option would use a vehicle speed less than 1 mph. The second option would use the normalized average CO_2 rate of a low-load certification cycle.[105] The remaining data points, bounded by the idle and medium-/high-load bins, would contribute to the low-load bin data.

We are considering several approaches for evaluating the emissions performance of the binned data. One approach would sum the total NO_X mass emissions divided by the sum of CO_2 mass emissions. This ''sum-over-sum'' approach would successfully account for all NO_X emissions; however, it would require the measurement system (PEMS or a NO_X sensor) to be accurate across the complete range of emissions concentrations. We are also considering the advantages and disadvantages other statistical approaches that evaluate a high percentile of the data instead of the full set. We request comment on all aspects

[98] For more on our NTE provisions, see 40 CFR 86.1362.

[99] Hamady, Fakhri, Duncan, Alan. ''A Comprehensive Study of Manufacturers In-Use Testing Data Collected from Heavy-Duty Diesel Engines Using Portable Emissions Measurement System (PEMS)''. 29th CRC Real World Emissions Workshop, March 10–13, 2019.

[100] COMMISSION REGULATION (EU) No 582/2011, May 25, 2011. Available online: *https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02011R0582-20180118&from=EN.*

[101] COMMISSION REGULATION (EU) 2018/932, June 29, 2018. Available online: *https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R0932&from=EN.*

[102] Rodriguez, F.; Posada, F. ''Future Heavy-Duty Emission Standards An Opportunity for International Harmonization''. The International Council on Clean Transportation. November 2019. Available online: *https://theicct.org/sites/default/files/publications/Future%20_HDV_standards_opportunity_20191125.pdf.*

[103] Our evaluation includes weighing our current understanding that shorter windows are more sensitive to measurement error and longer windows make it difficult to distinguish between duty cycles.

[104] We plan to propose that ''normalized average CO_2 rate'' be defined as the mass of NO_X (in grams) divided by the mass of CO_2 (in grams) and converted to units of mass of NO_X per unit of work by multiplying by the work-specific CO_2 emissions value. Our current thinking is to use the work-specific CO_2 value reported to EPA as part of the engine's family certification level (FCL) for the FTP certification cycle.

[105] The low load cycle proposed by CARB has an average power of eight percent.

of a moving average window analysis approach. Commenters are encouraged to share the benefits and limitations of the window sizes, binning criteria, and performance calculations introduced here, as well as other strategies EPA should consider. We also request data providing time and cost estimates for implementing a MAW-based in-use program and what aspects of this approach could be phased-in to reduce some of the upfront burden.

As mentioned previously, we are considering a separate MAW-based standard for each bin. In our current NTE-based program, the NTE standards are 1.5 times the certification duty-cycle standards. Similarly, for the MAW-based standards, we could design our certification and in-use programs to include corresponding laboratory-based cycles and in-use bins with emission standards that relate by a scaling factor. Alternatively, a percentile-based performance evaluation may make a scaling factor unnecessary. We request comment on appropriate scaling factors or other approaches to setting MAW-based standards. Finally, we request comment on whether there is a continued need for measurement allowances in an in-use program such as described above.

D. Extended Regulatory Useful Life

Under the Clean Air Act, an engine or vehicle's useful life is the period for which the manufacturer must demonstrate, to receive EPA certification, that the engine or vehicle will meet the applicable emission standard, including accounting for deterioration over time. Section 207(c) of the Act requires manufacturers to recall and repair engines if ''a substantial number of any class or category'' of them ''do not conform to the regulations . . . when in actual use throughout their useful life.'' Thus, there are two critical implications for the length of the useful life: (1) It defines the emission durability the manufacturer must demonstrate for certification, and (2) it is the period for which the manufacturer is liable for compliance in-use. With respect to the durability demonstration, manufacturers can either show that the components will generally last the full useful life and retain their function in meeting the applicable standard, or show that they will be replaced at appropriate intervals by owners.

Section 202(d) of the Act directs EPA to ''prescribe regulations under which the useful life of vehicles and engines shall be determined'' and establishes minimum values of 10 years or 100,000 miles, whichever occurs first. The Act authorizes EPA to adopt longer periods that we determine to be appropriate. Under this authority, we have established the following useful life mileage values for heavy-duty engines: [106]

- 110,000 miles for gasoline-fueled and light heavy-duty diesel engines
- 185,000 miles for medium heavy-duty diesel engines
- 435,000 miles for heavy heavy-duty diesel engines

Analysis of in-use mileage accumulation and typical rebuild intervals shows that current regulatory useful life values are much lower than actual in-use lifetimes of heavy-duty engines and vehicles. In 2013, EPA commissioned an industry characterization report that focused on heavy-duty diesel engine rebuilds.[107] The report relied on existing data from MacKay & Company surveys of heavy-duty vehicle operators. An engine rebuild was categorized as either an in-frame overhaul (where the rebuild occurred while the engine remained in the vehicle) or as an out-of-frame overhaul (where the engine was removed from the vehicle for somewhat more extensive service). We believe an out-of-frame overhaul is a reasonable estimate of a heavy-duty engine's primary operational life.[108] The following average mileage values were associated with out-of-frame overhauled engines from each of the heavy-duty vehicle classes in the report:

- Class 3: 256,000 miles
- Class 4: 346,300 miles
- Class 5: 344,200 miles
- Class 6: 407,700 miles
- Class 7: 509,100 miles
- Class 8: 909,900 miles

We translated these vehicle classes to EPA's regulatory classes for engines assuming Classes 3, 4, and 5 represent light heavy-duty diesel engines (LHDDEs), Classes 6 and 7 represent medium heavy-duty diesel engines (MHDDEs) and Class 8 represents heavy heavy-duty diesel engines (HHDDEs). The resulting average rebuild ages for LHDDE, MHDDE, and HHDDE are 315,500; 458,400; and 909,900, respectively.[109] The current regulatory useful life of today's engines covers less than half of the primary operational life of HHDDEs and MHDDEs and less than a third of LHDDEs—assuming the engines are only overhauled one time. We welcome comment on the average number of times an engine core receives an overhaul before being scrapped. We are also requesting comment on the whether the 2013 EPA report continues to reflect modern engine rebuilding practices.

We see no reason to change the useful life values with respect to years. However, based on available data, we intend to propose new useful life mileage values for all categories of heavy-duty engines to be more reflective of real-world usage. Although we are continuing to analyze the issue, we may propose to base the new useful life values for engines on the median or average period to the first rebuild, measured as mileage at the first out-of-frame overhaul. The reason to tie useful life to rebuild intervals stems from the changes to an engine when it is rebuilt. Rebuilding involves disassembling significant parts of the engine and replacing or remachining certain combustion-related components.

We are also evaluating the useful life for gasoline engines. Beginning no later than model year 2021, *chassis-certified* heavy-duty gasoline vehicles are subject to a 150,000-mile useful life. We request comment on whether this would be the appropriate value for heavy-duty gasoline *engines,* or if a higher value would be more appropriate. Consistent with Section III.A.2.i, we would expect to apply the same useful life for evaporative emissions technologies.

A direct result of longer useful life values would be to require manufacturers to change their durability demonstrations. Currently manufacturers measure emissions from a representative engine as they accumulate service hours on it. If we extend useful life with no other changes to this approach, manufacturers would need to extend this durability testing out further.[110] We request comment on alternative approaches that should be considered. For example, we could allow manufacturers to base the durability demonstration on component replacement if manufacturers could demonstrate that the component would actually be replaced in use. EPA has previously stated that a manufacturer's

[106] EPA adopted useful life values 110,000, 185,000, and 290,000 miles for light, medium, and heavy heavy-duty engines (respectively) in 1983. (48 FR 52170, November 16, 1983). The useful life for heavy heavy-duty engines was subsequently increased to 435,000 miles for 2004 and later model years. (62 FR 54694, October 21, 1997).

[107] ICF International, ''Industry Characterization of Heavy Duty Diesel Engine Rebuilds'' EPA Contract No. EP–C–12–011, September 2013.

[108] In-frame rebuilds tend to be less complete and occur at somewhat lower mileages.

[109] Note that these mileage values reflect replacement of engine components, but do not include aftertreatment components. At the time of the report, the population of engines equipped with DPF and SCR technologies was limited to relatively new engines that were not candidates for rebuild.

[110] See Section III.F.4, which describes potential opportunities to streamline our durability demonstration requirements.

commitment to perform the component replacement maintenance free of charge may be considered adequate, depending on the component. See 40 CFR 86.004–25 and related sections for other examples of how a manufacturer could potentially demonstrate durability.

In conversations with rebuilding facilities, it appears that aftertreatment components typically remain with the vehicle when engines are rebuilt out of frame and are not part of the rebuild process. We request comment on the performance and longevity of the aftertreatment components when the engine has reached the point of requiring a rebuild. Currently, aftertreatment components are covered by the useful life of the engine overall. While our current logic, explained above, would not support proposing useful life values for the entire engine that extend beyond the rebuild interval, it may not be appropriate for the durability requirements for the aftertreatment to be limited by the rebuild interval for the rest of the engine if current aftertreatment systems remain in service much longer. Thus, we are requesting comment on how to treat such components, including whether there is a need for separate provisions for aftertreatment components. One potential approach could be to establish a longer useful life for such components. However, we are also considering the possibility of requiring an a more extensive durability demonstration for such parts. For example, this might include a more aggressive accelerated aging protocol or an engineering analysis demonstrating a greater resistance to catalyst deterioration.

Another approach could be to develop a methodology to incorporate aftertreatment failure rates reflective of real-world experiences into engine deterioration factors at the time of certification, using methodology similar to incorporation of infrequent regeneration adjustment factors (''IRAF''). In 2018, CARB published an Initial Statement of Reasons document regarding proposed amendments to heavy-duty maintenance and warranty requirements. This document includes analysis of warranty data indicating that emission components for heavy heavy-duty engines had failure rates ranging from 1–17 percent, while medium heavy-duty engines had emission component failure rates ranging from 0–37 percent.[111] [112] ARB did this analysis using data from MY2012 engines, as this was the only model year with a complete five-year history. That model year included the phase-in of advanced emission controls systems, which may have an impact on failure rates compared to other model years. EPA is seeking comment on whether these rates reflect component failures for other model year engines and information on representative failure rates for all model years.

E. Ensuring Long-Term In-Use Emissions Performance

As discussed above, deterioration of emission controls can increase emissions from in-use vehicles. Such deterioration can be inherent to the design and materials of the controls, the result of component failures, or the result of mal-maintenance or tampering. We are requesting comment on ways to reduce in-use deterioration of emissions controls from all sources. We have identified five key areas of potential focus and seek comment on the following topics:

- Warranties that cover an appropriate fraction of engine operational life
- Improved, more tamper-resistant electronic controls
- Serviceability improvements for vehicles and engines
- Education and potential incentives
- Engine rebuilding practices that ensure emission controls are functional

We believe addressing these five areas could offer a comprehensive strategy for ensuring in-use emissions performance over more of an engine's operational life.[113] The following sections describe possible provisions we believe could especially benefit second or third owners of future engines who, under the current structure, may not have access to resources for maintaining compliance of their higher-mileage engines.

1. Lengthened Emissions Warranty

Section 207(a) of the Clean Air Act requires manufacturers to provide an emissions warranty. This warranty offers protection for purchasers from costly repairs of emission controls during the warranty period and generally covers all expenses related to diagnosing and repairing or replacing emission-related components.[114] EPA has established by regulation the warranty periods for heavy-duty engines to be whichever comes first of 5 years or 50,000 to 100,000 miles, depending on engine size (see 40 CFR 86.085). However, due to the high annual mileage accumulation of many trucks, our early assessment is that the current warranty periods are insufficient for real-world operations. For example, today's mileage requirements may represent less than a single year's worth of coverage for some Class 8 vehicles.[115] We welcome comment on annual vehicle miles travelled for different classes and vocations.

We intend to propose longer emissions warranty periods. A longer emissions warranty period could provide an extended period of protection for purchasers, as well as a greater incentive for manufacturers to design emission control components that are more durable and less costly to repair. Longer periods of protection for purchasers could provide a greater incentive for owners to appropriately maintain their engines and aftertreatment systems so as not to void their warranty. Designing more durable components could help reduce the potential for problems later in the vehicle life that lead to breakdowns and recalls. For instance, in at least one recent recall related to certain SCR catalysts in heavy-duty vehicles, the recall was not announced until nearly nine years after the initial sale of these engines; as such, there was a prolonged period of real-world emissions increases, and some owners likely absorbed significant cost and downtime for repairs that could have been covered by an extended warranty.[116] [117] More

[111] California Air Resources Board, ''Public Hearing to Consider Proposed Amendments to California Emission Control System Warranty Regulations and Maintenance Provisions for 2022 and Subsequent Model Year On-road Heavy-Duty Diesel Vehicles and Heavy-Duty Engines with Gross Vehicle Weight Ratings Greater Than 14,000 pounds and Heavy-Duty Diesel Engines in such Vehicles. Staff Report: Initial Statement of Reasons'' May 2018. Available at: *https://ww3.arb.ca.gov/regact/2018/hdwarranty18/isor.pdf.*

[112] California Air Resources Board, Appendix C: Economic Impact Analysis/Assessment to the Heavy-Duty Warranty Initial Statement of Reasons, page C–8. June 28, 2018. Available online: *https://ww3.arb.ca.gov/regact/2018/hdwarranty18/appc.pdf.*

[113] Memorandum to Docket EPA–HQ–OAR–2019–0055. ''Enhanced and Alternative Strategies to Achieve Long-term Compliance for Heavy-Duty Vehicles and Engines; the WISER Strategy'', Amy Kopin, December 12, 2019.

[114] See 40 CFR 1068.115 and Appendix I to Part 1068 for a list of covered emission-related components.

[115] American Transportation Research Institute, ''An Analysis of the Operational Costs of Trucking: 2017 Update'' October 2017. Available here: *https://truckingresearch.org/wp-content/uploads/2017/10/ATRI-Operational-Costs-of-Trucking-2017-10-2017.pdf.*

[116] U.S. Environmental Protection Agency. ''EPA Announces Largest Voluntary Recall of Medium- and Heavy-Duty Trucks.'' July 31, 2018. Available online: *https://www.epa.gov/newsreleases/epa-announces-largest-voluntary-recall-medium-and-heavy-duty-trucks.*

[117] Jaillet, James, ''Volvo setting aside $780M to address emission system degradation problem'' January 4, 2019. Available here: *https://www.ccjdigital.com/volvo-setting-aside-780m-to-address-emissions-system-degradation-problem/* Accessed 10/2/19.

durable parts could also lead to fewer breakdowns, which would likely reduce the desire for owners to tamper with emissions controls by bypassing DPF or SCR systems. In addition, extended warranties would result in additional tracking by OEMs of potential defect issues, which would increase the likelihood that emission defects (such as those involved in the recent recall) would be corrected in a timely manner. We request comment on emission component durability, as well as maintenance or operational strategies that could substantially extend the life of emission components and any regulatory barriers to implementing these strategies.

By rule, manufacturers providing a basic mechanical warranty must also cover emission related repairs for those same components.[118] Most engine manufacturers offer a 250,000-mile base warranty on their heavy heavy-duty engines, which already exceeds the current minimum 100,000-mile emission warranty requirement. We request comment on an appropriate length of emissions warranty period for engine and aftertreatment components to incentivize improved durability with reasonable cost.

One mechanism to maintain lower costs for a longer emissions warranty period could be to vary the length of warranty coverage across different types of components. For example, certain components (*e.g.,* aftertreatment components) could have a longer warranty period. Commenters are encouraged to address whether warranty should be tied to longer useful life, as well as whether the warranty period should vary by component and/or engine category.

With traditional warranty structures, parts and labor are covered 100 percent throughout a limited warranty period. We welcome comments addressing whether there would be value in alternative approaches. Figure 2 below provides a high-level illustration of alternative approaches to the traditional warranty structure. For example, there could be longer, prorated warranties that provide different levels of warranty coverage based on a vehicle's age or mileage. In addition, the warranty could be limited to include only certain parts after a certain amount of time, and/or not include labor for part, or even all, of the duration of coverage. We are seeking comment on any combination of these or other approaches. Commenters should consider discussing the components that could be included under each approach, and an appropriate period of time for given classes of vehicle and individual components. Commenters are encouraged to consider this issue in the context of the benefits of longer emissions warranty periods—namely providing an extended period of protection for purchasers, as well as a greater incentive for manufacturers to design emission control components that are more durable and less costly to repair.

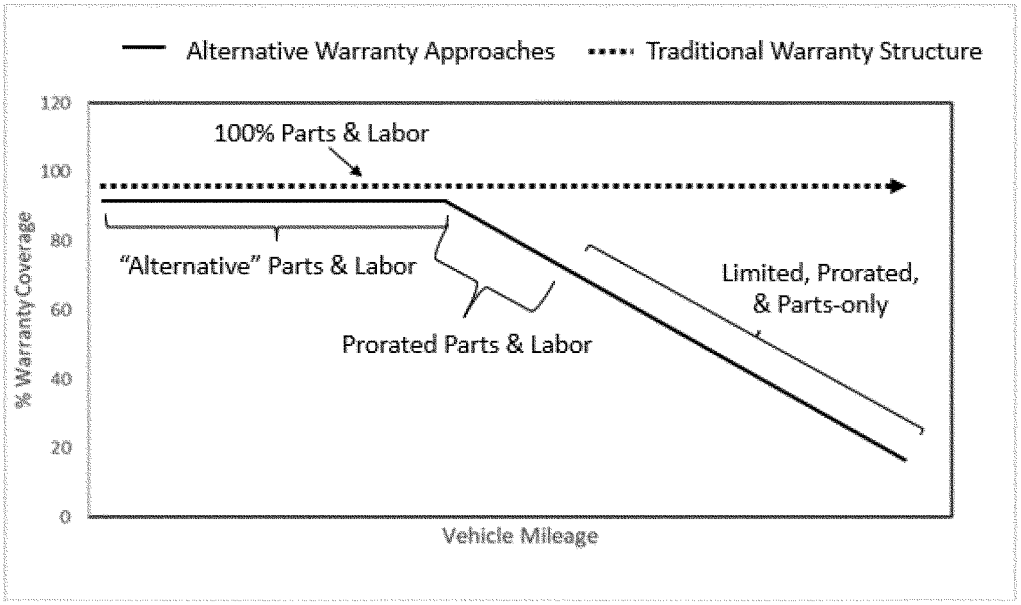

Figure 2 Alternative Warranty Approaches

2. Tamper-Resistant Electronic Controls

Although EPA lacks robust data on the frequency of tampering with heavy-duty engines and vehicles, enforcement activities continue to find evidence of tampering nationwide. Recently, EPA announced a new National Compliance Initiative (''NCI'') that will include enhanced collaboration with states to reduce the manufacture, sale, and installation of defeat devices on vehicles and engines, with a focus on commercial truck fleets.[119]

We have identified several different ways that tampering can occur.[120] Most commonly, the engine's emission system parts are physically removed or ''deleted'' electronically through the use of software which can disable these components. One of the key methods to

[118] See 40 CFR 86.004–2, definition of ''warranty period''.

[119] Belser, Evan, ''Tampering and Aftermarket Defeat Devices'' Presented to the National Association of Clean Air Agencies. September 18, 2019. Available here: *http://www.4cleanair.org/sites/default/files/resources/EPA%20Presentation%20to%20NACAA%20re%20Tampering%20and%20Aftermarket%20Defeat%20Device%20Sept%202019.pdf.*

[120] U.S. Environmental Protection Agency, ''Enforcement Data and Results'', Available online: *https://www.epa.gov/enforcement/enforcement-data-and-results.* Accessed September 18, 2019.

enable such actions is through tampering with the engine control module (ECM) calibration.

We are considering several approaches to prevent tampering with the ECM. One approach could be for manufacturers to provide public access to unique data channels that can be used by owners or enforcement agencies to confirm emission controls are active and functioning properly. A second approach to improved ECM security could be to develop methodologies that flag when ECMs are flashed with improper calibrations. This approach would require a process to distinguish between authorized and unauthorized flashing events, detect an unauthorized event, and store information documenting such events in the ECM. Finally, we are following ongoing work at SAE International that focuses on preventing cyber security hacking activity. The efforts to combat such safety- and security-related concerns may provide a pathway to apply similar solutions for emission control software and modules. We anticipate such a long-term approach would require effort beyond the CTI rulemaking timeframe. EPA requests comment on these or other actions we could take to help prevent ECM tampering.

3. Serviceability Improvements

Vehicle owners play an important role in achieving the intended emission reductions of the technologies that manufacturers implement to meet EPA standards. Vehicle owners are expected to properly maintain the engines, which includes scheduled (preventive) maintenance (*e.g.,* maintaining adequate DEF supply for their diesel engines' aftertreatment) and repairs when components or systems degrade or fail. Although defective designs and tampering can contribute significantly to increased in-use emissions, mal-maintenance (which includes improper repairs, delayed repairs, and delayed or unperformed maintenance) also increases in-use emissions. Mal-maintenance (by owners or repair facilities) can result from:

- High costs to diagnose and repair
- Inadequate maintenance instructions
- Limited access to service information and specialized tools to make repairs

As discussed below, we are looking to improve in-use maintenance practices by addressing these factors. We also discuss how maintenance concerns can increase tampering.

We are especially interested in the repair and maintenance practices of second owners, which are typically individual owners and small fleets that do not have the sophisticated repair facilities of the larger fleets. These second owners often experience emission-related problems that cannot be diagnosed easily, causing the repairs to be delayed. While fleets often have sufficient resources to obtain engine manufacturer-specific diagnostic tools for their trucks and can diagnose emission-systems problems quickly, smaller fleets or individual owners may be required to tow their truck to a dealer to diagnose and address the problem.

In 2009, EPA finalized regulations for the heavy-duty industry to ensure that manufacturers make ''service information'' available to any person repairing or servicing heavy-duty vehicles and engines (see 74 FR 8309, February 24, 2009). This service information includes: Information necessary to make use of the OBD system, instructions for making emission-related diagnoses and repairs, training information, technical service bulletins, etc. EPA is considering whether the service information and tools needed to diagnose problems with heavy-duty emission control systems are available and affordable. EPA requests comment on the following serviceability topics:

- Usefulness of currently available emission diagnostic information and equipment
- The adequacy of emission-related training for diagnosis and repair of these systems
- The readiness and capabilities of repair facilities in making repairs
- The reasonableness of the cost of purchasing this information and the equipment
- The prevalence of using of this equipment outside of large repair facilities
- If there are any existing barriers to enabling owners to quickly diagnose emission control system problems

We are currently evaluating which OBD signals are needed to diagnose and repair emission control components. While SAE's J1939 protocol establishes a comprehensive list of signals and parameters used in heavy-duty trucks, many signals are not required to be broadcast publicly. Ensuring that all owners, including those who operate older, higher-mileage vehicles, have access to service information to properly diagnose problems with their truck's emission system could reduce the cost for many owners who choose to do some maintenance on their own. Although J1939 includes nearly 2,000 parameters OBD regulations dictate a limited number of signals must be broadcast publicly. While today, some manufacturers broadcast more signals than are required, there is no guarantee that this practice will continue which could lead to loss of diagnostic ability. Therefore, we request comment on which signals we should require to be made available publicly to ensure adequate access to critical emissions diagnostic information.

Maintenance issues can result in owner dissatisfaction, which can incentivize removal or bypass of emission controls. EPA is aware of significant discontent expressed by owners concerning their experiences with emission systems on vehicles compliant with fully phased-in 2010 standards—in particular, for the first several model years after the new standards went into effect. Although significant improvements have been made to these systems since they were introduced into the market, reliability issues continue to cause concern for owners. For example, software and/or component failures can occur with little-to-no warning. Misdiagnosis can also lead to repeated repairs that don't solve the problem with the risk of repeated breakdowns, tows, and trips to repair facilities. We believe that reducing maintenance issues could also reduce tampering.

We are also evaluating the use of maintenance-inducing control features (''inducements'') that degrade engine performance as a means to ensure that certain critical maintenance steps are performed. For example, SCR-equipped engines generally include features that ''derate'' or severely limit engine operation if a vehicle is operated without DEF. EPA guidance for such features was issued in 2009.[121] While inducements were designed to encourage owners to perform proper maintenance, an inducement can be triggered for a variety of reasons that an owner cannot control (*e.g.,* faulty wiring, software glitches, or sensor failures) and may not degrade emission control performance. EPA understands that some owners view derate inducements as particularly problematic when they are not due to improper maintenance, because they are difficult to predict and may occur at inconvenient locations, far from preferred repair facilities. Owners' prior concerns over parts durability and potential breakdowns are likely heightened by the risk of inducements. Given that we are nearing a decade of industry experience in understanding

[121] U.S. Environmental Protection Agency. ''Certification Requirements for Heavy-Duty Diesel Engines Using Selective Catalyst Reduction (SCR) technologies'', February 18, 2009, CISD–09–04 (HDDE).

maintenance of SCR systems, we believe it is time to reevaluate these features, and potentially allow for less severe inducements. We believe such relief may also reduce tampering.

We broadly request comment on actions EPA should take, if any, to improve maintenance practices and the repair experience for owners. We welcome comment on the adequacy of existing emission control system maintenance instructions provided by OEMs. In addition, we request comment on whether other stakeholders (such as state and local agencies) may find it difficult in the field to detect tampering due to limitations of available scan tools and limited publicly available broadcast OBD parameters. We request comment on signals that are not currently broadcast publicly that would enable agencies to ensure vehicles are compliant during inspections.

4. Emission Controls Education and Incentives

In addition to more easily accessible service information for users, we believe that there may also be educational programs and voluntary incentives that could lead to better maintenance and real-world emission benefits. We understand that there continues to be misinformation in the marketplace regarding exhaust aftertreatment systems, including predatory websites that incorrectly indicate that their fuel economy-boosting delete kits are legal. We seek comment on the potential benefits of educational and/or voluntary, incentive-based programs such as EPA's SmartWay program.[122] Such a program could provide online training on issues such as the importance of the emissions equipment, how it functions, how emissions systems impact fuel economy, users' ability to access service information, and how to identify legitimate methods and services that do not compromise their vehicles' emissions compliance. In addition to educational elements, we are seeking comment on whether and how to develop tools allowing fleets to commit to selling used vehicles with fully functional and verified emissions control systems.

5. Improving Engine Rebuilding Practices [123]

Under 40 CFR 1068.120(b), EPA defines requirements for rebuilding engines to avoid violating the tampering prohibition in 1068.101(b)(1). EPA supports engine rebuilding that maintains emissions compliance, but it is unclear if the rebuilding industry's current practices adequately address the functioning of aftertreatment systems during this process. We are interested in improving engine rebuilding practices to help ensure emission controls continue to function properly after an engine is rebuilt. In particular, we are concerned about components that typically remain with the vehicle when the engine is removed for rebuilding, especially aftertreatment components. Because these components may not be included when an engine is overhauled, we believe that additional provisions may be needed to help ensure that these other components maintain proper function to the same degree that the rebuilt components do.

There are practical limitations to implementing new regulations that would include testing and repairing the aftertreatment system during each rebuild event. Currently, engine rebuilding is focused on the engine; aftertreatment systems may not be evaluated at the time of rebuild—especially when it remains with the vehicle during an out-of-frame rebuild. We recognize the potentially significant financial undertaking that might be necessary for the rebuilding industry to restructure their businesses to include aftertreatment systems in their processes.

Instead, our goal of proposing new regulations for rebuilding would be to ensure the aftertreatment system is functioning properly at the time of rebuild. We are considering a program where rebuilders would collect information documenting certain OBD codes to determine whether their emission systems are on the truck and functioning prior to placing an order for a factory-rebuilt engine or sending their engine out for rebuilding. This could consist of the engine rebuilder requesting that the owner provide them with a report showing the results of a limited number of OBD parameters that indicate broadly the status of the emissions systems. Such a program could involve the rebuilder ensuring this report has been received, reviewed, and retained. This sort of check would not be intended to impede the sale of the rebuilt engine. We acknowledge that some engines may have experienced catastrophic failures that may result in numerous ''check engine'' codes and prevent owners or repair facilities from running additional OBD monitors to confirm the aftertreatment system status.

We solicit comment on whether we could appropriately ensure compliance without creating unnecessary market disruption by requiring owners to attest that any problems shown in their engine's report will be repaired within a certain timeframe. We believe this documentation requirement would introduce a level of accountability with respect to aftertreatment systems when engines are rebuilt, with minimal burden on the rebuilders and owners. We request comment on the feasibility and challenges of such an approach, including suggestions of relevant OBD parameters, report format, and how to collect the information (*e.g.,* could manufacturers build into new vehicles the ability for such a status report to be run using a generic scan tool and be output in a text file).

F. Certification and Compliance Streamlining

The fundamental requirements for certification of heavy-duty engines are specified by the Clean Air Act. For example, the Act provides:

- Manufacturers must obtain a certificate of conformity from EPA before introducing an engine into commerce
- Manufacturers must obtain new certificates each year
- The certificate must be based on test data
- The manufacturer must provide an emissions warranty to the purchaser

However, EPA has significant discretion for many aspects of our certification and compliance programs, and we are requesting comment on potential opportunities to streamline our requirements, while ensuring no change in protection for public health and the environment, including EPA's ability to ensure compliance with the requirements of the CAA and our regulations. Commenters are encouraged to consider not just potential cost savings associated with each aspect of streamlining, but also ways to prevent any adverse impacts on the effectiveness of our certification and in-use compliance program.

1. Certification of Carry-Over Engines

Our regulations currently require engine families to undergo a thorough certification process each year. This includes ''carry-over'' engines with no year-to-year calibration or hardware changes. Although we have already adopted certain simplifications, we intend to consider additional

[122] Learn about SmartWay. Available online at: *https://www.epa.gov/smartway/learn-about-smartway.* Accessed October 3, 2019.

[123] As used here, the term ''rebuilding'' generally includes practices known commercially as ''remanufacturing''. Under 40 CFR part 1068, rebuilding refers to practices that fall short of producing a ''new'' engine.

improvements to this this process under the CTI to reduce the burden of certification for carry-over engines. We request comment on specific revisions that could apply for certifying carry-over engines.

2. Modernizing of Heavy-Duty Engine Regulations

Heavy-duty engine criteria pollutant standards and related regulations were codified into 40 CFR part 86 in the 1980s. We believe the CTI provides an opportunity to clarify (and otherwise improve) the wording of our existing heavy-duty criteria pollutant regulations in plain language and migrate them to part 1036. This part, which was created for the Phase 1 GHG program, provides a consistent, modern format for our regulations, with improved organization. This migration would not be intended to make any change to the compliance program, except as specifically and expressly addressed in the CTI rulemaking. We request comment on the benefits and concerns with this undertaking.

3. Heavy-Duty In-Use Testing Program

Under the current manufacturer-run heavy-duty in-use testing program, EPA annually selects engine families to evaluate whether engines are meeting current emissions standards. Once we submit a test order to the manufacturer to initiate testing, it must contact customers to recruit vehicles that use an engine from the selected engine family. The manufacturer generally selects five unique vehicles that have a good maintenance history, no malfunction indicators on, and are within the engine's regulatory useful life for the requested engine family. The tests require use of portable emissions measurement systems (PEMS) that meet the requirements of 40 CFR 1065 subpart J. Manufacturers collect data from the selected vehicles over the course of a day while they are used for their normal work and operated by a regular driver, and then submit the data to EPA.

EPA's current process for selecting an engine family test order is undefined and can be based on a range of factors including, but not limited to, recent compliance performance or simply length of time since last data collection on that family. Onboard NO_X sensors present an opportunity to better define EPA's criteria for test orders. For example, onboard NO_X data could be used to screen in-use engines for key performance characteristics that may indicate a problem. We welcome comment on possible strategies and challenges to incorporating onboard NO_X sensor data in EPA's engine family test order process.

An evolution of our current PEMS-based in-use testing approach could be to use onboard NO_X sensors that are already on vehicles instead of (or potentially in addition to) PEMS as the emission measurement tool for in-use compliance. In this scenario, manufacturers would collect and store performance data on the engine's computer until it is retrieved. When a test order is sent, manufacturers could simply collect the stored data and send it to EPA, reducing the burden of today's PEMS-based collection procedures. This simplified data collection could potentially expand the pool of vehicles evaluated for a given test order and compliance could be based on a much greater percentage of the in-use fleet with broader coverage of the industry's diverse operation. We are currently in the early stages of evaluating key questions for this type of evolution in approach to in-use testing. These key issues include: NO_X sensor performance (noted in III.A.3), appropriate engine parameters to target, quantity of data to collect, performance metrics to calculate, and frequency of reporting. Additionally, we are evaluating several candidate processes for aggregating the results. See Section III.C for a discussion of our early thinking on these topics as they relate to potential updates to EPA's manufacturer-run in-use testing program.

Another aspect of this potential evolution in the in-use testing program could be combining the use of onboard sensors with telematic communication technologies that facilitate manufacturers receiving and sending information from/to the vehicle in real time. Telematics services are already increasingly used by the industry due to the Department of Transportation's Federal Motor Carrier Safety Administration's Electronic Logging Device (ELD) Rule that requires the use of ELDs by the end of 2019.[124] The value of being able to measure NO_X emissions from the in-use fleet could be increased if coupled with real-time communication between the engine manufacturers and the vehicles. For example, such a combination could enable manufacturers to identify emission problems early. By being able to schedule repairs proactively or otherwise respond promptly, operators would be able to prevent or mitigate failures during in-use operation and make arrangements to avoid disrupting operations. We request comment on the potential use of telematics and communication technology in ensuring in-use emissions compliance.

Finally, we request comment on the need to measure PM emissions during in-use testing of DPF-equipped engines—whether under the current regulations or under some future program. PEMS measurement is more complicated and time-consuming for PM measurements than for gaseous pollutants such as NO_X and eliminating it for some or all in-use testing would provide significant cost savings. Commenters are encouraged to address whether there are less expensive alternatives for ensuring that engines meet the PM standards in use.

4. Durability Testing

Pursuant to Clean Air Act Section 206, EPA's regulations require that a manufacturer's application for certification include a demonstration that the new engines will meet applicable emission standards throughout the engines' useful life. This is often called the durability demonstration. The core of this demonstration includes procedures to calculate a deterioration factor (DF) to project full useful life emissions compliance based on testing a low-hour engine.[125]

A deterioration factor can be determined directly for heavy-duty diesel engines by aging the engine and exhaust aftertreatment system to full useful life on an engine dynamometer. This time-consuming process requires manufacturers to commit to product configurations well ahead of their pre-production certification testing in order to ensure the durability testing is complete. Some manufacturers run multiple, staggered durability tests in parallel in case a component failure occurs that would require a complete restart of the aging process.

Recognizing that full useful life testing is a significant undertaking (that can involve more than one full year of continuous engine operation for heavy heavy-duty engines), EPA has allowed manufacturers to age their systems to between 35 and 50 percent of full useful life on an engine dynamometer and extrapolate the data to full useful life. This extrapolation reduces the time to complete the aging process, but it is unclear if it accurately captures the emissions deterioration of the system.

[124] DOT Federal Motor Carrier Safety Administration. ''ELD Factsheet,'' Available online: *https://www.fmcsa.dot.gov/hours-service/elds/eld-fact-sheet-english-version.*

[125] 40 CFR 86.1823–08.

i. Diesel Aftertreatment Rapid Aging Protocol

The current durability demonstration provisions were developed before aftertreatment systems were widely adopted for emission control and we believe some of the inaccuracy of the deterioration extrapolation may be due to the deterioration mechanisms unique to catalysts. We believe a more cost-efficient demonstration protocol could focus on the emissions-critical catalytic aftertreatment system to accelerate the process and possibly improve accuracy.

EPA is developing a protocol for demonstrating aftertreatment durability through an accelerated catalyst aging procedure. The objective of this protocol is to artificially recreate the three primary catalytic deterioration processes observed in field-aged components: Thermal aging based on time at high temperature, chemical aging that accounts for poisoning due to fuel and oil contamination, and deposits. This work to develop a diesel aftertreatment rapid-aging protocol (DARAP) builds on an existing rapid-aging protocol designed for light-duty gasoline vehicles (64 FR 23906).

A necessary feature of this protocol development would be a process to validate deterioration projections from accelerated aging. Three engines and their corresponding aftertreatment systems will be aged using our current, engine-focused durability test procedure. Three comparable aftertreatment systems will be aged using a burner in place of an engine. We are planning to evaluate emissions using this accelerated approach, compared to the standard approach, at the following approximate intervals: 0; 280,000; 425,000; 640,000; and 850,000 miles.

We anticipate this validation program will take six months per engine platform. We expect the program will be completed after the CTI NPRM is issued. We plan to have results from one of the test engines in time to consider when developing the proposal, with the remaining results and final report completed before the final rulemaking. We request comment on the need, usefulness and appropriateness for a diesel aftertreatment rapid-aging protocol, and we request comment on the test program EPA has initiated to inform the accelerated durability demonstration method outlined here.

ii. Durability Certification

As mentioned previously, EPA has issued guidance to ensure manufacturers report accurate deterioration factors. EPA is considering updates to the durability demonstration currently required for manufacturers, which may still require manufacturers to validate their reported values. We believe onboard data collected for in-use compliance could provide a pathway for manufacturers to show the deterioration performance of their engines in the real world with reduced need for upfront durability demonstrations. We request comment on the suitability of onboard data to supplement our current or future deterioration factor demonstrations, as well as opportunities to reduce testing burden by reporting in-use data.

G. Incentives for Early Emission Reductions

The Clean Air Act requires that EPA provide manufacturers sufficient lead time to meet new standards. However, we recognize that manufacturers may have opportunities to introduce some technologies earlier than required, and that public health and the environment could benefit from such early introduction. Thus, we are requesting comments on potential provisions that would provide a regulatory incentive for reducing emissions earlier than required, including but not limited to incentives for low-emission, advanced powertrain technologies.[126] Such approaches can have the effect of accelerating the turnover of the existing fleet of heavy-duty vehicles to lower-emitting vehicles.

We have often relied on emission credit banking provisions, such as those in 40 CFR 1036.715, to incentivize early emission reductions. This approach has worked well for rulemakings that set numerically lower standards but keep the same test cycles and other procedures. However, this would not necessarily be the case for the CTI, where we expect to adopt new test cycles or other fundamentally new approaches. Manufacturers could generate and bank emission credits for the two current EPA test cycles (the FTP and RMC) in the near-term, but it is unclear how those credits could be used to show compliance with respect to operating modes that are not reflected in the current cycles.

Manufacturers could certify to any new CTI provisions once the rule is finalized, but that may not leave sufficient time for manufacturers to complete all of the steps required to certify new engines early. For example, manufacturers would not know the new useful life mileages until the rule is finalized, which may hinder them from completing durability work early. Therefore, we request comment on alternative approaches to incentivize early emission reductions.

In particular, we would be interested in the early adoption of technology that reduces low-load emissions. One approach we are considering would be for manufacturers to certify engines with new technology to the existing requirements (*i.e.,* FTP and RMC test cycles and durability demonstration), but then track the engines in-use using improved in-use provisions. This approach could demonstrate that the engines have lower emissions in use than other engines (including low-load operation) and serve as a pilot program for an updated in-use program. We request comment on options to potentially generate numerical off-cycle credit under this approach, or other interim benefits, such as delayed compliance for some other engine family, that could incentivize early emissions reductions.

IV. Next Steps

As described above, EPA has made important progress in the development of technical information to support new, more stringent NO_X emission standards and other potential program elements. We also expect to receive additional technical information in the comments on this ANPR. We intend to publish a NPRM this year, after reviewing the comments and considering how any new information we receive may be used in the analysis we have underway to support the CTI NPRM.

See the PUBLIC PARTICIPATION section at the beginning of this notice for details on how to submit comments.

V. Statutory and Executive Order Reviews

Under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993), this is not a ''significant regulatory action.'' Because this action does not propose or impose any requirements, the various statutes and Executive Orders that apply to rulemaking do not apply in this case. Should EPA subsequently pursue a rulemaking, EPA will address the statutes and Executive Orders as applicable to that rulemaking. Nevertheless, the Agency welcomes comments and/or information that would help the Agency to assess any of the following:

- The potential impact of a rule on small entities pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*);
- Potential impacts on federal, state, or local governments pursuant to the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531–1538);

[126] See Section III.A.4 for more discussion on advanced powertrain technologies.

• Federalism implications pursuant to Executive Order 13132, entitled Federalism (64 FR 43255, November 2, 1999);

• Availability of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113;

• Tribal implications pursuant to Executive Order 13175, entitled Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 6, 2000);

• Environmental health or safety effects on children pursuant to Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997)—applies to regulatory actions that: (1) Concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children and (2) are economically significant regulatory action, as defined by Executive Order 12866;

• Energy effects pursuant to Executive Order 13211, entitled Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001);

• Paperwork burdens pursuant to the Paperwork Reduction Act (PRA) (44 U.S.C. 3501); or

• Human health or environmental effects on minority or low-income populations pursuant to Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

The Agency will consider such comments during the development of any subsequent proposed rulemaking.

Dated: January 6, 2020.

Andrew R. Wheeler,

Administrator.

[FR Doc. 2020–00542 Filed 1–17–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Chapter IV

[CMS–2324–NC]

RIN 0938–ZB57

Coordinating Care From Out-of-State Providers for Medicaid-Eligible Children With Medically Complex Conditions

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Request for information.

SUMMARY: This document is a request for information (RFI) to seek public comments regarding the coordination of care from out-of-state providers for Medicaid-eligible children with medically complex conditions. We wish to identify best practices for using out-of-state providers to provide care to children with medically complex conditions; determine how care is coordinated for such children when that care is provided by out-of-state providers, including when care is provided in emergency and non-emergency situations; reduce barriers that prevent such children from receiving care from out-of-state providers in a timely fashion; and identify processes for screening and enrolling out-of-state providers in Medicaid, including efforts to streamline such processes for out-of-state providers or to reduce the burden of such processes on them. We intend to use the information received in response to this RFI to issue guidance to state Medicaid directors on the coordination of care from out-of-state providers for children with medically complex conditions.

DATES: *Comments:* To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on March 23, 2020.

ADDRESSES: In commenting, refer to file code CMS–2324–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this RFI to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2324–NC, P.O. Box 8016, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2324–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT: Nicole Gillette-Payne, 212–616–2465.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period will be made available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We will post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments.

I. Background

Medicaid health homes were originally authorized under section 2703 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148, enacted March 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 115–152, enacted March 30, 2010) (the ACA), which added section 1945 to the Social Security Act (the Act). Section 1945 of the Act allows states to elect a Medicaid state plan option to provide a comprehensive system of care coordination for Medicaid beneficiaries with chronic conditions. The goal of the health homes authorized under section 1945 of the Act is to integrate and coordinate all primary, acute, behavioral health, and long-term services and supports to treat the whole person. States may not limit enrollment by age in the health homes authorized under section 1945 of the Act, but may target chronic conditions that have a higher prevalence in particular age groups.[1]

[1] See Health Homes FAQs, December 18, 2017, *https://www.medicaid.gov/state-resource-center/medicaid-state-technical-assistance/health-home-information-resource-center/downloads/health-homes-faq-12-18-17.pdf.*

The Medicaid Services Investment and Accountability Act of 2019 (MSIA) (Pub. L. 116–16, enacted April 18, 2019), added section 1945A to the Act, which authorizes a new optional Medicaid health home benefit. Under section 1945A of the Act, beginning October 1, 2022, states have the option to cover health home services for Medicaid-eligible children with medically complex conditions who choose to enroll in a health home. States will submit State Plan Amendments (SPAs) to exercise this option, which permits them to specifically target children with medically complex conditions as defined in section 1945A(i) of the Act. States will receive a 15 percent increase in the federal match for their expenditures on section 1945A health home services during the first 2 fiscal year quarters that the approved health home SPA is in effect, but under no circumstances may the federal matching percentage for these services exceed 90 percent. Among other required information, states must include in their section 1945A SPAs a methodology for tracking prompt and timely access to medically necessary care for children with medically complex conditions from out-of-state providers.

To qualify for health home services under section 1945A of the Act, children with medically complex conditions must be under 21 years of age and eligible for Medicaid. Additionally, they must either: (1) Have at least one or more chronic conditions that cumulatively affect three or more organ systems and that severely reduce cognitive or physical functioning (such as the ability to eat, drink, or breathe independently) and that also require the use of medication, durable medical equipment, therapy, surgery, or other treatments; or (2) have at least one life-limiting illness or rare pediatric disease as defined in section 529(a)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360ff(a)(3)).

Section 1945A(i)(2) of the Act defines a chronic condition as a serious, long-term physical, mental, or developmental disability or disease. Qualifying chronic conditions listed in the statute include cerebral palsy, cystic fibrosis, HIV/AIDS, blood diseases (such as anemia or sickle cell disease), muscular dystrophy, spina bifida, epilepsy, severe autism spectrum disorder, and serious emotional disturbance or serious mental health illness. The Secretary may establish higher levels as to the number or severity of chronic, life threatening illnesses, disabilities, rare diseases or mental health conditions for purposes of determining eligibility for health home services under section 1945A of the Act.

Under section 1945A(i)(4) of the Act, health home services for children with medically complex conditions must include the following list of comprehensive and timely high-quality services:

- Comprehensive care management;
- Care coordination, health promotion, and providing access to the full range of pediatric specialty and subspecialty medical services, including services from out-of-state providers, as medically necessary;
- Comprehensive transitional care, including appropriate follow-up, from inpatient to other settings; [2]
- Patient and family support, including authorized representatives;
- Referrals to community and social support services, if relevant; and
- Use of health information technology (HIT) to link services, as feasible and appropriate.

These services are very similar to the health home services described in section 1945 of the Act, with some variations to reflect the targeted population for section 1945A health homes.

Health home services must be provided by a health home, which is a designated provider (including a provider that operates in coordination with a team of health care professionals) or a health team that is selected by a Medicaid-eligible child with medically complex conditions, or by his or her family. Subject to the provider qualification standards established by the Secretary as described in section 1945A(b) of the Act, states determine which providers or entities are qualified to serve as health homes. However, section 1945A of the Act does not limit the ability of a child (or a child's family) to select any qualified health home provider as the child's health home. Per section 1945A(i)(5) of the Act, designated providers may be:

- A physician (including a pediatrician or a pediatric specialty or subspecialty provider), children's hospital, clinical practice or clinical group practice, prepaid inpatient health plan (PIHP) or prepaid ambulatory health plan (PAHP) (as those terms are defined in 42 CFR 438.2);
- A rural clinic;
- A community health center;
- A community mental health center;
- A home health agency; or
- Any other entity or provider that is determined by the state and approved by the Secretary to be qualified to be a health home for children with medically complex conditions on the basis of documentation that the entity has the systems, expertise, and infrastructure in place to provide health home services.[3]

Designated providers may include providers who are employed by, or affiliated with, a children's hospital.

Per section 1945A(i)(6) of the Act, a team of health care professionals may include:

- Physicians and other professionals, such as pediatricians or pediatric specialty or subspecialty providers, nurse care coordinators, dietitians, nutritionists, social workers, behavioral health professionals, physical therapists, occupational therapists, speech pathologists, nurses, individuals with experience in medical supportive technologies, or any professionals determined to be appropriate by the state and approved by the Secretary;
- An entity or individual who is designated to coordinate such a team; and
- Community health workers, translators, and other individuals with culturally-appropriate expertise.

A team of health care professionals may be freestanding, virtual, or based at a children's hospital, hospital, community health center, community mental health center, rural clinic, clinical practice or clinical group practice, academic health center, or any entity determined to be appropriate by the State and approved by the Secretary. At section 1945A(i)(7) of the Act, a health team is defined as having the meaning given such term for purposes of section 3502 of the ACA.

Under section 1945A(b) of the Act, section 1945A health home providers must demonstrate to the state the ability to:

- Coordinate prompt care for children with medically complex conditions, including access to pediatric emergency services at all times;
- Develop an individualized comprehensive pediatric family-centered care plan for children with medically complex conditions that accommodates patient preferences;
- Work in a culturally and linguistically appropriate manner with the family of a child with medically complex conditions to develop and incorporate into the child's care plan, in a manner consistent with the needs of the child and the choices of the child's

[2] Many children with medically complex conditions have a disability under federal disability rights laws, including the Americans with Disabilities Act. Children covered by these laws have a right to receive services in the most integrated setting appropriate to their needs. *See Olmstead* v. *L.C.,* 527 U.S. 581 (1999).

[3] For example, a managed care organization (MCO) as the term is defined in 42 CFR 438.2.

family, ongoing home care, community-based pediatric primary care, pediatric inpatient care, social support services, and local hospital pediatric emergency care;

• Coordinate access to subspecialized pediatric services and programs for children with medically complex conditions, including the most intensive diagnostic, treatment, and critical care levels as medically necessary;

• Coordinate access to palliative services if the state provides Medicaid coverage for palliative services;

• Coordinate care for children with medically complex conditions with out-of-state providers furnishing care to these children to the maximum extent practicable for the children's families and where medically necessary, in accordance with 42 CFR 431.52 and the guidance that CMS will provide on this topic under section 1945A(e)(1) of the Act; and

• Collect and report information described in section 1945A(g)(1) of the Act, which includes provider identifying information, specific health care services to be provided to children with medically complex conditions, and information on applicable quality measures.

A. Medicaid Services and Out-of-State Providers

Medicaid generally provides broad coverage to eligible children, both through required benefits packages for eligible children, and through the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) benefit. Through the EPSDT benefit, states must provide any service listed in section 1905(a) of the Act to eligible beneficiaries under age 21, when the service is determined to be necessary to correct or ameliorate an identified condition, and in any amount that is medically necessary, regardless of whether the service is covered in the state plan. In some cases, children with medically complex conditions may require specialized diagnostic or treatment services that are not available from providers in their state. Federal regulations at § 431.52(b)(3) require that, if a state Medicaid agency, on the basis of medical advice, determines that needed medical services or necessary supplementary resources for a beneficiary resident in the state are ''more readily available'' in another state, the state must pay for services furnished in the other state to the same extent that it would pay for services furnished within its boundaries. Under Medicaid managed care, § 438.206(b)(4) provides that if a managed care organization (MCO), PIHP, or PAHP (''managed care plan'') provider network is unable to provide necessary services covered under the contract to an enrollee, the managed care plan must adequately and timely cover the services out of network for the enrollee. Furthermore, §§ 435.930(c) and 438.114(c), require, respectively, that state Medicaid agencies and Medicaid managed care plans cover needed emergency services as defined in regulations. In the case of an individual with an ''emergency medical condition,'' managed care plans must cover and pay for emergency services, and in some instances post-stabilization care services, ''regardless of whether the provider that furnishes the services has a contract'' with the managed care plan, whether in-state or out-of-state.

Per section 1902(a)(27) of the Act and § 431.107(b), providers or organizations furnishing services under the state plan must have a provider agreement. In the February 2, 2011 **Federal Register**, we published a final rule where we established Medicaid provider screening requirements at 42 CFR part 455, subpart E (76 FR 5862). In addition, section 5005(b)(1) of the 21st Century Cures Act (Pub. L. 114–255, enacted December 13, 2016) amended section 1902(a) of the Act to require that states require enrollment by all providers furnishing, ordering, prescribing, referring, or certifying eligibility for Medicaid services and collect identifying information from enrolled providers, not later than January 1, 2017. In the case of a state that under its state plan or waiver of the plan for medical assistance pays for medical assistance on a fee-for-service basis, the state shall require each provider furnishing items or services to, or ordering, prescribing, referring, or certifying eligibility for, services for individuals eligible to receive medical assistance under such plan to enroll with the state agency and provide to the state agency the provider's identifying information, including the name, specialty, date of birth, Social Security number, national provider identifier (if applicable), federal taxpayer identification number, and the state license or certification number of the provider (if applicable).[4] Section 5005(b)(2) of the 21st Century Cures Act amended section 1932(d) of the Act to include similar enrollment and information reporting requirements for providers participating in the network of a Medicaid managed care entity, effective no later than January 1, 2018. Only under very limited circumstances may a provider or organization bill and receive payment without being enrolled as a Medicaid provider in the reimbursing state. Specifically, a state may pay a claim to a furnishing provider that is not enrolled in the reimbursing state's Medicaid plan to the extent that the claim is otherwise payable and meets the following criteria:

• The item or service is furnished by an institutional provider, individual practitioner, or pharmacy at an out-of-state practice location– that is, located outside the geographical boundaries of the reimbursing state's Medicaid plan;

• The National Provider Identifier of the furnishing provider is represented on the claim;

• The furnishing provider is enrolled and in an ''approved'' status in Medicare or in another state's Medicaid plan;

• The claim represents services furnished, and

• The claim represents either:

++ A single instance of care furnished over a 180-day period; or

++ Multiple instances of care furnished to a single participant, over a 180-day period.[5] The payment to the out-of-state provider is subject to the same federal matching rate as the state receives when it pays an in-state provider, which means that the state pays the same share in either case.

B. Guidance on Coordinating Care From Out-of-State Providers

Under section 1945A(e) of the Act, the Secretary must issue guidance to state Medicaid directors by October 1, 2020 on:

• Best practices for using out-of-state providers to provide care to children with medically complex conditions;

• Coordinating care provided by out-of-state providers to children with medically complex conditions, including when provided in emergency and non-emergency situations;

• Reducing barriers that prevent children with medically complex conditions from receiving care from out-of-state providers in a timely fashion; and

• Processes for screening and enrolling out-of-state providers, including efforts to streamline these processes or reduce the burden of these processes on out-of-state providers. Under section 1945A(g)(2)(B) of the Act, states with an approved section 1945A SPA must submit to the Secretary, and make publicly available on the appropriate state website, a report on

[4] Section 1902(a)(78) of the Act.

[5] The Medicaid Provider Enrollment Compendium (7/24/18), pg. 42, *https://www.medicaid.gov/affordable-care-act/downloads/program-integrity/mpec-7242018.pdf.*

how the state is implementing the guidance issued under section 1945A(e) of the Act, including through any best practices adopted by the state. The required report must be submitted no later than 90 days after the state's section 1945A SPA is approved.

Section 1945A(e)(2) of the Act directs the Secretary to issue this request for information (RFI) as part of the process of developing the required guidance, to seek input from children with medically complex conditions and their families, states, providers (including children's hospitals, hospitals, pediatricians, and other providers), managed care plans, children's health groups, family and beneficiary advocates, and other stakeholders with respect to coordinating the care provided by out-of-state providers to children with medically complex conditions.

II. Solicitation of Comments

This is an RFI only. Respondents are encouraged to provide complete but concise responses to the questions listed in the sections outlined below. Response to this RFI is completely voluntary. This RFI is issued solely for information and planning purposes; it does not constitute a Request for Proposal, for applications, for proposal abstracts, or for quotations. This RFI does not commit the Government to contract for any supplies or services or make a grant award. Further, we are not seeking proposals through this RFI and will not accept unsolicited proposals. Responders are advised that the United States Government will not pay for any information or administrative costs incurred in response to this RFI; all costs associated with responding to this RFI will be solely at the interested party's expense. Not responding to this RFI does not preclude participation in any future procurement, if conducted. It is the responsibility of the potential responders to monitor this RFI announcement for additional information pertaining to this request. Also, we note that we will not respond to questions from individual responders about the policy issues raised in this RFI. We may or may not choose to contact individual responders. Such communications would only serve to further clarify written responses. Contractor support personnel may be used to review RFI responses. Responses to this RFI are not offers and cannot be accepted by the Government to form a binding contract or issue a grant. Information obtained as a result of this RFI may be used by the Government for program planning on a non-attribution basis. Respondents should not include any information that might be considered proprietary or confidential. This RFI should not be construed as a commitment or authorization to incur cost for which reimbursement would be required or sought. All submissions become Government property and will not be returned. We may publicly post the comments received, or a summary thereof.

A. Public/Stakeholder Feedback

We are soliciting general comments on the coordination of care provided by out-of-state providers including but not limited to primary care providers, pediatricians, hospitals, specialists, and other health care providers or entities who may provide care for Medicaid-eligible children with medically complex conditions. We are specifically seeking input on these topics as they relate to urban, rural, Tribal, and medically underserved populations, as barriers and successful strategies may vary by geography. We also seek input on these topics with respect to both Medicaid fee-for-service and Medicaid managed care arrangements. Therefore, in responding to these comments, please differentiate between Medicaid fee-for-service and Medicaid managed care arrangements, as appropriate.

- We are seeking public comment on any best practices for using out-of-state providers to provide care to children with medically complex conditions, including specific examples of what has and has not worked in the commenter's experience.
- We are seeking public comment about coordinating care from out-of-state providers for children with medically complex conditions, including when care is provided in emergency and non-emergency situations. Discussion of specific examples of what has and has not worked, in the commenter's experience, is especially welcome.
- We are seeking information about any state initiatives that have promoted and/or improved the coordination of services and supports provided by out-of-state providers to children with medically complex conditions.
- We are seeking public comment related to administrative, fiscal, and regulatory barriers that states, providers, beneficiaries, and their families experience that prevent children with medically complex conditions from receiving care, including community and social support services, from out-of-state providers in a timely fashion, as well as examples of successful approaches to reducing those barriers.
- We are seeking public comment related to barriers that prevent caregivers from accessing or navigating care from out-of-state providers in a timely fashion, as well as examples of successful approaches to reducing those barriers.
- We are seeking public comment related to individual financial barriers (for example, costs of travel, lodging, and work hours lost) that prevent children with medically complex conditions from receiving care from out-of-state providers in a timely fashion, as well as examples of successful approaches to reducing those barriers.
- We are seeking public comment on successful methods to inform caregivers of children with medically complex conditions about ways to access care from out-of-state providers.
- We are seeking public comment on any measures that have been, or could be employed by states, providers, health systems and hospitals to reduce barriers to coordinating care for children with medically complex conditions when receiving care from out-of-state providers.
- We are seeking public comment related to processes that states could employ for screening and enrolling out-of-state Medicaid providers, in both emergent and non-emergent situations, including efforts to streamline these processes or reduce the administrative and fiscal burden of these processes on out-of-state providers and states.
- We are seeking public comment on challenges with referrals to out-of-state providers for specialty services, including community and social supports, for children with medically complex conditions and the impact of these challenges on access to qualified providers.
- We are seeking public comment on best practices for developing appropriate and reasonable terms of contracts and payment rates for out-of-state providers, for both Medicaid fee-for-service and Medicaid managed care.

III. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping, or third-party disclosure requirements. However, section II. of this document does contain a general solicitation of comments in the form of a request for information. In accordance with the implementing regulations of the Paperwork Reduction Act of 1995 (PRA), specifically 5 CFR 1320.3(h)(4), facts or opinions submitted in response to general solicitations of comments from the public, published in the **Federal Register** or other publications, regardless of the form or format thereof,

provided that no person is required to supply specific information pertaining to the commenter, other than that necessary for self-identification, as a condition of the agency's full consideration, are not generally considered information collections and therefore not subject to the PRA. Consequently, there is no need for review by the Office of Management and Budget under the authority of the PRA (44 U.S.C. Chapter 35).

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble. The comments provided in response to the RFI will assist CMS in developing guidance for state Medicaid directors on the coordination of care from out-of-state providers for children with medically complex conditions.

Dated: November 4, 2019.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Dated: January 10, 2020.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2020–00796 Filed 1–16–20; 11:15 am]

BILLING CODE 4120–01–P

Notices

Federal Register

Vol. 85, No. 13

Tuesday, January 21, 2020

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Determining Eligibility for Free and Reduced Price Meals and Free Milk

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this information collection. This collection is a revision of a currently approved collection for determining eligibility for free and reduced price meals and free milk as stated in FNS regulations. These Federal requirements affect eligibility under the National School Lunch Program, School Breakfast Program, and the Special Milk Program and are also applicable to the Child and Adult Care Food Program and the Summer Food Service Program when individual eligibility must be established. The eligibility burden of the Child and Adult Care Food Program and the Summer Food Service Program is reported in information collections under OMB Control Numbers 0584–0055 and 0584–0280, respectfully. The proposed collection reports the eligibility burden of National School Lunch Program; the School Breakfast Program; and the Special Milk Program. Previous information collection reviews unintentionally omitted the burden hours associated with the Special Milk Program's eligibility criteria, and some revisions being requested are due to the addition of the Special Milk Program. The current approval for the information collection burden associated with the eligibility requirements expires on March 31, 2020.

DATES: Written comments must be received on or before March 23, 2020.

ADDRESSES: Comments may be sent to: Tina Namian, School Programs Branch, Policy and Program Development Division, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Alexandria, VA 22314. Comments also may be submitted via fax to the attention of Tina Namian at 703–305–6294 or via email to *SM.FN.CNDinternet@usda.gov.* Comments also will be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically. All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Tina Namian at 703–305–2590.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools—7 CFR part 245.

Form Number: This collection does not contain any forms. However, FNS–742 and FNS–874, which are approved under OMB Control Number 0584–0594 Food Programs Reporting System (FPRS), are used in conjunction with this collection.

OMB Number: 0584–0026.

Expiration Date: March 31, 2020.

Type of Request: Revision of a currently approved collection.

Abstract: The Food and Nutrition Service administers the National School Lunch Program, the School Breakfast Program, and the Special Milk Program as mandated by the Richard B. Russell National School Lunch Act (NSLA), as amended (42 U.S.C. 1751, *et seq.*), and the Child Nutrition Act of 1966, as amended (42 U.S.C. 1771, *et seq.*). Per 7 CFR part 245, schools participating in these meal and milk programs must make free and reduced price meals and free milk available to eligible children. This information collection obtains eligibility information for free and reduced price meals and free milk and also incorporates verification procedures as required to confirm eligibility. The Programs are administered at the State and local levels and operations include direct certification, the submission of household size and income applications for school meal/milk benefits, record maintenance, and public notification of eligibility determinations, documentation, and other data. The information collection burden associated with this revision is summarized in the chart below. The difference in burden from the previous information collection is due to the addition of several reporting, recordkeeping, and public notification burdens associated with determining eligibility in the Special Milk Program as well as changes in the number of participating school food authorities/local educational agencies, and the number of households submitting applications. This is a revision of the currently approved information collection.

Affected Public: State Agencies, School Food Authorities/Local Educational Agency, and Individuals/Households.

Estimated Number of Respondents: 3,571,311 (54 SAs, 19,371 SFAs/LEAs, 3,551,886 households).

Estimated Number of Responses per Respondent: 3.514.

Estimated Total Annual Responses: 12,550,196.

Estimated Hours per Response: 0.053.

Estimated Total Annual Reporting Burden: 655,065.

Estimated Total Annual Recordkeeping Burden: 2,911.

Estimated Total Annual Public Disclosure Burden: 6,750.

Estimated Total Annual Burden: 664,725.

Current OMB Inventory for Part 245: 939,501.

Difference (Burden Revisions Requested with this renewal): −274,776.

Refer to the following table for estimated annual burden per each type of respondent:

Affected public (a)	Estimated number respondents (b)	Estimated number responses per respondent (c)	Estimated total annual responses (d) (b × c)	Estimated hours per response (e)	Estimated Total annual burden hours (f) (d × e)
Reporting					
State Agencies	54	166.44	8,988	0.76	562
School Food Authorities	19,371	455.953	8,832,491	0.024	213,454
Individuals/Households	3,551,886	1.03	3,653,373	0.12	441,049
Total Reporting Burden	3,571,311	3.50	12,494,853	0.05	655,065
Recordkeeping					
State Agencies	54	12.09	653	0.174	113
School Food Authorities	15,786	1.03	16,286	0.172	2,797
Total Recordkeeping Burden	15,840	1.07	16,939	0.172	2,911
Public Notification					
State Agencies	54	2	108	0.14	15
School Food Authorities	19,371	2	38,296	0.176	6,735.25
Total Public Notification Burden	19,425	1.98	38,404	0.176	6,750
Total Reporting, Recordkeeping and Public Disclosure					
Reporting	3,571,311	3.50	12,494,853	0.05	655,065
Recordkeeping	15,840	1.07	16,939	0.172	2,911
Public Notification	19,425	1.98	38,404	0.176	6,750
Total Reporting, Recordkeeping, and Public Disclosure Burden	3,571,311	3.514	12,550,196	0.053	664,725

Dated: December 30, 2019.

Pamilyn Miller,

Administrator, Food and Nutrition Service.

[FR Doc. 2020–00908 Filed 1–17–20; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–57–2019]

Foreign-Trade Zone (FTZ) 145—Shreveport, Louisiana; Authorization of Production Activity; Benteler Steel/Tube Manufacturing Corp. (Seamless Quality Steel Tubes); Shreveport, Louisiana

On September 13, 2019, Benteler Steel/Tube Manufacturing Corp. submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 145, in Shreveport, Louisiana.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (84 FR 49717, September 23, 2019). On January 13, 2020, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: January 13, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–00859 Filed 1–17–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–040]

Truck and Bus Tires From the People's Republic of China: Correction to Final Results of Antidumping Duty Changed Circumstances Review

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

SUMMARY: The Department of Commerce (Commerce) is correcting the final results in the changed circumstances review (CCR) with respect to the antidumping duty order on truck and bus tires from the People's Republic of China (China) to correct the cash deposit rate in effect on the date that those final results published.

DATES: Applicable January 21, 2020.

FOR FURTHER INFORMATION CONTACT: Lochard Philozin, 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) 482–4260.

Background

On January 13, 2020, Commerce published in the **Federal Register** the final results of the CCR [1] of the

[1] *See Truck and Bus Tires from the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review,* 85 FR 1802 (January 13, 2020) (*CCR Final Results*). In the *CCR Final Results* we determined that Sailun Group Co., Ltd. (Sailun Group) is the successor-in-interest to Sailun Jinyu Group Co., Ltd. (Sailun Jinyu), and that Sailun (Shenyang) Tire Co., Ltd. (Sailun

antidumping duty order on truck and bus tires from China.[2] In the **Federal Register** notice, we inadvertently stated that Commerce will instruct U.S. Customs and Border Protection to suspend liquidation of all shipments of subject merchandise for the two successor-in-interest producer/exporter combinations at their predecessor-in-interest producer/exporter combinations' cash deposit rate of 9.00 percent. This notice serves to correct the cash deposit rated listed in the *CCR Final Results* from 9.00 percent to 0.00 percent, which is the estimated weighted-average dumping margin adjusted for domestic pass-through subsidies and export subsidies found in the amended final determination of the companion countervailing duty investigation of this merchandise imported from China.[3] No other changes have been made to the *CCR Final Results.*

This correction to the *Final Results* is issued and published in accordance with section 751(b)(1)(A) of the Tariff Act of 1930, as amended, and 19 CFR 351.216, 351.221(c)(3), and 351.224(e).

Dated: January 14, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–00853 Filed 1–17–20; 8:45 am]

BILLING CODE 3510–DS–P

Shenyang) is the successor-in-interest to Shenyang Peace Radial Tyre Manufacturing Co., Ltd. (Shenyang Peace).

[2] *See Truck and Bus Tires from the People's Republic of China: Antidumping Duty Order,* 84 FR 4436 (February 15, 2019) (*AD Order*).

[3] *See AD Order,* 84 FR 4436, 4437 n.9; *see also Truck and Bus Tires from the People's Republic of China: Amended Final Determination and Countervailing Duty Order,* 84 FR 4434 (February 15, 2019).

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee (ETTAC) Public Meeting

AGENCY: International Trade Administration, DOC.

ACTION: Notice of an open meeting of a Federal Advisory Committee.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Environmental Technologies Trade Advisory Committee (ETTAC).

DATES: The meeting is scheduled for February 11, 2020, from 8:45 a.m. to 3:30 p.m. Eastern Daylight Time (EDT). The deadline for members of the public to register or to submit written comments for dissemination prior to the meeting is 5:00 p.m. EDT on Thursday, January 30, 2020. The deadline for members of the public to request auxiliary aids is 5:00 p.m. EDT on Thursday, January 30, 2020.

ADDRESSES: The meeting will take place in the Research Library at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. To register and obtain call-in information, submit comments, or request auxiliary aids, please contact: Mr. Adam O'Malley, Office of Energy & Environmental Industries (OEEI), International Trade Administration, Room 28018, 1401 Constitution Avenue NW, Washington, DC 20230 or email: *Adam.OMalley@trade.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Adam O'Malley, Office of Energy & Environmental Industries (OEEI), International Trade Administration, Room 28018, 1401 Constitution Avenue NW, Washington, DC 20230 (Phone: 202–482–4850; Fax: 202–482–5665; email: *Adam.OMalley@trade.gov*).

SUPPLEMENTARY INFORMATION: The meeting will take place on February 11, 2020, from 8:45 a.m. to 3:30 p.m. EDT. The general meeting is open to the public, and time will be permitted for public comment from 3:00–3:30 p.m. EDT. Members of the public seeking to attend the meeting are required to register in advance. Those interested in attending must provide notification by Thursday, January 30, 2020, at 5:00 p.m. EDT, via the contact information provided above. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to OEEI at *Adam.OMalley@trade.gov* or (202) 482–4850 no less than one week prior to the meeting. Requests received after this date will be accepted, but it may not be possible to accommodate them.

Written comments concerning ETTAC affairs are welcome any time before or after the meeting. To be considered during the meeting, written comments must be received by Thursday, January 30, 2020, at 5:00 p.m. EDT to ensure transmission to the members before the meeting. Minutes will be available within 30 days of this meeting.

Topics to be considered: During the February 11 meeting, which is the fifth in-person meeting of the current charter term, the ETTAC will deliberate on and finalize potential recommendations to the interagency through the Secretary of Commerce. Topics to be considered will fall under the three themes of Trade Policy and Trade Negotiations, Trade Promotion and Export Market Development, and Cooperation on Standards, Certifications and Regulations. OEEI will make the final agenda available to the public one week prior to the meeting. Please email *Adam.OMalley@trade.gov* or contact 202–482–4850 for a copy.

Background: The ETTAC is mandated by Section 2313(c) of the Export Enhancement Act of 1988, as amended, 15 U.S.C. 4728(c), to advise the Environmental Trade Working Group of the Trade Promotion Coordinating Committee, through the Secretary of Commerce, on the development and administration of programs to expand U.S. exports of environmental technologies, goods, services, and products. The ETTAC was most recently re-chartered through August 16, 2020.

Dated: January 15, 2020.

Man Cho,

Deputy Director, Office of Energy and Environmental Industries.

[FR Doc. 2020–00855 Filed 1–17–20; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Electronic Monitoring Systems for Atlantic Highly Migratory Species (HMS).

OMB Control Number: 0648–0372.

Form Number(s): None.

Type of Request: Regular (extension of a currently approved collection).

Number of Respondents: 157.

Average Hours per Response: 4 hours for initial VMS installation; 5 minutes per VMS initial activation checklist; 2 minutes per hail-out/hail-in declaration; 6 hours for initial electronic monitoring installation; 5 minutes for pelagic longline bluefin tuna catch records; 15 minutes for purse seine bluefin tuna catch records; 1 minute for dockside review of bluefin tuna catch 5 records; 2 hours for electronic monitoring data retrieval.

Burden Hours: 5,278.

Needs and Uses: Vessel monitoring systems (VMS) and other electronic

monitoring systems collect important information on fishing effort, catch, and the geographic location of fishing effort and catch for certain sectors of the Atlantic HMS fleet. Data collected through these systems are used in both domestic and international fisheries management, law enforcement, stock assessments, and quota management purposes. Atlantic HMS vessels required to use VMS are pelagic longline, purse seine, bottom longline (directed shark permit holders in North Carolina, South Carolina, and Virginia), and gillnet (directed shark permit holders consistent with the requirements of the Atlantic large whale take reduction plan requirements at 50 CFR 229.39(h)) vessels. In addition to VMS, pelagic longline vessels are also required to have electronic monitoring systems to monitor catch and account for bluefin tuna interactions.

The National Marine Fisheries Service (NMFS) Office of Law Enforcement monitors fleet adherence to gear- and time-area restrictions with VMS position location data. Gear restricted areas and time-area closures are important tools for Atlantic HMS management that have been implemented to reduce bycatch of juvenile swordfish, sea turtles, and bluefin tuna, among other species. Electronic monitoring data from the pelagic longline fleet are used by NMFS to accurately monitor bluefin tuna catch by the pelagic longline fleet, to ensure compliance with Individual Bluefin Quota (IBQ) limits and requirements, and to ensure that the Longline category bluefin tuna quota is not over-harvested. Additionally, electronic monitoring is used to verify disposition of retained shortfin mako sharks, consistent with binding international agreements. VMS reporting of bluefin tuna catch is used to monitor IBQ allocations in real-time. Atlantic HMS fisheries are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Atlantic Tunas Conservation Act (ATCA). Under the MSA, management measures must be consistent with ten National Standards, and fisheries must be managed to maintain optimum yield, rebuild overfished fisheries, and prevent overfishing. Under ATCA, the Secretary of Commerce shall promulgate regulations, as necessary and appropriate, to implement measures adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT).

Affected Public: Businesses or other for-profit organizations; individuals or households; and State, Local, or Tribal government.

Frequency: VMS reports at the start and end of each trip, VMS set reports at the end of each day of fishing, EM data retrieval after each trip.

Respondent's Obligation: Required to submit reports through VMS at the start of end of each fishing trip, after each set and data retrieval after each trip.

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–00831 Filed 1–17–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: West Coast Region Permit Family of Forms.

OMB Control Number: 0648–0204.

Form Number(s): None.

Type of Request: Regular submission (extension of a currently approved collection).

Number of Respondents: 1,768.

Average Hours per Response: Pacific Highly Migratory Species Vessel Permit Application: Paper—20 minutes, Online—15 minutes; Pacific Highly Migratory Species Vessel Permit Renewal Application: Paper—10 minutes, Online—5 minutes; Coastal Pelagic Fishing Limited Entry Permit Renewal Form—10 minutes; Coastal Pelagic Fishing Limited Entry Permit Transfer—30 minutes; EFP—60 minutes; Limited Entry Drift Gillnet Permit: Renewal—10 minutes; Transfer Form—30 minutes; Designation Request—30 minutes; Exemption Request—30 minutes; Appeals—4 hours.

Burden Hours: 203 hours.

Needs and Uses: The West Coast Region (WCR) Southwest Permits Office administers permits required for persons participating in federally-managed fisheries off the West Coast under the Magnuson-Stevens Fishery Conservation and Management act, 16 U.S.C. 1801 *et seq.* There are three types of permits: Open access fishery permits, limited entry permits for selected fisheries, and exempted fishing permits (EFPs). Open access permits are used in all fisheries where there are no specific limitations or eligibility criteria for entry to the fishery. Limited entry permits are used to prevent overcapitalization or address other management goals in the fishery and are issued to applicants for fishing activities that would otherwise be prohibited under a fisheries management plan. Permits also provide an important link between the NMFS and fishermen via the permit application process. The permit application process also makes it easier for NMFS staff to contact fishermen and advise them of changes in the regulations or fishery conditions, and give fishermen a direct point of contact in case they have questions or issues they want to bring to the attention of NMFS or a fishery management council.

This collection consists of four permits: The General Highly Migratory Species (HMS) permit, limited entry permits for coastal pelagic species (CPS) and drift gillnet (DGN), and EFPs.

Affected Public: Business or other for-profit.

Frequency: HMS permits—Biennial; CPS biennial; DGN LE—annual; EFP—biennial; DGN LE Designation Request—annual; DGN LE Exemption Request—annual; appeals—annual.

Respondent's Obligation: Required to obtain or retain benefits.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–00833 Filed 1–17–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Active Duty Service Determinations for Civilian or Contractual Groups

AGENCY: DoD Civilian/Military Service Review Board, Department of the Air Force.

ACTION: Notice.

SUMMARY: On 15 August 2019, the Secretary of the Air Force, acting as Executive Agent of the Secretary of Defense, determined that the service of the group known as: ''Department of the Navy (DON) Civilian Special Agents who Served in Direct Support and Under Control of the DON, within the Republic of Vietnam, During the Period January 9, 1962 through May 7, 1975 (Vietnam War)'' be considered ''active duty'' under the provisions of Public Law 95–202 for the purposes of all laws administered by the Department of Veterans Affairs (DVA).

FOR FURTHER INFORMATION CONTACT: Colonel Patricia Barr at the Secretary of the Air Force Personnel Council (SAFPC); 1500 West Perimeter Road, Joint Base Andrews, NAF Washington, MD 20762–7002.

SUPPLEMENTARY INFORMATION: To be eligible for DVA benefits, persons who believe they were part of this group recognized by the Secretary must establish each of the following:

1. They were employed by the Department of the Navy (DON) as Civilian Special Agents assigned to the Office of Naval Intelligence (ONI) or Naval Investigative Service (NIS); and 2. During their service as Civilian Special Agents assigned to ONI/NIS, served within the Republic of Vietnam, in their capacity as Civilian Special Agents, during the period January 9, 1962 through May 7, 1975.

Application Procedures

Before an individual can receive any DVA benefits, the person must first apply for a Department of Defense (DD) Form 214, *Certificate of Release or Discharge from Active Duty,* by filling out a DD Form Form 2168, *Application for Discharge of Member or Survivor of Member of Group Certified to Have Performed Active Duty with the Armed Forces of the United States,* and sending it to the Navy Personnel Command at the following address: Navy Personnel Command (PERS–312), Millington, TN 38054–5045.

Important: The burden of proof of substantiating membership in the group rests with the Applicant. Applicants must attach supporting documents to their DD Form 2168 application. Of primary importance will be any employment records from the Department of the Navy Office of Naval Intelligence (ONI)/Naval Investigative Service (NIS). Other supporting documentation might include copies of passports with appropriate entries, military or civilian orders posting the applicant to an assignment in the Republic of Vietnam, reports signed by or mentioning the work of the applicant as part of ONI/NIS Civilian Special Agents performing duties in the Republic of Vietnam, military identification forms, any personal employment records such as commendations regarding performance, employee expense reports of charges to contracts, medical certifications prior to departure from the U.S., military passes to leave the limits of a location within the Republic of Vietnam, other miscellaneous military papers, etc. Applicants having difficulty establishing all of the eligibility criteria mentioned above should recognize the nature and character of documents addressing each criterion need not be the same. For example, an applicant may establish employment with ONI/NIS through official employment records, but find that proving assignment to locations within the Republic of Vietnam as an ONI/NIS Civilian Special Agent more difficult. In such a case, an applicant may be able to prove assignment and service at that location through other evidence, such as, dated, postmarked (or other sign of authenticity) correspondence (official or personal) to or from the applicant at that assignment within the Republic of Vietnam. Upon confirmation of an applicant's eligibility, the DD Form 214 will be passed from the application office to an awards and decorations office to determine which ribbons the applicant is eligible to receive (campaign ribbons, theater ribbons, victory medal, etc.). Specific awards (*i.e.,* Silver Star, Purple Heart, etc.) need separate justification detailing the act, achievement, or service believed to warrant the appropriate medal/ribbon.

DD Forms 2168 are available from VA offices or from the military service offices in this notice. An electronic version is also available on the internet at ''DefenseLINK, websites, forms.''

Benefit Information

A determination of ''active duty'' under Public Law 95–202 is ''for the purposes of all laws administered by the Department of Veterans Affairs'' (Sec 106, 38 U.S.C.). Benefits are not retroactive and do not include such things as increased military or Federal Civil Service retirement pay, or a military burial detail, for example. Entitlement to state veteran's benefits varies and is governed by each state. Therefore, for specific benefits information, contact your nearest Veterans Affairs Office and your state veteran's service office after you have received your DD Form 214.

Adriane Paris,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2020–00807 Filed 1–17–20; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2019–OS–0108]

Science and Technology Reinvention Laboratory (STRL) Personnel Demonstration Project in the Technical Center of the U.S. Army Space and Missile Defense Command (USASMDC)

AGENCY: Under Secretary of Defense for Research and Engineering (USD(R&E)), DoD.

ACTION: Personnel demonstration project notice.

SUMMARY: This **Federal Register** Notice (FRN) serves as notice of the adoption of an existing STRL Personnel Management Demonstration Project by the Technical Center, U.S. Army Space and Missile Defense Command (USASMDC). The Technical Center adopts, with some modifications, the STRL Personnel Demonstration Project implemented at the U.S. Army Combat Capabilities Development Command (CCDC) Aviation and Missile Center (AvMC) (previously designated as the Aviation and Missile Research, Development, and Engineering Center).

DATES: Implementation of this demonstration project will begin no earlier than January 21, 2020.

FOR FURTHER INFORMATION CONTACT:

- *Technical Center, USASMDC:* Dr. Chad Marshall, 5220 Martin Road, Redstone Arsenal AL 35898–5000, (256) 955–5697, *chad.j.marshall.civ@mail.mil.*
- *DoD*: Dr. Jagadeesh Pamulapati, Director, Laboratories and Personnel Office, 4800 Mark Center Drive, Alexandria, VA 22350, (571) 372–6372, *jagadeesh.pamulapati.civ@mail.mil.*

SUPPLEMENTARY INFORMATION: Section 342(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 1995, Public Law 103–337, as amended by section 1109 of the NDAA for FY 2000, Public Law 106–65; section

1114 of the NDAA for FY 2001, Public Law 106–398; and section 211 of the NDAA for FY 2017, Public Law 114.328, authorizes the Secretary of Defense (SECDEF), through the USD(R&E) to conduct personnel demonstration projects at DoD laboratories designated as STRLs. Section 1105(b) of the FY10 NDAA, as amended by section 1103 of the FY15 NDAA, Public Law 113–291, authorizes the Technical Center, USASMDC to implement an STRL Personnel Demonstration Project.

1. Background

Many studies conducted since 1966 on the quality of the laboratories and personnel have recommended improvements in civilian personnel policy, organization, and management. Pursuant to the authority provided in section 342(b) of Public Law 103–337, as amended, a number of DoD STRL personnel demonstration projects have been approved. The demonstration projects are ''generally similar in nature'' to the Department of Navy's China Lake Personnel Demonstration Project. The terminology ''generally similar in nature'' does not imply an emulation of various features, but rather implies a similar opportunity and authority to develop personnel flexibilities that significantly increase the decision authority of laboratory commanders and/or directors.

2. Overview

DoD published notice on September 19, 2019 in 84 FR 49255 that the Technical Center, USASMDC will adopt, with some modifications, the STRL Personnel Demonstration Project implemented at the U.S. Army Combat Capabilities Development Command (CCDC) Aviation and Missile Center (AvMC) (previously designated as the Aviation and Missile Research, Development, and Engineering Center). During the public comment period ending on October 21, 2019, DoD received no comments. However, during the internal coordination process of publishing this notice, six comments were received. Three comments were administrative in nature to recommend better wording choices and to remove a duplicated sentence. All three were accepted. The remaining three are summarized as follows.

A. Labor Participation

One comment received stated that the first three sentences were unnecessary. Those sentences described the American Federation of Government Employees (AFGE)'s participation in the design of this personnel demonstration project.

Comment: Delete the first three sentences.

Response: Deleted.

B. Staffing Supplement

One comment was received pertaining to a staffing supplement.

Comment: An issue with similar language in other demonstration projects resulted in the need for clarifying language.

Response: Since the language in this FRN is almost identical to other demonstration projects, the decision was made to address the issue in a modification to all impacted FRNs rather than changing the wording of this FRN.

C. Personnel Policy Board

One comment was received pertaining to the Personnel Policy Board (PPB).

Comment: Although it is stated that the PPB's establishment will not affect any of management's enumerated rights found in 5 U.S.C. 7106, deliberations and recommendations of the PPB in the majority of oversight areas do affect management's 7106 rights, and case law of the Federal Labor Relations Authority (FLRA) has determined that certain union proposals affecting these rights are not subject to collective bargaining.

Response: The fourth sentence of Section II.H. was deleted and replaced with the following: ''The Union's participation on the PPB is limited to a consultative role and is not subject to further review in any forum. The PPB may consider the Union's viewpoints on matters within the scope of the PPB's charter and will advise the Technical Center Director accordingly; however, neither the Union's viewpoints nor the PPB's advice are binding on the Technical Center Director.''

3. Access to Flexibilities of Other STRLs

All STRLs authorized by section 1105 of the NDAA for FY 2010, Public Law 111–84, as well as any newly designated STRLs authorized by SECDEF or future legislation, may use the provisions described in this FRN. STRLs implementing this flexibility must have an approved personnel management demonstration project plan published in an FRN and will fulfill any collective bargaining obligations. Each STRL will establish internal operating procedures (IOPs) to provide additional guidance on implementation of the FRN. Adoptions will be made in accordance with DoD Instruction 1400.37, ''Science and Technology Reinvention Laboratory (STRL) Personnel Demonstration Projects'' (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/140037p.pdf*) (and its successor instructions).

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I. Executive Summary

The Technical Center is a subordinate organization of the USASMDC. The Technical Center provides technologies to meet today's requirements and future needs in directed energy, space, cyberspace, hypersonics, and integrated air and missile defense by executing Science and Technology (S&T) and Research and Development (R&D) programs within core competencies; managing and conducting test programs; managing and operating the Reagan Test Site; and conducting space operations and space surveillance. To deliver technologies and solutions to enable warfighter dominance, the Technical Center must be able to balance customer requirements for near-term technical and scientific products and information with the evolving capabilities of the workforce. These missions will be significantly enhanced by personnel management changes or flexibilities, to include funded education programs for degrees related to mission areas; modified term appointment authorities such as contingent employee, flexible

length and renewable term authorities; and establishment of Senior Scientific Technical Manager (SSTM) positions.

This project adopts, with some modifications, the STRL personnel demonstration project designed by the CCDC AvMC, with participation and review by the Department of the Army (DA) and DoD. The foundations of this project are based on the concept of linking performance to pay for all covered positions; simplifying paperwork and the processing of classification and other personnel actions; emphasizing partnerships among management, employees, and the Union; and delegating classification and other authorities to line managers. Additionally, the intellectual capital of the Technical Center workforce will be revitalized through the use of expanded opportunities for employee development. These opportunities will reinvigorate the creative intellect of the research and development community.

The Director of the Technical Center at USASMDC will execute and manage the project. Project oversight within the DA will be achieved by an executive steering committee made up of top-level executives, co-chaired by the Deputy Assistant Secretary of the Army for Research and Technology and the Deputy Assistant Secretary of the Army (Civilian Personnel Policy)/Director, Civilian Personnel. Oversight external to the Army will be provided by DoD.

II. Introduction

A. Purpose

The purpose of the project is to demonstrate that the effectiveness of DoD laboratories can be enhanced by allowing greater managerial control over personnel functions and, at the same time, expanding the opportunities available to employees through a more responsive and flexible personnel system. The quality of DoD laboratories, their people, and products has been under intense scrutiny in recent years. This perceived deterioration of quality is due, in substantial part, to the erosion of control, which line managers have over their human resources. This demonstration, in its entirety, attempts to provide managers, at the lowest practical level, the authority, control, and flexibility needed to achieve quality laboratories and quality products.

B. Problems With the Present System

The Technical Center's technology programs/products contribute to the readiness of U.S. forces and to the stability of the American economy. To complete its mission, the Technical Center must acquire and retain an enthusiastic, innovative, and highly educated and trained workforce, particularly scientists and engineers. The Technical Center must be able to compete with the private sector and other government agencies for the best talent and be able to make job offers in a timely manner with the attendant monetary compensation and incentives to attract high quality employees. The Technical Center must compete for high quality scientists and engineers with (1) the CCDC AvMC, an STRL established in 1997, (2) the Missile Defense Agency (MDA), and (3) the private sector within the second largest Research Park in the United States. Today, industry laboratories can make an offer of employment to a promising new hire before the Technical Center can prepare the paperwork necessary to begin the recruitment process.

The current personnel system does not enhance the Technical Center Director's capability to achieve the full flexibility of a DoD STRL. The DoD STRL Laboratory Personnel Demonstration Project provides more authority and flexibilities needed by the Technical Center. The DoD STRL's strategic objectives are supported by recent legislative initiatives and published FRNs. These tenets include changing procedures involving personnel management, research related contracting, and facilities refurbishment; and enhancing the STRL director's management authority. Managers must be given local control of positions and classifications to enable movement of positions to other lines of the business activity within the STRL to match supported customers' needs, including needs stemming from weapon system life cycles. In addition, Technical Center managers must be provided with additional tools to timely reward and motivate employees.

C. Changes Required/Expected Benefits

This project is expected to demonstrate that a human resource system tailored to the mission and needs of the Technical Center will result in: (a) Increased timeliness of key personnel processes; (b) increased retention rates of high quality employees and separation rates of poor quality employees; and (c) increased customer satisfaction with the Technical Center and its products by all customers it serves. The primary benefit expected from this demonstration project is greater organizational effectiveness.

The Technical Center adopts, with some modifications, the demonstration project designed and implemented by the CCDC AvMC. The CCDC AvMC demonstration program was based on successful features of the China Lake demonstration project and the National Institute of Standards and Technology (NIST) project. The CCDC AvMC payband structure is modified, however to improve personnel recruitment and retention and preserve the same pay structure for clerical and administrative employees across the entire USASMDC. The Engineers & Scientists Occupational Family (DB) is modified slightly for payband III to extend the cap to $10,000 above the GS–13, step 10 salary.

The STRL demonstration projects have produced impressive statistics for on-the-job satisfaction for their employees versus that for the federal workforce in general. The Technical Center's success is dependent on its total workforce. The new authorities will provide additional management tools that will enable the Technical Center to attract and retain the best and brightest employees. Therefore, in addition to expected benefits mentioned above, the Technical Center demonstration project expects to find increased employee satisfaction due to many aspects of the project, including pay equity, timely classification decisions, and enhanced career development opportunities. A full range of measures will be collected during the project evaluation described in Section VII.

D. Participating Organization

The Technical Center is comprised of employees located mainly at Redstone Arsenal, Alabama, with the remaining employees located at sites at Albuquerque and White Sands Missile Range, New Mexico; Washington, DC; and U.S. Army Kwajalein Atoll, Republic of Marshall Islands. The USASMDC Technical Center's successor organizations, if any, will continue to be covered by this demonstration project.

E. Participating Employees

The demonstration project includes civilian appropriated fund employees in the competitive and excepted service, and will cover approximately 150 Technical Center civilian employees, unless otherwise excluded. Senior Executive Service (SES) members, Senior Leader/Scientific and Professional (SL/ST) employees, Federal Wage Grade (FWS) employees, and Defense Civilian Intelligence Personnel System (DCIPS) positions will not be covered in the demonstration project. Additionally, DA interns will not be converted to the demonstration project until completion of the intern program. Personnel added to the Technical Center after implementation, in like positions covered by the demonstration (through

appointment, promotion, reassignment, realignment, change to a lower grade, or where their functions and positions have been transferred into the Technical Center) will be converted to the demonstration project in accordance with this FRN, Section V. Conversion. Successor organizations will continue coverage in the demonstration project.

F. Labor Participation

The Technical Center will continue to fulfill its obligations to consult and/or negotiate with AFGE, in accordance with 5 U.S.C. 4703(f) and 7117, and applicable Executive Orders, in implementing the demonstration project. The Union is an integral part of this STRL personnel demonstration project, and will be a full partner in its implementation.

G. Project Design

The Technical Center engaged the Deputy Chief of Staff for Personnel (G1), Deputy Chief of Staff for Resource Management (G8), Office of Command Counsel and Staff Judge Advocate, AFGE Local 1858, and senior managers in the USASMDC to consider the attributes developed by and currently in use at the CCDC AvMC STRL personnel demonstration project. An Integrated Process Team approach was used to review these attributes. The team was led by management, and the team members were managers and associates from the Technical Center, AFGE Local 1858, other major functional organizations within the command and the CCDC AvMC.

This personnel system design was subject to critical reviews at the executive level within the command. The Technical Center reviewed broadbanding systems currently practiced in the Federal sector. Technical Center management conferred with AFGE Local 1858 to obtain agreement for a partnership to pursue a demonstration project like the CCDC AvMC's. Initial concept designs for this demonstration project received critical reviews by headquarters elements of DA and DoD. AFGE Local 1858 endorsed a partnership in pursuit of a STRL demonstration project, as long as it is similar in nature to the demonstration project currently implemented in the CCDC AvMC.

H. Personnel Policy Board

The Technical Center intends to establish an appropriate balance between the personnel management authority of supervisors and the demonstration project oversight responsibilities of a Personnel Policy Board (PPB). The Technical Center Director will delegate the demonstration project's management and oversight to a PPB whose members, Chairperson, and Staff (other than union representatives) will be appointed by the Director. The Union will have permanent membership in the PPB and will select its representatives. The Union's participation on the PPB is limited to a consultative role and is not subject to further review in any forum. The PPB may consider the Union's viewpoints on matters within the scope of the PPB's charter and will advise the Technical Center Director accordingly; however, neither the Union's viewpoints nor the PPB's advice are binding on the Technical Center Director. The PPB's establishment will not affect the authority of any management official in the exercise of the management rights set forth in 5 U.S.C. 7106. The PPB will be tasked with the following:

1. Overseeing the civilian pay budget.

2. Determining the composition of the pay-for-performance pay pools in accordance with the guidelines of this FRN and internal procedures.

3. Allocating funds to pay pool managers.

4. Reviewing operation of the Technical Center pay pools.

5. Reviewing hiring and promotion compensation, to include exceptions to pay-for-performance salary increases.

6. Providing guidance to pay pool managers.

7. Monitoring award pool distribution.

8. Selecting participants for the Expanded Developmental Opportunity Program, long term training, and any special developmental assignments.

9. Ensuring in-house budget discipline.

10. Assessing the need for changes to demonstration project procedures and policies.

11. Adjudicating requests for retention pay, to include requests to adjust individual employee pay setting to avoid unintended pay loss due to conversion to the demonstration project.

I. Funding Levels

The Under Secretary of Defense (Personnel and Readiness), may, at his/her discretion, adjust the minimum funding levels of performance pay pools to take into account factors such as the Department's fiscal condition, guidance from the Office of Management and Budget, and equity in circumstances when funding is reduced or eliminated for GS pay raises or awards.

III. Personnel System Changes

A. Broadbanding

1. Occupational Families

Occupations at the Technical Center will be grouped into occupational families. Occupations will be grouped according to similarities in type of work, customary requirements for formal training or credentials, and in consideration of the business practices at the Technical Center. Common patterns of advancement within the Technical Center's occupations, as practiced at DoD Laboratories and in the private sector, will also be considered. The Technical Center's current occupations and grades have been examined, and their characteristics and distribution were utilized as guidelines in developing the three occupational families described below:

a. Engineers and Scientists (E&S). This occupational family includes all technical professional positions, such as engineers, physicists, chemists, metallurgists, mathematicians, operations research analysts, and computer scientists. Specific course work or educational degrees are generally required for these occupations.

b. Technical and Business Support. This occupational family contains positions that directly support the E&S mission; it includes specialized functions in fields such as technical information management, equipment specialists, quality assurance, engineering and electronics technicians, finance, accounting, general administrative, business and industry specialists, and management analysis. Employees in these jobs may or may not require specific course work or educational degrees. Analytical abilities and specialized knowledge in administrative fields are required for these positions. Knowledge of, and training in, various electrical, mechanical, chemical, or computer principles, methods, and techniques, as applicable to the specific positions, are also generally required.

c. General Support. This occupational family is composed of positions for which minimal formal education is needed, but for which special skills, such as office automation, are usually required. This occupational family includes: Clerical work, that usually involves processing and maintaining records; and assistant work, that requires knowledge of methods and procedures within a specific administrative area. Other support functions include secretarial work and other clerical support.

2. Paybands

Each occupational family will be composed of discrete paybands (levels) corresponding to recognized advancement within the occupations. These paybands will replace grades used under the GS system, and will not be the same for all occupational families. Each occupational family will be divided into three to five paybands; each payband will encompass one or more of the corresponding grades under the GS system. A salary overlap will be maintained, similar to the current overlap between GS grades.

Exceptional qualifications, specific organizational requirements, or other compelling reasons may lead an employee to enter a payband at a higher level.

The proposed paybands for the occupational families and how they relate to the current GS grades are shown in Figure 1. Application of the Fair Labor Standards Act (FLSA) within each payband is also shown in Figure 1. This payband concept has the following advantages:

1. It may reduce the number of classification decisions required during an employee's career.

2. It simplifies the classification decision-making process and paperwork. A payband covers a larger scope of work than a grade under the GS system, and will be defined in shorter and simpler language.

3. It supports delegation of classification authority to line managers.

4. It provides a broader range of performance-related pay for each level. In many cases, employees whose pay would have been frozen at the top step of a GS system grade will now have more potential for upward movement in the broader payband.

5. It prevents the progression of low performers through a payband by mere longevity, since job performance serves as the basis for determining pay.

The Technical Center will modify the CCDC AvMC flexibility establishing and implementing the concept of Payband V of the Engineers and Scientists occupational family. The CCDC AvMC paybanding plan expanded the paybanding concept used at China Lake and NIST by creating Payband V of the Engineers and Scientists (E&S) occupational family. This payband pertains to SSTMs who engage in research and development in the physical, biological, medical or engineering sciences, or another field closely related to the mission of the Technical Center and carry out technical supervisory responsibilities. SSTM positions may be filled using the authority in 10 U.S.C. 2358a. The number of such positions may not exceed two percent of the number of scientists and engineers employed at the Technical Center as of the close of the last fiscal year before the fiscal year in which any appointments subject to the numerical limitation are made.

The SSTM program will be managed and administered by the Technical Center Director. The Technical Center will review its positions classified at the GS–15 or equivalent level to determine those that may warrant classification above GS–15 equivalency. Panels will be created to assist in filling SSTM positions. Panel members will be selected from a pool of current Technical Center SES members, and later those in SSTM positions, and an equal number of individuals of equivalent stature from outside the laboratory to ensure impartiality, breadth of technical expertise, and a rigorous and demanding review. The panel will apply criteria developed largely from the current Office of Personnel Management (OPM) Research Grade Evaluation Guide for positions exceeding the GS–15 level. Vacant SSTM positions will be competitively filled to ensure that selectees are preeminent researchers and technical leaders in the specialty fields who also possess substantial managerial and supervisory abilities.

Figure 1. Paybands and Occupational Families

Occupational Families		Bands															
Corresponding GS Grades		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Above 15
Engineers and Scientists (E&S)	**DB**	I N				II N/E							III* E		IV E		V E
Technical and Business Management	**DE**	I N				II N/E							III N/E		IV E		
General Support	**DK**	I N				II N/E			III N/E								

*E&S Band III has an upper limit equivalent to GS-13, step 10, plus $10,000.

FLSA Codes:
N - Nonexempt
E - Exempt
N/E - Exemption status determined on a case-by-case basis.

3. Fair Labor Standards Act

FLSA exempt and nonexempt determinations will be made consistent with criteria found in 5 CFR part 551. There are five paybands (see Figure 1) where employees can be either exempt or nonexempt from overtime provisions. For these five paybands supervisors with classification authority will make the determinations on a case-by-case basis by comparing the duties and responsibilities assigned, the classification standards for each payband, and the FLSA criteria under 5 CFR part 551. As needed, the advice and assistance of the servicing Civilian Personnel Advisory Center (CPAC) will be obtained in making determinations as part of the performance review process. The benchmark position descriptions will not be the sole basis for the determination, and the basis for an FLSA exemption determination will be documented and attached to each description. Exemption criteria will be narrowly construed and applied only to those employees who clearly meet the spirit of the exemption. Changes will be documented and provided to the Deputy Chief of Staff for Personnel (G–1) and CPAC, as appropriate.

4. Simplified Assignment Process

Today's environment of downsizing and workforce transition mandates that

the Technical Center have increased flexibility to assign employees. Broadbanding can be used to address this need. As a result of the assignment to a particular level descriptor, the organization will have increased flexibility to assign an employee, without pay change, within broad descriptions consistent with the organization's needs and the individual's qualifications and rank or level. Subsequent assignments to projects, tasks, or functions anywhere within the organization requiring the same level, area of expertise, and qualifications would not constitute an assignment outside the scope or coverage of the individual's current level descriptor.

Such assignments within the coverage of the generic descriptors are accomplished without the need to process a personnel action. For instance, a technical expert can be assigned to any project, task, or function requiring similar technical expertise. Likewise, a manager could be assigned to manage any similar function or organization consistent with that individual's qualifications. This flexibility allows broader latitude in assignments and further streamlines the administrative process and system.

5. Promotion

A promotion is an action to move an employee to either a higher payband in the same occupational family, or a payband in another occupational family in combination with an increase in the employee's salary. Positions with known promotion potential to a specific band within an occupational family will be identified when they are filled. Not all positions in an occupational family will have promotion potential to the same band. Movement from one occupational family to another will depend upon individual knowledge, skills, abilities, and the organization's needs.

Promotions will be processed under competitive procedures in accordance with merit principles and requirements and the local merit promotion plan. The following actions are excepted from competitive procedures:

(a) Re-promotion to a position which is in the same payband and occupational family as the employee previously held on a permanent basis within the competitive service.

(b) Promotion, reassignment, demotion, transfer, or reinstatement to a position having promotion potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service.

(c) A position change permitted by reduction in force procedures.

(d) Promotion without current competition when the employee was appointed through competitive procedures to a position with a documented career ladder.

(e) A temporary promotion, or detail to a position in a higher payband, of 180 days or less.

(f) A promotion based on reclassification of positions, to include reclassification based on an incumbent's personal qualifications after application of the Research Grade Evaluation Guide, the Equipment Development Grade Evaluation Guide, Part III, or similar guides.

(g) A promotion resulting from the correction of an initial classification error or the issuance of a new classification standard.

(h) Consideration of a candidate not given proper consideration in a competitive promotion action.

6. Link Between Promotion and Performance

a. Career ladder promotions and promotions resulting from the addition of duties and responsibilities are examples of promotions that can be made noncompetitively. To be promoted noncompetitively from one band to the next, an employee must meet the minimum qualifications for the job and have a current performance rating of B or better (see Performance Evaluation) or equivalent under a different performance management system.

b. Selection of employees through competitive procedures will require a current performance rating of B or better for internal Technical Center recruitment.

B. Pay-for-Performance Management System

1. Overview

The performance evaluation system will link compensation to performance through annual performance appraisals and performance scores. The performance evaluation system will allow optional use of peer evaluation and/or input from subordinates as determined appropriate by the PPB. The system will have the flexibility to be modified, if necessary, as more experience is gained under the project. A performance evaluation will consist of three meetings held between an employee and the supervisor during the performance cycle: The initial meeting (to establish performance objectives and performance elements), the midpoint meeting (a progress review), and the performance appraisal (a performance review and evaluation feedback meeting). The performance rating cycle will be October 1 through September 30.

2. Performance Objectives

Performance objectives are statements of job responsibilities based on the work unit's mission, goals, and supplemental benchmark position descriptions. Employees and supervisors will jointly develop performance objectives which will reflect the types of duties and responsibilities expected at the respective pay level. In case of disagreements, the supervisor's decision will prevail. Performance objectives deal with outputs and outcomes of a particular job. The performance objectives should be in place within 30 days from the beginning of each rating period.

3. Performance Elements

Performance elements are generic job performance attributes, such as technical competence, that an employee exhibits in performing job responsibilities and associated performance objectives. The new performance evaluation system will be based on critical and non-critical performance elements defined in Appendix B. Each performance element is assigned a weight within a specified range. The total weight of all elements is 100 points. The supervisor assigns each element some portion of the 100 points in accordance with its importance for mission attainment. As a general rule, essentially identical positions will have the same critical elements and the same weight. These weights will be developed along with employee performance objectives.

4. Midpoint Review

A midpoint review between a supervisor and employee will be held to determine whether objectives are being met and whether ratings on performance elements are above an unsatisfactory level. Performance objectives should be modified as necessary to reflect changes in planning, workload, and resource allocation. The weights assigned to performance elements may be changed during the midpoint review. Additional reviews may be held to provide periodic feedback to the employee on level of performance. If, at any point in the rating cycle, the supervisor determines that the employee is not performing at an acceptable level on one or more elements, the supervisor must alert the employee and document the problem(s).

5. Employee Feedback to Supervisors

Opportunity for employee feedback to supervisors is a critical component of this demonstration project. A voluntary feedback process will be developed and implemented within six months after implementation of the demonstration. Employee feedback will be for the supervisors' information only, and will not be a factor in determining the supervisor's annual ratings of record.

6. Performance Appraisal Process

A performance appraisal process will begin the final weeks of the annual performance cycle, although an individual performance appraisal may be conducted at any time after the minimum appraisal period of 120 days. The performance appraisal process brings supervisors and employees together to discuss employee performance and results prior to assigning the employee a rating of record. If the employee is unavailable for a meeting, the supervisor will document the reasons and provide a written assessment of performance to the employee.

7. Performance Review

A supervisor will meet with the employee to discuss job performance and accomplishments. The supervisor will notify the employee of the review meeting and allow reasonable time for the employee to prepare a list of accomplishments. Employees will have an opportunity at the meeting to provide a personal performance assessment and describe accomplishments. The supervisor and employee will discuss job performance and accomplishments in relation to performance objectives and performance elements. Supervisors will not assign performance scores or performance ratings at this meeting.

8. Evaluation Feedback

In a meeting with the employee, the supervisor will inform the employee of management's appraisal of the employee's performance on performance objectives, and the employee's performance score and rating on performance elements. During this meeting, the supervisor and employee will also discuss and document performance objectives for the next rating period.

9. Performance Scores

The overall performance score is the sum of individual performance element scores. Employees will receive an academic-type rating of A, B, C, D, or U depending upon the score attained. These summary ratings are representative of pattern H (a five-level system) in the summary level chart in 5 CFR 430.208(d)(1). This rating will become the rating of record, and only those employees rated D or higher will receive performance pay increases (*i.e.,* basic pay increases), and/or performance bonuses. A rating of an A will be assigned for scores from 90 to 100 points, B-High for scores from 85 to 89 points, B-Low for scores 80 to 84 points, C for scores from 70 to 79 points, D for scores 50–69 points, and U for scores below 50 points, or a failure to achieve at the 50 percent level of any critical element. The academic-type ratings will be used to determine performance payouts as follows:

Rating (score)	Summary level	Compensation (share)
A (90–100)	5—Exceptional	4.0
B (High; 85–89)	4—Highly Successful.	3.5
B (Low; 80–84)	4—Highly Successful.	3.0
C (70–79)	3—Fully Successful.	2.0
D (50–69)	2—Marginally Successful.	1.0
U (0–49)	1—Unsatisfactory.	N/A

Benchmark performance standards will be used to assist in selecting the weighted points to assign to an employee's performance on each of the performance elements. These benchmark performance standards, published in the IOP, will be modified versions of the performance standards used by CCDC AvMC (62 FR 34902). Each benchmark performance standard will describe the level of performance associated with a particular point on a rating scale. Supervisors may add supplemental standards for employees they supervise to further elaborate the benchmark performance standards.

10. Performance-Based Actions

The Technical Center Director or designee will implement a process to rehabilitate, reduce, or remove poor performers. The process may start at any time during the rating period and may lead to involuntary separation. The process will begin when the supervisor identifies one or more deficiencies that cause the level of performance to be at the U (unsatisfactory) level based on a composite score that is less than 50 for all elements or a score on any critical element of less than 50 percent.

When the employee's performance is determined to be unsatisfactory at the close of the annual rating period, the Unsatisfactory (U) rating will become the rating of record for all matters relating to pay or Reduction-in-Force (RIF). The process to address poor performance will be described in the IOP.

The Technical Center Director will preserve all relevant documentation which serves as the basis for an employment action related to poor performance and will make it available for review by the affected employee or the employee's designated representative. At a minimum, the record will consist of a notice of proposed action; the employee's written reply, if provided, or a summary if the employee makes an oral reply; the written notice of decision; evidence regarding the opportunity afforded the employee to demonstrate improved performance; and any other material considered by the decision maker.

11. Adverse Actions

The Technical Center Director may take an adverse employment action against an employee covered by the project only for such cause as will promote the efficiency of the project. An employee against whom an action is proposed will be provided at least 30 days advanced written notice and a reasonable time, but not less than 7 days, to respond. An employee against whom an action is proposed will be afforded the same procedural and appeal rights provided to non-covered employees by 5 U.S.C. chapter 75 and related OPM regulations.

12. Awards

The Technical Center currently has an extensive awards program consisting of both internal and external awards. On-the-spot, special act (which are both performance related and nonperformance related), and other internal awards (both monetary and nonmonetary) will continue under the project, and may be modified or expanded as appropriate. DA and DoD awards and other honorary non-cash awards will be retained.

The Technical Center Director will have the authority to grant awards of up to $10,000 to covered employees for a special act. The scale of the award will be determined using criteria in applicable DA regulations.

13. Pay Administration

The objective is to establish a pay system that will improve the Technical Center's ability to attract and retain quality employees. The new system will be a pay-for-performance system and, when implemented, will result in a redistribution of pay resources based upon individual performance. The performance rating cycle in the Technical Center will be October 1 through September 30, although the first

cycle may be shortened based on actual implementation date. The first performance payout will be made effective with the first full pay period of calendar year (CY) 2020 (January 2020). Future pay adjustments will be effective at the beginning of the first full pay period of subsequent calendar years. General Pay Increases (GPI) and locality pay adjustments will be provided to all covered employees on the same basis as they are provided to GS employees.

14. Pay-for-Performance

The Technical Center will use a simplified performance appraisal system that will permit both the supervisor and the employee to focus on quality of the work. The proposed system will permit the manager/supervisor to base incentive pay increases entirely on performance or value added to the organization's goals. This system will allow managers to withhold pay increases from nonperformers, thereby giving the nonperformer the incentive to improve performance or leave government service. For example, employees with ratings of U will receive no performance pay increase or performance bonus, but will receive GPI.

Pay for performance has two components: Performance pay increases and/or performance bonuses. The basic rates of pay used in computing the pay pool and performance payouts exclude locality pay. Locality pay will be added to the performance pay increases and/or performance bonuses after calculations are completed. All covered employees will be given the full amount of locality pay adjustments. Employees receiving retained rates will receive a pay increase in accordance with 5 U.S.C. 5363. The funding for performance pay increases and/or performance bonuses is composed of money previously available for within-grade increases, quality step increases, promotions from one grade to another where both grades are now in the same payband, and for some performance awards. Additionally, funds will be obtained from performance pay increases withheld for poor performance (see Performance Evaluation).

15. Performance Pay Pool

The performance pay pool is composed of a base pay fund and a bonus pay fund. The payouts made to employees from the performance pay pool will be a mix of base pay increases and bonus payments and will be paid such that the allocated funds are distributed as intended.

The funding for the base pay fund is composed of money previously available for within-grade increases, quality step increases, and promotions between grades that are banded under the demonstration project. The bonus pay fund is separately funded within the constraints of the organization's overall performance award budget. The final bonus pay allocation may be indexed after initial calculations, within the constraints of in-house budget discipline, to be competitive with local industrial economic demographics such as market bonus percentages. Special ad hoc awards—*e.g.,* suggestion awards, or special act awards, will be separately funded within the constraints of the Technical Center's operating budget and will not be included as part of the performance pay pool. The Technical Center will calculate initial performance pay pool funds and allocate these funds to pay pool managers as appropriate. This pay pool allocation, approved by the Technical Center Director, will be determined early in the annual performance appraisal cycle.

16. Performance Pay Increases and/or Performance Bonuses

A pay pool manager is accountable for establishing final pay pool funds. The pay pool manager assigns performance pay increases and/or performance bonuses to individuals on the basis of an academic-type rating, the value of the performance pay pool resources available, and the individual's current basic rate of pay within a given payband. A pay pool manager may request approval from the PPB or its designee to grant a performance pay increase and/or bonus to an employee that is higher than the compensation formula for that employee, to recognize extraordinary achievement or to provide accelerated compensation for local interns. Extraordinary achievement recognition grants a base pay increase and/or bonus to an employee that is higher than the one generated by the compensation formula for that employee. Any base pay increase granted may not cause the employee to exceed the maximum rate of pay in the assigned payband. The funds available for extraordinary achievement recognition are separately funded within the constraints of the organization's budget.

Performance payouts, for the first year, will be calculated for each individual based upon a performance pay pool value that will be 3.7 percent (*e.g.,* 2.4 percent performance pay + 1.3 percent performance bonus) of the combined basic rates of pay of the assigned employees. For subsequent years, this percentage, a payout factor, will be adjusted as necessary to compensate for changing employee demographics which impact the elements used in the GS system, such as the amount of step raises, quality step increases, and promotions. For subsequent years, the performance bonus pool value will be set at a minimum of 1.0 percent of the total Lab Demo Base Salary, or the limit set by DA if lower than 1.0 percent. An employee's performance payout is computed as follows:

Performance payout = (Pool Value * SAL * N) ÷ SUM (SAL_j * N_j); J = 1 to n

Pool Value = F * SUM (SAL_j); where $_j$ = 1 to n

n = Number of employees in pay pool

N = Number of shares earned by an employee based on their performance rating (0 to 4); where j = 1 to n

SAL = An individual's basic rate of pay

SUM = The summation of the entities in parenthesis over the range indicated

F = Payout Factor

Once the individual performance payout amounts have been determined, the next step is to determine what portion of each payout will be in the form of a base pay increase as opposed to a bonus payment. A base pay share factor is derived by dividing the amount of the base pay fund by the amount of the total performance pay pool. This factor is multiplied by the individual performance payout amounts to derive each individual's projected base pay increase. Certain employees will not be able to receive the projected base pay increase due to base pay caps. Base pay is capped when an employee reaches the maximum rate of pay in an assigned payband, when the midpoint principle applies (see below), and when the 50 percent rule applies (see below). Also, for employees receiving retained rates above the applicable payband maximum, the entire performance payout will be in the form of a bonus payment.

If the Technical Center Director determines it is appropriate, the Director may reallocate a portion (up to the maximum possible amount) of the unexpended base pay funds for employees not eligible for base pay increases (capped) to employees who are eligible for base pay increases (uncapped). This reallocation must be made on a proportional basis so that all uncapped employees receive the same percentage increase in their base pay share (unless the reallocation adjustment is limited by a pay cap). Any dollar increase in an employee's projected base pay increase will be offset, dollar for dollar, by an accompanying reduction in the

employee's projected bonus payment. Thus, the employee's initial total performance payout is unchanged.

A midpoint principle will be used to determine performance pay increases. This principle requires that employees in all paybands must receive a C rating or higher to advance their basic rate of pay beyond the midpoint dollar threshold (the actual midpoint dollar amount between the top and bottom of the payband) of their respective paybands. If the performance payout formula yields a basic pay increase for a D-rated employee that would increase their basic rate of pay beyond the midpoint dollar threshold, then their basic rate of pay will be adjusted to the midpoint dollar threshold and the balance converted to a performance bonus. Once an employee has progressed beyond the midpoint dollar threshold, future performance pay increases will require a C rating or greater. If an employee attains a D rating and is beyond the midpoint dollar threshold, incentive pay increases will be restricted to performance bonuses only.

Annual performance pay increases will be limited to (1) 50 percent of the difference between the particular maximum band rate and the employee's current basic rate of pay, or (2) the projected performance pay increase, whichever is less, with the balance converted to a performance bonus. This rule will not apply when an employee's current basic rate of pay is within $500 of the maximum band rate. This means that employees whose pay has reached the upper limits of a particular payband will receive most performance incentives as a performance bonus. Performance bonuses are cash payments and are not part of the basic pay for any purpose (*e.g.,* lump sum payments of annual leave on separation, life insurance, and retirement).

17. Supervisory Pay Adjustments

Supervisory pay adjustments may be used at the discretion of the Technical Center Director, to compensate employees assuming positions entailing supervisory responsibilities. Supervisory pay adjustments are increases to the supervisor's basic rate of pay, ranging up to 10 percent of that pay rate, subject to the constraint that the adjustment may not cause the employee's basic rate of pay to exceed the payband maximum rate. Only employees in supervisory positions with formal supervisory authority, as defined in the OPM GS Supervisory Guide, may be considered for the supervisory pay adjustment. Criteria to be considered in determining the pay increase percentage include the following organizational and individual employee factors:

(1) Needs of the organization to attract, retain, and motivate high quality supervisors;

(2) Budgetary constraints;

(3) Years of supervisory experience;

(4) Amount of supervisory training received;

(5) Performance appraisals and experience as a group or team leader;

(6) Their organizational level of supervision; and

(7) Managerial impact on the organization.

Conditions, after the date of conversion into the demonstration project, under which the application of a supervisory pay adjustment may be considered are as follows:

(1) New hires into supervisory positions will have their initial rate of basic pay set at the supervisor's discretion within the pay range of the applicable payband. This rate of pay may include a supervisory pay adjustment determined using the ranges and criteria outlined above.

(2) A career employee selected for a supervisory position that is within the employee's current payband may also be considered for a supervisory pay adjustment. If a supervisor is already authorized a supervisory pay adjustment and is subsequently selected for another supervisory position, within the same payband, then the supervisory pay adjustment will be re-determined.

Within the demonstration project rating system, the performance element ''Supervision/EEO'' is identified as a critical element. Changes in the rating value for this element awarded to a supervisor with a supervisory pay adjustment may generate a review of the adjustment and may result in an increase or decrease to that adjustment. Decrease to a supervisory pay adjustment is not an adverse action if this action results from changes in supervisory duties or supervisory ratings.

Upon initial conversion into the demonstration project, a supervisor converting into the same or substantially similar position, will be converted at the existing basic rate of pay and will not be offered a supervisory pay adjustment. Supervisory adjustments will not be funded from performance pay pools.

The supervisory adjustment will cease when an employee leaves a supervisory position. The cancellation of the adjustment is not an adverse action and is not appealable. If an employee is involuntarily removed from a supervisory position for cause, the removal action will be conducted using adverse action procedures, and the employee may request the PPB approve pay retention as part of that process.

18. Supervisory Pay Differentials

A supervisory pay differential is a cash incentive that may range up to 10 percent of the supervisor's basic rate of pay. It is paid on a pay period basis and is not included as part of the supervisor's basic rate of pay. Criteria to be considered in determining the amount of this supervisory pay differential includes those identified for Supervisory Pay Adjustments. For SSTM personnel, this incentive may range up to five percent of base pay (excluding locality pay). The SSTM supervisory pay differential is paid on a pay period basis with a specified not-to-exceed date up to one year and may be renewed as appropriate.

The supervisory pay differential may be considered, either during conversion into or after initiation of the demonstration project. The differential must be terminated if the employee is removed from a supervisory position, regardless of cause, or no longer meets established eligibility criteria. Supervisory differentials will not be funded from performance pay pools.

All personnel actions involving a supervisory differential will require a statement signed by the employee acknowledging that the differential may be terminated or reduced at the Technical Center Director's discretion. The termination or reduction of the supervisory differential is not an adverse action and is not subject to appeal.

19. Distinguished Contribution Allowance (DCA)

The Technical Center needs increased capability to recognize and incentivize employees who are (a) consistently extremely high level performers and (b) paid at the top of their payband level. Eligibility for the Technical Center DCA is open to employees in all occupational families. A DCA, when added to an employee's pay (to include locality pay and any supervisory differential), may not exceed the rate of basic pay for Executive Level I. DCA is paid on either a bi-weekly basis or as a lump sum following completion of a designated performance period, or combination of these. DCA is not an entitlement, and is used at the discretion of Technical Center Director to recruit and retain high performing employees. DCA is not base pay for any purpose, such as retirement, life insurance, severance pay, promotion, or any other payment or benefit calculated as a percentage of base pay. Employees may receive a DCA

for up to five years but not more than 10 cumulative years over an employee's entire career. The DCA will be reviewed on an annual basis for continuation or termination. Further details will be published in the IOP

20. Retention Counteroffers

The Technical Center Director, working with the PPB, may offer a retention counteroffer to retain high performing employees with critical scientific or technical skills who present evidence of an alternative employment opportunity with higher compensation. Such employees may be provided increased base pay (up to the ceiling of the payband) and/or a one-time cash payment that does not exceed 50 percent of one year of base pay. This flexibility addresses the expected benefits described in paragraph II. C, particularly ''increased retention of high quality employees.'' Retention allowances, either in the form of a base pay increase and/or a bonus, count toward the Executive Level I aggregate limitation on pay consistent with 5 U.S.C. 5307 and 5 CFR part 530, subpart B. Further details will be published in the IOP.

21. Pay and Compensation Ceilings

An employee's total monetary compensation paid in a calendar year may not exceed the basic rate of pay paid in level I of the Executive Schedule consistent with 5 U.S.C. 5307 and 5 CFR part 530, subpart B. In addition, each payband will have its own pay ceiling, just as grades do in the GS system. Pay rates for the various paybands will be directly keyed to the GS rates. Except for retained rates, base pay will be limited to the maximum rates payable for each payband.

22. Pay Setting for Promotion

Upon promotion, an employee will be entitled to an eight percent increase in base pay or the lowest level in the payband to which promoted, whichever is greater. For employees who, currently or in the future, are assigned to occupational categories and geographic areas covered by special salary rate tables: (1) The minimum salary rate in the payband to which the employee is promoted is the minimum salary for the corresponding special salary rate or locality rate, whichever is greater; and (2) a demonstration staffing adjusted pay is considered basic pay for promotion calculations. On a case-by-case basis, the Technical Center PPB may approve requests for promotion base pay increases beyond eight percent, in accordance with established Technical Center operating procedures. The Technical Center PPB will document its rationale for decisions to provide an increase above eight percent. Highest previous rate may also be considered in setting pay in accordance with existing pay-setting policies.

23. Pay Retention

When an employee is involuntarily placed in a lower paid position, pay retention may be approved by the PPB, except for SSTM members who require approval by the Technical Center Director. Pay retention establishes the employee's rate of basic pay upon entry into an initial or new position. Any future adjustments to basic pay will be determined in accordance with the provisions of the FRN.

C. Classification

The objectives of the demonstration project classification system are to simplify the classification process, make the process more serviceable and understandable, and place more decision-making authority and accountability with line managers. All Technical Center positions will be identified in the IOP. Provisions will be made for including other occupations as employment requirements change in response to changing technical programs, a change in mission requirements, or new OPM-recognized occupations.

1. Occupational Series

The present GS classification system has over 400 occupations (also called series), divided into 22 groups. The occupational series will be maintained. New series, established by OPM, may be added as needed to reflect new occupations in the workforce.

2. Classification Standards

The Technical Center will use the CCDC AvMC classification system, modified as needed. The present classification standards will be used to create local benchmark position descriptions for each payband, reflecting duties and responsibilities comparable to those described in present classification standards for the span of grades represented by each payband. There will be at least one benchmark position description for each payband. A supervisory benchmark position description may be added to those paybands that include supervisory employees. Present titles and series will continue to be used in order to recognize the types of work being performed and educational backgrounds and requirements of incumbents. Locally developed specialty codes and OPM functional codes will be used to facilitate titling, making qualification determinations, and assigning competitive levels to determine retention status.

3. Position Descriptions and Classification Process

The Technical Center Director will have classification authority and may re-delegate this authority to subordinate managers in the IOP. Benchmark position descriptions to assist managers in exercising delegated position classification authority will be included in the IOP. Managers will identify the occupational family, job series, the functional code, the specialty code, payband level, and the appropriate acquisition codes. The manager will document these decisions on a benchmark cover sheet.

Specialty codes will be developed by Subject Matter Experts (SMEs) to identify the special nature of work performed. Functional codes are those currently found in the OPM Introduction to the Classification Standards which define certain kinds of activities, *e.g.,* Research, Development, Test, and Evaluation, etc., and covers Engineers & Scientists.

4. Classification Appeals

Classification appeals are not accepted on positions which exceed the equivalent of a GS–15 level. For all other positions, an employee may appeal the occupational family, occupational series, or payband level of the position at any time. An employee must first raise the areas of concern to a supervisor in the employee's immediate chain of command, either verbally or in writing. If an employee is not satisfied with the supervisory response, he or she may then appeal to the DoD appellate level. Appellate decisions from DoD are final. Time periods for case processing under 5 CFR part 511 apply.

An employee may not appeal the accuracy of the position description, the demonstration project classification criteria, or the pay-setting criteria; the assignment of occupational series to an occupational family; the title of a position; the propriety of a salary schedule; or matters grievable under an administrative or negotiated grievance procedure or an alternative dispute resolution procedure.

The evaluation of a classification appeal under this demonstration project is based upon the demonstration project classification criteria. Case files will be forwarded for adjudication through the Civilian Personnel Advisory Center providing personnel service and will

include copies of appropriate demonstration project criteria.

D. Hiring and Appointment Authorities

1. Qualifications

A candidate's basic eligibility will be determined using OPM's Qualification Standards Handbook for General Schedule Positions. Candidates must meet the minimum standards for entry into the payband. For example, if the payband includes positions in grades GS–5 and GS–7, the candidate must meet the qualifications for positions at the GS–5 level. Specific experience/education requirements will be determined based on whether a position to be filled is at the lower or higher end of the band. Selective placement factors can be established in accordance with the OPM Qualification Handbook, when judged to be critical to successful job performance. These factors will be communicated to all candidates for particular position vacancies and must be met for basic eligibility. Restructuring the examining process and providing an authority to appoint candidates meeting distinguished scholastic achievements will allow the Technical Center to compete more effectively for high quality personnel and strengthen the manager's role in personnel management as well as the goals of the demonstration project.

2. Appointment Authority

Under the demonstration project, there will continue to be career and career conditional appointments and temporary appointments not to exceed one year. These appointments will use existing authorities, and entitlements, and will comply with merit system principles. A public notice may be used to fill anticipated permanent or modified term vacancies with a full-time or part-time work schedule at various locations.

Non-permanent positions (exceeding one year) needed to meet fluctuating or uncertain workload requirements may be competitively filled using the Flexible Length and Renewable Term Technical Appointment Authority (FLRTTA), authorized in 82 FR 43339, or the Contingent Employee Appointment Authority (CEAA), authorized in 62 FR 34876, 34889.

Employees hired for more than one year, under the Contingent Employee Appointment Authority, are given modified term appointments in the competitive service for up to five years. The Technical Center Director is authorized to extend a contingent appointment for up to one additional year.

Using the FLRTTA, a modified term scientific or technical position may be filled for any period of more than one year but not more than six years, and may be extended in up to six-year increments at any time. The initial source of candidates must be from outside of the DoD.

Employees hired under the FLRTTA and CEAA are entitled to the same rights and benefits as term employees. The Pay-for-Performance Management System described in III.B applies to employees appointed under these authorities. In addition, these employees may be eligible for conversion to career-conditional appointments. To be converted from CEAA or FLRTTA, the employee must (a) have been selected for the term position under an announcement or public notice specifically stating that the individual(s) selected for the term position(s) may be eligible for conversion to career-conditional appointment at a later date without further competition; (b) served two years of substantially continuous service in a term position; and (c) have a current rating of B or better.

Employees serving under term appointments at the time of conversion to the STRL Demonstration Project will be converted to new term contingent employee appointments. Time served in term positions prior to conversion to the contingent employee appointment is creditable to the requirement for two years of continuous service stated above, provided the service was continuous.

(a) Competitive Examining Authority

Category rating will be used to provide for a more streamlined and responsive hiring system to increase the number of eligible candidates referred to selecting officials. This provides for the grouping of eligible candidates into quality categories and the elimination of consideration according to the ''rule of three.'' This includes the coordination of recruitment and public notices, the administration of the examining process, the administration of veterans' preference, the certification of candidates, and selection and appointment consistent with merit principles. Specific procedures used for competitive examining authority within the Technical Center will be detailed in the IOP.

(b) Distinguished Scholastic Achievement Appointment (DSAA)

A DSAA is an authorization to appoint candidates possessing a bachelor's degree or higher to Technical and Business Management positions up to pay band III. Candidates may be appointed to positions provided all of the following conditions are met: The candidate meets the minimum standards for the position as published in OPM's operating manual, ''Qualification Standards for General Schedule Positions,'' plus any selective factors stated in the vacancy announcement; the occupation has a positive education requirement; and the candidate has a cumulative grade point average of 3.5 or better (on a 4.0 scale) in those courses in those field s of study that are specified in the Qualifications Standards for the occupational series.

Veterans' preference procedures will apply when selecting candidates under this authority. Preference eligible candidates who meet the above criteria will be considered ahead of non-preference eligible candidates. In making selections, to pass over any preference eligible candidate(s) to select a non-preference eligible candidate requires approval under applicable DA pass-over or objection procedures.

DSAAs will enable the Technical Center to respond quickly to hiring needs for eminently qualified candidates possessing distinguished scholastic achievements.

(c) Direct Hire Authorities

The Technical Center will use the direct-hire authorities authorized by 10 U.S.C. 2358a to appoint the following:

(1) Candidates with advanced degrees to scientific and engineering positions;

(2) Candidates with bachelor's degrees to scientific and engineering positions;

(3) Veteran candidates to scientific, technical, engineering, and mathematics positions (STEM), including technician positions; and

(4) Student candidates enrolled in a program of instruction leading to a bachelors or advanced degree in a STEM discipline.

3. Legal Authority

For actions taken under the auspices of the demonstration project, the first legal authority code (LAC)/legal authority Z2U/Public Law 103–337 will be used. The second LAC/legal authority may identify the authority utilized (*e.g.,* Direct Hire Authority). For all other actions, the nature of action codes and legal authority codes prescribed by OPM, DoD, or DA will continue to be used.

4. Probationary Period

The probationary period will be two years for all newly hired employees. All other features of the current probationary period are retained, including the potential to remove an

employee without providing the full substantive and procedural rights afforded a non-probationary employee. Probationary employees will be terminated if an employee fails to demonstrate proper conduct, technical competency, and/or adequate contribution for continued employment. When the Technical Center Director or designee decides to terminate an employee serving a probationary period because his/her work performance or conduct during this period fails to demonstrate fitness or qualifications for continued employment, the employee will be provided written notification of the reasons for separation and the effective date of the action. The information in the notice as to why the employee is being terminated will, as a minimum, consist of the manager's conclusions as to the inadequacies of their performance or conduct.

5. Supervisory Probationary Periods

Supervisory probationary periods will be made consistent with 5 CFR 315.901. Employees that have successfully completed the initial probationary period will be required to complete an additional one year probationary period for the initial appointment to a supervisory position. If, during the supervisory probationary period, the decision is made to return the employee to a nonsupervisory position for reasons solely related to supervisory performance, the employee will be returned to a comparable position of no lower payband and pay than the position from which they were promoted.

6. Volunteer Emeritus Program (VEP)

The Technical Center Director will have the authority to offer former Federal employees who have retired or separated from the Federal service, voluntary assignments in the Technical Center. Volunteer Emeritus Program assignments are not considered ''employment'' by the Federal government (except as indicated below). Thus, such assignments do not affect an employee's entitlement to buyouts or severance payments based on an earlier separation from Federal service. The Volunteer Emeritus Program will ensure continued quality research while reducing the overall salary line by allowing higher paid individuals to accept retirement incentives with the opportunity to retain a presence in the scientific community. The program will be of most benefit during manpower reductions as senior employees could accept retirement and return to provide valuable on-the-job training or mentoring to less experienced employees. Volunteer service will not be used to replace any employee, or interfere with career opportunities of employees. The Volunteer Emeritus Program may not be used to replace or substitute for work performed by civilian employees occupying regular positions required to perform the Technical Center's mission.

To be accepted into the Volunteer Emeritus Program, a candidate must be recommended by a Technical Center manager to the Technical Center Director. Everyone who applies is not entitled to participate in the program. The Technical Center Director will document the decision process for each candidate and retain selection and non-selection documentation for the duration of the assignment or two years, whichever is longer.

To ensure success and encourage participation, the volunteer's federal retirement pay (whether military or civilian) will not be affected while serving in a volunteer capacity. Retired or separated federal employees may accept an emeritus position without a break or mandatory waiting period.

Volunteers will not be permitted to monitor contracts on behalf of the government or to participate on any contracts or solicitations where a conflict of interest exists. The same rules that currently apply to source selection members will apply to volunteers.

An agreement will be established between the volunteer, the Technical Center Director, and the USASMDC G–1. The agreement will be reviewed by the servicing legal office. The agreement must be finalized before the assumption of duties and will include:

(a) A statement that the service provided is gratuitous, that the volunteer assignment does not constitute an appointment in the civil service and is without compensation or other benefits except as provided for in the agreement itself, and that, except as provided in the agreement regarding work-related injury compensation, any and all claims against the Government (stemming from or in connection with the volunteer assignment) are waived by the volunteer;

(b) a statement that the volunteer will be considered a federal employee for the purpose of:

(1) 18 U.S.C. 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913;

(2) 31 U.S.C. 1343, 1344, and 1349(b);

(3) 5 U.S.C. chapters 73 and 81;

(4) The Ethics in Government Act of 1978;

(5) 41 U.S.C. chapter 21;

(6) 28 U.S.C. chapter 171 (tort claims procedure), and any other Federal tort liability statute;

(7) 5 U.S.C. 552a (records maintained on individuals); and

(c) the volunteer's work schedule;

(d) the length of agreement (defined by length of project or time defined by weeks, months, or years);

(e) the support to be provided by the Technical Center (travel, administrative, office space, supplies);

(f) the volunteer's duties;

(g) a provision that states no additional time will be added to a volunteer's service credit for such purposes as retirement, severance pay, and leave as a result of being a participant in the Volunteer Emeritus Program;

(h) a provision allowing either party to void the agreement with 10 working days written notice;

(i) the level of security access required (any security clearance required by the assignment will be managed by the Technical Center while the volunteer is a participant in the Volunteer Emeritus Program);

(j) a provision that any written products prepared for publication that are related to Volunteer Emeritus Program participation will be submitted to the Technical Center Director for review and must be approved prior to publication;

(k) a statement that the volunteer accepts accountability for loss or damage to Government property occasioned by the volunteer's negligence or willful action;

(l) a statement that the volunteer's activities on the premises will conform to the Technical Center's regulations and requirements;

(m) a statement that the volunteer will not improperly use or disclose any non-public information, to include any pre-decisional or draft deliberative information related to DoD programming, budgeting, resourcing, acquisition, procurement or other matter, for the benefit or advantage of the Volunteer Emeritus Program participant or any non-Federal entities. Volunteer Emeritus Program participants will handle all non-public information in a manner that reduces the possibility of improper disclosure;

(n) a statement that the volunteer agrees to disclose any inventions made in the course of work performed at the Technical Center. The Technical Center Director will have the option to obtain title to any such invention on behalf of the U.S. Government. Should the Technical Director elect not to take title, the Center will retain a non-exclusive, irrevocable, paid up, royalty-free license

to practice or have practiced the invention worldwide on behalf of the U.S. Government;

(o) a statement that the Volunteer Emeritus Program participant must complete either a Confidential or Public Financial Disclosure Report, whichever applies, and ethics training in accordance with office of Government Ethics regulations prior to implementation of the agreement; and

(p) a statement that the Volunteer Emeritus Program participant must receive post-government employment advice from a DoD ethics counselor at the conclusion of program participation. Volunteer Emeritus Program participants are deemed Federal employees for purposes of post-government employment restrictions.

E. Employee Development

1. Expanded Developmental Opportunity Program

The Technical Center Expanded Developmental Opportunity Program will be funded by the Technical Center, and will cover all demonstration project employees. An expanded developmental opportunity complements existing developmental opportunities such as (1) long term training, (2) one year work experiences in an industrial setting via the Relations With Industry Program, (3) one year work experiences in laboratories of allied nations via the Science and Engineer Exchange Program, (4) rotational job assignments within the Technical Center, (5) up to one year developmental assignments in higher headquarters within the DA and/or the DoD, and (6) self-directed study via correspondence courses and local colleges and universities.

Each developmental opportunity period should benefit the Technical Center, as well as increase the employee's individual effectiveness. Various learning or uncompensated developmental work experiences may be considered, such as advanced academic teaching or research, or on-the-job work experience with public or non-profit organizations. Employees will be eligible for the Technical Center Expanded Developmental Opportunity Program after completion of seven years of Federal service. Final approval authority for participation in the Technical Center Expanded Developmental Opportunity Program will rest with the Technical Center Director, and selection for the Technical Center Expanded Developmental Opportunity Program will be granted on a competitive basis. An expanded developmental opportunity period will not result in loss of (or reduction in) basic pay, loss of leave to which the employee is otherwise entitled, or credit for time or service. Employees accepting an expanded developmental opportunity may be required to enter a continued service agreement, which may vary from the requirement in 5 U.S.C. 4108(a)(1).

The opportunity to participate in the Technical Center Expanded Developmental Opportunity Program will be announced annually. Instructions for application and the selection criteria will be included in the announcement. Final selection for participation in the program will be made by the PPB. The position of employees on an expanded developmental opportunity may be backfilled with employees temporarily promoted or contingent employees or employees assigned via the simplified assignment process in Section III.A.

2. Training for Degrees

Degree training is an essential component of an organization that requires continuous acquisition of advanced and specialized knowledge. Degree training in the academic environment of laboratories is also a critical tool for recruiting and retaining employees with critical skills. Current government-wide regulations authorize payment for degrees based on recruitment or retention needs. Degree payment is not currently permitted for non-shortage occupations involving critical skills.

The Technical Center will expand use of these authorities to provide degree payment opportunities to employees in all occupational families for purposes of meeting current or projected mission requirements, to ensure continuous acquisition of advanced and specialized knowledge essential to the organization, and to recruit and retain personnel critical to the present and future requirements of the organization. Degree payment may not be authorized where it would result in a tax liability for the employee without the employee's express and written consent. It is expected that the degree payment authority will be used primarily for advanced degrees, but may be used to fund undergraduate courses that are a necessary pre-requisite to the attainment of an advanced degree.

The Technical Center will develop guidelines to ensure competitive approval of degree training participation and that related decisions are fully documented. Employees participating in degree training will be required to enter a continued service agreement required by 5 U.S.C. 4108(a)(1).

IV. Training

Training about the demonstration project is key to its success. This training will provide the knowledge and skills necessary to carry out the demonstration project's proposed changes to the Technical Center's personnel system, as well as foster participant commitment to the program.

Training before the beginning of implementation and throughout the demonstration project will be provided to supervisors, employees, and the administrative staff responsible for assisting managers in effecting the changeover and operation of the new system.

The elements to be covered in the orientation portion of this training will include: (1) A description of the personnel system, (2) how employees are converted into and out of the system, (3) the pay adjustment and/or bonus process, (4) familiarization with the new position descriptions and performance objectives, (5) the performance evaluation management system, (6) the reconsideration process, (7) the demonstration project administrative and formal evaluation process, and (8) AFGE Local 1858's role and function in the demonstration program.

A. Supervisors

The focus of this demonstration project on management-centered personnel administration, with increased supervisory and managerial personnel management authority and accountability, demands thorough training of supervisors and managers in the knowledge and skills that will prepare them for their new responsibilities. Training will include detailed information on the policies and procedures of the demonstration project, skills training in using the classification system, position description preparation, performance evaluation, and interaction with AFGE Local 1858 as a partner. Additional training may focus on non-project procedural techniques such as interpersonal and communication skills.

B. Administrative Staff

The administrative staff, including G–1 personnel specialists, Technical Center technicians, and administrative officers, will play a key role in advising, training, and coaching supervisors and employees in implementing the demonstration project. This staff will need training in the procedural and technical aspects of the project.

C. Employees

The Technical Center, in conjunction with the AFGE Local 1858 and education and development assets of the USASMDC G–1 and the CPAC will train employees covered under the demonstration project. In the months leading up to the implementation date, meetings will be held for employees to fully inform them of all project decisions, procedures, and processes.

V. Conversion

A. Conversion to the Demonstration Project

Initial entry into the demonstration project for covered employees will be accomplished through a full employee protection approach that ensures each employee an initial place in the appropriate payband without loss of pay. Employees serving under regular term appointments at the time the demonstration project is implemented will be converted to the contingent employee appointments. Position announcements will not be required for these contingent employee appointments. An automatic conversion into the new broadband system will be accomplished from an interim GS grade and pay which corresponds to an employee's current broadband. Each employee's initial total salary under the demonstration project will equal the total salary received immediately before conversion. Employees who enter the demonstration project later by lateral reassignment or transfer (at the same pay grade from within the DoD) may be subject to these pay conversion rules.

If conversion into the demonstration project is accompanied by a geographic move, the employee's GS pay entitlements in the new geographic area must be determined before performing the pay conversion.

Employees who are on temporary promotions at the time of conversion will be converted to a payband commensurate with the grade of the position to which they are promoted. At the conclusion of the temporary promotion, the employee will revert to the payband which corresponds to the employee's grade of record prior to the temporary promotion. When a temporary promotion is terminated, the employee's pay entitlements will be determined based on the employee's position of record, with appropriate adjustments to reflect pay events during the temporary promotion, subject to the specific policies and rules established by the Technical Center. In no case may those adjustments increase the pay for the position of record beyond the applicable pay range maximum rate. The only exception will be if the original competitive promotion announcement stipulated that the promotion could be made permanent; in these cases actions to make the temporary promotion permanent will be considered, and, if implemented, will be subject to all existing priority placement programs.

Employees who are covered by special salary rates (SSRs) upon being converted to the demonstration project will no longer be considered special rate employees under the demonstration project. These employees will, therefore, be entitled to full locality pay or a staffing supplement, whichever is greater. These employees' adjusted salaries will not change. Rather, the employees will receive a new basic pay rate computed under the staffing supplement rules in Section V.B.2.e. (Pay-Setting Provisions), if applicable. Adverse action and pay retention provisions will not apply to the conversion process, as there will be no change in total salary.

During the first 12 months after conversion into the demonstration project, employees in career ladder positions will receive pay increases for non-competitive promotion equivalents, provided the grade level of the promotion is encompassed within the same broadband, the employee's performance warrants the promotion, and promotions would have otherwise occurred during that period. Employees who receive an in-level promotion at the time of conversion will not receive a prorated step increase equivalent as defined below.

Employees who enter the demonstration project later by lateral reassignment or transfer from the GS classification and pay system may receive an adjustment to their demonstration project base salary for a prorated value based upon the number of weeks the employee has performed at a successful level for purposes of eligibility for the next higher step under the GS system.

B. Conversion or Movement From a Project Position to a General Schedule Position

If a demonstration project employee is moving to a GS position not under the demonstration project, or if the project ends and all project employees must be converted back to the GS system, the following procedures will be used to convert the employee's demonstration project payband to a GS-equivalent grade and the employee's demonstration project rate of pay to GS equivalent rate of pay. The converted GS grade and GS rate of pay must be determined before movement or conversion out of the demonstration project and any accompanying geographic movement, promotion, or other simultaneous action. For conversions upon termination of the demonstration project and for lateral reassignments, the converted GS grade and rate will become the employee's actual GS grade and rate after leaving the demonstration project (before any other action). For employee movement within DoD (transfers), promotions, and other actions, the converted GS grade and rate will be used in applying any GS pay administration rules applicable in connection with the employee's movement out of the project (*e.g.,* promotion rules, highest previous rate rules, pay retention rules), as if the GS converted grade and rate were actually in effect immediately before the employee left the demonstration project.

1. Grade-Setting Provisions

An employee in a payband corresponding to a single GS grade is converted to that grade. An employee in a payband corresponding to two or more grades is converted to one of those grades according to the following rules:

a. The employee's adjusted rate of basic pay under the demonstration project (including any locality payment or staffing supplement) is compared with step four rates on the highest applicable GS rate range. (For this purpose, a ''GS rate range'' includes a rate in (1) the GS base schedule, (2) the locality rate schedule for the locality pay area in which the position is located, or (3) the appropriate special rate schedule for the employee's occupational series, as applicable.) If the series is a two-grade interval series, only odd-numbered grades are considered below GS–11.

b. If the employee's adjusted project rate equals or exceeds the applicable step four rate of the highest GS grade in the band, the employee is converted to that grade.

c. If the employee's adjusted project rate is lower than the applicable step four rate of the highest grade, the adjusted rate is compared with the step four rate of the second highest grade in the employee's payband. If the employee's adjusted rate equals or exceeds step four rate of the second highest grade, the employee is converted to that grade.

d. This process is repeated for each successively lower grade in the band until a grade is found for which the employee's adjusted project rate equals or exceeds the applicable step four rate of the grade. The employee is then converted at that grade. If the

employee's adjusted rate is below the step four rate of the lowest grade in the band, the employee is converted to the lowest grade.

e. Exception: If the employee's adjusted project rate exceeds the maximum rate of the grade assigned under the above-described ''step four'' rule but fits in the rate range for the next higher applicable grade (*i.e.,* between step one and step four), then the employee will be converted to that next higher applicable grade.

f. Exception: An employee will not be converted to a lower grade than the grade held by the employee immediately preceding a conversion, lateral reassignment, or transfer from within DoD into the project, unless since that time the employee has undergone a reduction in band.

2. Pay-Setting Provisions

An employee's pay within the converted GS grade is set by converting the employee's demonstration project rate of pay to the GS rate of pay in accordance with the following rules:

a. The pay conversion is done before any geographic movement or other pay-related action that coincides with the employee's movement or conversion out of the demonstration project.

b. An employee's adjusted rate of basic pay under the demonstration project (including any locality payment or staffing supplement) is converted to a GS adjusted rate on the highest applicable rate range for the converted GS grade. (For this purpose, a ''GS rate range'' includes a rate range in (1) the GS base schedule, (2) an applicable locality rate schedule, or (3) an applicable special rate schedule.)

c. If the highest applicable GS rate range is a locality pay rate range, the employee's adjusted project rate is converted to a GS locality rate of pay. If this rate falls between two steps in the locality-adjusted schedule, the rate must be set at the higher step. The converted GS unadjusted rate of basic pay would be the GS base rate corresponding to the converted GS locality rate (*i.e.,* same step position). (If this employee is also covered by a special rate schedule as a GS employee, the converted special rate will be determined based on the GS step position. This underlying special rate will be basic pay for certain purposes for which the employee's higher locality rate is not basic pay.)

d. If the highest applicable GS rate range is a special rate range, the employee's adjusted project rate is converted to a special rate. If this rate falls between two steps in the special rate schedule, the rates must be set at the higher step. The converted GS unadjusted rate of basic pay will be the GS rate corresponding to the converted special rate (*i.e.,* same step position).

e. Staffing Supplement

• Application of the Staffing Supplement upon Conversion to the Demonstration Project:

Employees assigned to occupational categories and geographic areas covered by special rates will be entitled to a staffing supplement if the maximum adjusted rate for the banded GS grades to which the employee is assigned is a special rate that exceeds the maximum GS locality rate for the banded grades. The staffing supplement is added to base pay, much like locality rates are added to base pay. For employees being converted into the demonstration project, total pay immediately after implementation of the staffing supplement will be the same as immediately before the staffing supplement, but a portion of the total pay will be in the form of a staffing supplement. Adverse action and pay retention provisions will not apply to the conversion process, as there will be no change in total salary. The staffing supplement is calculated as follows:

Upon conversion, the demonstration base rate will be established by dividing the employee's former GS adjusted rate (the higher of special rate or locality rate) by the staffing factor. The staffing factor will be determined by dividing the maximum special rate for the banded grades by the GS unadjusted rate corresponding to that special rate (step 10 of the GS rate for the same grade as the special rate). The employee's demonstration project staffing supplement is derived by multiplying the demonstration base rate by the staffing factor minus one. Therefore, the employee's final demonstration project special staffing rate equals the demonstration project base rate plus the staffing supplement. This amount will equal the employee's former GS adjusted rate.

Simplified, the formula is this:

Staffing factor = (Maximum special rate for the banded grades)/(GS unadjusted rate corresponding to that special rate)

Demonstration project base rate = (Former GS adjusted rate, special or locality rate)/(staffing factor)

Staffing supplement = (Demonstration project base rate) × (staffing factor − 1)

Salary upon conversion = (Demonstration project base rate) + (staffing supplement)

Note: This sum will equal the existing rate.

Example: Assume there is a GS–854–11, step 3, employee stationed in Huntsville, Alabama, who is entitled to the greater of a SSR of $65,213 or a locality rate of $64,312 ($55,265 + 16.37 percent). The maximum special rate for a GS–854–11, step 10 is $79,478, and the corresponding regular rate is $67,354. The maximum GS–11 locality rate in Huntsville is $78,380 ($67,354 + 16.37 percent), which is less than the maximum SSR. Thus, a staffing supplement is payable. The staffing factor is computed as follows:

Staffing factor = $79,478/$67,354 = 1.1800

Demonstration project base rate = $65,213/1.1800 = $55,265

Then to determine the staffing supplement, multiply the demonstration project base rate by the staffing factor minus one.

Staffing supplement = $55,265 × 0.1800 = $9,948

The staffing supplement of $9,948 is added to the demonstration project base rate of $55,265 and the total salary is $65,213, which is the salary of the employee before this intervention.

If an employee is in a band where the maximum GS adjusted rate for the banded grades is a locality rate, when the employee enters into the demonstration project, the demonstration project base rate is derived by dividing the employee's former GS adjusted rate (the higher of locality rate or special rate) by the applicable locality pay factor (for example, 1.1637 in the Huntsville area for CY 2016). The employee's demonstration project locality-adjusted rate will equal the employee's former GS adjusted rate. Any GS or special rate schedule adjustment will require computing the staffing supplement again. Employees receiving a staffing supplement remain entitled to an underlying locality rate, which may over time supersede the need for a staffing supplement. If OPM discontinues or decreases a special rate schedule, pay retention provisions will be applied. Upon geographic movement, an employee who receives the staffing supplement will have the supplement recomputed. Any resulting reduction in pay will not be considered an adverse action or a basis for pay retention.

• Application of the Staffing Supplement in Circumstances Other than Conversion to the Demonstration Project:

Calculation of the staffing supplement discussed above was presented in the context of a GS employee entering the demonstration project. Application of the staffing supplement is normally

intended to maintain pay comparability for GS employees entering the demonstration project. However, the staffing supplement formulas must be compatible with non-Government employees entering the demonstration project and also be adaptable to the special circumstances of employees already in the demonstration project. Employees who are already in the demonstration project and who are in occupational categories covered by SSR tables will have their salaries examined for the application of a staffing supplement or a one-time salary adjustment.

The principles in the following paragraphs (1) through (6) govern the modifications necessary to the previous staffing supplement calculations to apply the staffing supplement to circumstances other than a GS employee entering the demonstration project. No adjustment under these provisions will provide an increase greater than that provided by the SSR. An increase provided under this authority is not an equivalent increase, as defined by 5 CFR 531.403. These principles are stated with the understanding that the necessary conditions exist that require the application of a staffing supplement.

(1) If a non-Government employee is hired into the demonstration project, the employee's entry salary will be used for the term ''former GS adjusted rate'' to calculate the demonstration project base rate.

(2) If a current demonstration project employee is covered by a SSR table that has not changed (other than by annual general pay increases), the employee's current demonstration project adjusted base salary will be used for the term ''former GS adjusted rate'' to calculate the demonstration project base rate.

(3) If a current demonstration project employee is covered by a new or modified SSR table, the employee's current demonstration project base rate is used to calculate the staffing supplement percentage. The employee's new demonstration project adjusted base salary is the sum of the current demonstration project base rate and the calculated staffing supplement.

(4) If a current demonstration project employee is in an occupational category that is covered by a SSR table and, subsequently, the occupational category becomes covered by a different SSR table with a higher value, the following steps must be applied to calculate a new demonstration project base rate:

Step 1. To obtain a relevance factor, divide the staffing factor that will become applicable to the employee by the staffing factor that would have applied to the employee.

Step 2. Multiply the relevance factor resulting from step one by the employee's current adjusted demonstration project rate to determine a new adjusted demonstration project rate.

Step 3. Divide the result from step two by the applicable staffing factor to derive a new demonstration project base rate. This new demonstration project base rate will be used to calculate the staffing supplement and the new demonstration project adjusted base salary.

(5) If, after the establishment of a new or adjusted SSR table, an employee enters the demonstration project (whether converted/hired from GS or another pay system, or hired from outside Government) prior to this intervention, then the employee's current adjusted base salary is used for the term ''former GS adjusted rate'' to calculate the demonstration project base rate. This principle prevents double compensation due to the single event of a new or adjusted SSR table.

(6) If an employee is in an occupational category covered by a new or modified SSR table, and the pay band to which assigned is not entitled to a staffing supplement, then the employee's salary may be reviewed and adjusted to accommodate the salary increase provided by the SSR. The review may result in a one-time pay increase if the employee's salary equals or is less than the highest special salary grade and step that exceeds the comparable locality grade and step. Technical Center operating procedures will identify the officials responsible to make such reviews and determinations. The applicable salary increase will be calculated by determining the percentage difference between the highest step 10 SSR and the comparable step 10 locality rate and applying this percentage to the demonstration project base rate.

An established salary including the staffing supplement will be considered basic pay for the same purposes as a locality rate under 5 CFR 531.606(b), *i.e.,* for purposes of retirement, life insurance, premium pay, severance pay, and pay advances. It will also be used to compute worker's compensation payments and lump-sum payments for accrued and accumulated annual leave.

3. E&S Payband III Employees

An employee in Payband III of the E&S Occupational family will convert out of the demonstration project at no higher than the GS–13, step 10 level. The Technical Center, in consultation with the USASMDC G–1 and CPAC, will develop a procedure to ensure that employees entering E&S Payband III understand that if they leave the demonstration project and their adjusted pay exceeds the GS–13, step 10 rate, there is no entitlement to retained pay; their GS-equivalent rate will be deemed to be the rate for GS–13, step 10.

4. E&S Payband V Employees

The minimum basic pay for DB–V positions is 120 percent of the minimum rate of basic pay for GS–15. Maximum DB–V basic pay with locality pay is limited to Executive Level III (EX–III), and maximum salary without locality pay may not exceed EX–IV. The total pay (including locality pay and any supervisory differential) may not exceed the midpoint between the maximum rate of basic pay of EX–III and the maximum rate of basic pay of EX–II, rounded up to the next thousand (*i.e.,* $182,050 for calendar year 2019). An employee in Payband V of the E&S Occupational family will convert out of the demonstration project at the GS–15 level. The Technical Center, in consultation with the USASMDC G–1 and CPAC, will develop a procedure to ensure that employees entering Payband V understand that if they leave the demonstration project and their adjusted pay exceeds the GS–15, step 10 rate (*e.g.,* SSTMs), there is no entitlement to retained pay; their GS-equivalent rate will be deemed to be the rate for GS–15, step 10. For those Payband V employees paid below the adjusted GS–15, step 10 rate, the converted rates will be set in accordance with paragraph 2.b.

5. Employees With Band or Pay Retention

a. If an employee is retaining a band level under the demonstration project, apply the procedures in paragraphs 1.a. and 1.b. (Grade-Setting Provisions) above, using the grades encompassed in the employee's retained band to determine the employee's GS-equivalent retained grade and pay rate. The time in a retained band under the demonstration project counts toward the two-year limit on grade retention in 5 U.S.C. 5382.

b. If an employee is retaining a pay rate under the demonstration project, the employee's GS-equivalent grade is the highest grade encompassed in his or her band level. The Technical Center will coordinate with the DoD to prescribe a procedure for determining the GS-equivalent pay rate for an employee retaining a rate under the demonstration project.

6. Within-Grade Increase

Equivalent Increase Determinations: Service under the demonstration project is creditable for within-grade increase purposes upon conversion back to the GS pay system. Performance pay increases (including a zero increase) under the demonstration project are equivalent increases for the purpose of determining the commencement of a within-grade increase waiting period under 5 CFR 531.405(b).

7. Personnel Administration

All personnel laws, regulations, and guidelines not waived by this demonstration project will remain in effect. Basic employee rights will be safeguarded and merit principles will be maintained. Supporting personnel specialists will continue to process personnel-related actions and provide consultative and other appropriate services.

Use of benchmark position descriptions is not anticipated to adversely impact an employee's ability to seek employment outside of the Technical Center. Technical Center employees participating in the demonstration project will have short generic benchmark position descriptions that describe the general type of work performed and the range of complexity and supervisory controls. The benchmark position description cover sheet lists the OPM occupational series, *e.g.,* 855 for Electronics Engineer, to which the employee is assigned, and, where additional specificity is needed, lists a specialty code that is tied to the employee's benchmark description to a particular technology or functional area. The OPM occupational code will serve as ready identification, Government-wide, of the basic qualifications and experience that the employee possesses. In addition, virtually all federal employment systems, including OPM's, rely on employee-generated resumes that allow applicants to summarize or describe the details of their experience and training. Any pertinent information regarding Technical Center employees' knowledge, skills, or abilities not contained in the benchmark position description can be conveyed to potential employers through an employee's resume.

8. Automation

The Technical Center will continue to use the Defense Civilian Personnel Data System (DCPDS) for processing personnel-related data. Payroll servicing will continue from the respective payroll offices.

Local automated systems will be developed to support computing performance related pay increases, bonuses, awards, and other personnel processes and systems associated with this demonstration project.

9. Experimentation and Revision

Many aspects of a demonstration project are experimental. Revisions will be considered and negotiated with the Union, where appropriate, as experience is gained, results are analyzed, and conclusions are reached on how the demonstration project is working. The Technical Center may make minor modifications, such as changes in the occupational series in an occupational family, without further notice. Major changes, such as a change in the number of occupational families, will be negotiated with the Union to the extent required by law, regulation, and Executive Order, and published in the **Federal Register**. See 5 CFR part 470.

VI. Project Duration

Public Law 103–337 removed any mandatory expiration date for this demonstration project. The demonstration project evaluation plan adequately addresses how each personnel management change or flexibility will be comprehensively evaluated for at least the first five years of the demonstration project. Major changes and modifications to the flexibilities will be made if warranted by formative evaluation data and will be published in the **Federal Register** to the extent required.

VII. Evaluation Plan

A. Overview

Title 5 U.S.C. chapter 47 requires that an evaluation system be implemented to measure the effectiveness of the proposed personnel management changes or flexibilities. An evaluation plan for the entire STRL demonstration program covering 24 DoD labs was developed by a joint OPM/DoD Evaluation Committee. A comprehensive evaluation plan was submitted to the Office of Defense Research & Engineering in 1995 and subsequently approved (Proposed Plan for Evaluation of the DoD S&T Laboratory Demonstration Program, Office of Merit Systems Oversight & Effectiveness, June 1995). The primary focus of the evaluation is to determine whether the waivers granted result in a more effective personnel system than the current system as well as an assessment of the costs associated with the new system.

The present personnel system with its many rigid rules and regulations is generally perceived as an impediment to mission accomplishment. The Demonstration Project is intended to remove some of those barriers and therefore, is expected to contribute to improved organizational performance. While it is not possible to prove a direct causal link between intermediate and ultimate outcomes (improved personnel system performance and improved organizational effectiveness), such a linkage is hypothesized and data will be collected and tracked for both types of outcome variables.

B. Evaluation Model

An intervention impact model (Appendix A) will be used to measure the effectiveness of the various personnel system changes or interventions. Additional measures will be developed as new interventions are introduced or existing interventions modified consistent with expected effects. Measures may also be deleted when appropriate. Activity specific measures may also be developed to accommodate specific needs or interests which are locally unique.

The evaluation model for the Demonstration Project identifies elements critical to an evaluation of the effectiveness of the interventions. The overall evaluation approach will also include consideration of context variables that are likely to have an impact on project outcomes: *e.g.,* Human Resource Management regionalization, downsizing, cross-service integration, and the general state of the economy. However, the main focus of the evaluation will be on intermediate outcomes, *i.e.,* the results of specific personnel system changes which are expected to improve human resources management. The ultimate outcomes are defined as improved organizational effectiveness, mission accomplishment, and customer satisfaction.

C. Evaluation

The STRL Directors will conduct an internal evaluation of the STRL Personnel Demonstration Program. Because most of the eligible laboratories are participating in the program, a 5 U.S.C. comparison group will be compiled from the Central Personnel Data File (CPDF). This comparison group will consist of workforce data from Government-wide research organizations in civilian Federal agencies with missions and job series matching those in the DoD laboratories. The comparison group will be used primarily in the analysis of pay banding costs and turnover rates.

The evaluation effort will consist of two phases, formative and summative

evaluation, covering at least five years to permit inter- and intra-organizational estimates of effectiveness. The formative evaluation phase will include baseline data collection and analysis, implementation evaluation, and interim assessments. The formal reports and interim assessments will provide information on the accuracy of project operation and current information on impact of the project on veterans and protected groups, Merit System Principles, and Prohibited Personnel Practices. The summative evaluation will focus on an overall assessment of project outcomes after five years. The final report will provide information to DoD on how well the demonstration project achieved the desired goals, which interventions were most effective, and whether the results can be generalized to other Federal installations.

D. Method of Data Collection

Data from a variety of different sources will be used in the evaluation. Information from existing management information systems supplemented with perceptual survey data from employees will be used to assess variables related to effectiveness. Multiple methods provide more than one perspective on how the demonstration project is working. Information gathered through one method will be used to validate information gathered through another. Confidence in the findings will increase as they are substantiated by the different collection methods. The following types of qualitative and/or quantitative data will be collected as part of the evaluation: (1) Workforce data; (2) personnel office data; (3) employee attitudes and feedback using surveys, structured interviews, and focus groups; (4) local activity histories; and, (5) core measures of laboratory effectiveness.

VIII. Demonstration Project Costs

Costs associated with the development of the personnel demonstration system include software automation, training, and project evaluation. All funding will be provided through the Technical Center's budget. The projected annual expenses for each area is summarized in Table 1.

TABLE 1—PROJECTED DEVELOPMENTAL COSTS

[Then year dollars]

	FY18	FY19	FY20	FY21	FY22
Training	5K	20K	10K	10K	5K
Project Evaluation	.....	.....	5K	5K	50K
Automation	20K	75K	25K	10K	10K
Totals	25K	95K	40K	25K	65K

IX. Required Waivers to Laws and Regulations

Public Law 103–337 gave the DoD the authority to experiment with several personnel management innovations. In addition to the authorities granted by the law, the following are the waivers of law and regulation that will be necessary for implementation of the Demonstration Project. In due course, additional laws and regulations may be identified for waiver request.

The following waivers and adaptations of certain 5 U.S.C. provisions are required only to the extent that these statutory provisions limit or are inconsistent with the actions contemplated under this demonstration project. Nothing in this plan is intended to preclude the demonstration project from adopting or incorporating any law or regulation enacted, adopted, or amended after the effective date of this demonstration project.

A. Title 5 U.S.C.

Chapter 5, section 552a: Records. Waived to the extent required to clarify that volunteers under the Voluntary Emeritus Program are considered employees of the Federal government for purposes of this section.

Chapter 31, section 3104: Employment of Specially Qualified Scientific and Professional Personnel. Waived to allow SSTMs.

Chapter 31, section 3132: The Senior Executive Service; Definitions and exclusions. Waived to allow SSTMs.

Chapter 33, section 3308: Competitive Service; Examinations; Educational Requirements Prohibited. This section is waived with respect to the scholastic achievement appointment authority.

Chapter 33, section 3317(a), Competitive Service, certification from registers. Waived insofar as ''rule of three'' is eliminated.

Chapter 33, section 3318(a), Competitive Service, selection from certificates. Waived insofar as ''rule of three'' is eliminated.

Chapter 33, section 3321: Competitive Service; Probationary Period: This section waived only to the extent necessary to replace grade with ''pay band.''

Chapter 33, section 3324 and section 3325: Appointments to Positions Classified Above GS–15. Waived in entirety to allow SSTMs.

Chapter 33, section 3327: Civil service employment information. Waived to allow for provisions as described in this FRN.

Chapter 33, section 3330: Government-wide list of vacant positions. Waived to allow for provisions as described in this FRN.

Chapter 33, section 3341: Details. This waiver applies to the extent necessary to waive the time limits for details.

Chapter 35, section 3502: Order of Retention. Waived to the extent necessary to allow provisions of the RIF plan as described in this FRN.

Chapter 41, section 4107: Pay for Degrees. Waived in entirety.

Chapter 41, section 4108: Employee Agreements; Service after Training. To the extent that employees who accept an expanded developmental opportunity (sabbatical) do not have to sign a continued service agreement.

Chapter 43, sections 4301–4305: Related to performance appraisal. These sections are waived to the extent necessary to allow provisions of the performance management system as described in this FRN.

Chapter 51, sections 5101–5112: Related to classification standards and grading. Waived to the extent that white collar employees will be covered by broadbanding and to the extent necessary to allow classification provisions described in this FRN. Pay category determination criteria for federal wage system positions remain unchanged.

Chapter 53, sections 5301–5307: Related to pay comparability system and General Schedule pay rates. Waived to the extent necessary to allow demonstration project employees, including SSTM employees, to be treated as General Schedule employees, and to allow basic rates of pay under the

demonstration project to be treated as scheduled rates of pay. SSTM pay will not exceed EX–IV and locality adjusted SSTM rates will not exceed EX III.

Chapter 53, sections 5331–5336: General Schedule pay rates. These waivers apply to the extent necessary to allow: (1) Demonstration Project employees to be treated as GS employees; (2) to allow the provisions of this FRN pertaining to setting rates of pay; and (3) waive sections 5335 and 5336 in their entirety.

Chapter 53, sections 5361–5366: Grade and pay retention. Waived to the extent necessary to allow pay and grade retention provisions described in this FRN.

Chapter 55, section 5542(a)(1)–(2): Overtime rates; computation. These sections are adapted only to the extent necessary to provide that the GS–10 minimum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the ''applicable special rate'' in applying the pay cap provisions in 5 U.S.C. 5542.

Chapter 55, section 5545(d): Hazardous duty differential. This waiver applies only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees. This waiver does not apply to ST employees or employees in Payband V of the E&S occupational family.

Chapter 55, section 5547(a)–(b): Limitation on premium pay. These sections are adapted only to the extent necessary to provide that the GS–15 maximum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the ''applicable special rate'' in applying the pay cap provisions in 5 U.S.C. 5547.

Chapter 57, section 5753: Recruitment and Relocation Bonuses. Waived to the extent necessary to allow demonstration project employees, including SSTM employees, to be treated as General Schedule employees.

Chapter 57, section 5754: Retention Bonuses. Waived to the extent necessary to allow provisions of the retention counteroffer and incentives as described in this FRN.

Chapter 57, section 5755: Supervisory Differentials. Waived to the extent necessary to allow provisions as described in this FRN.

Chapter 59, section 5941: Allowances based on living costs and conditions of environment; employees stationed outside continental U.S. or Alaska. This waiver applies only to the extent necessary to provide that COLAs paid to employees under the demonstration project are paid in accordance with the regulations prescribed by the President (as delegated to OPM).

Chapter 75, sections 7501(1), 7511(a)(1)(A)(ii), and 7511(a)(1)(C)(ii): Adverse Actions—Definitions. Waived to the extent necessary to remove the reference to one year of current continuous service, and to permit termination during the extended probationary period without using adverse action procedures for those employees serving a probationary period under an initial appointment except for those with veterans' preference.

Chapter 75, section 7512(3): Adverse actions. This waiver applies only to the extent necessary to replace ''grade'' with ''payband.''

Chapter 75, section 7512(4): Adverse actions. This waiver applies only to the extent necessary to provide that adverse action provisions do not apply to (1) conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced and (2) reductions in pay due to the removal of a supervisory pay adjustment upon voluntary movement to a nonsupervisory position.

B. Title 5, Code of Federal Regulations

Parts 300 through 330, Employment (General) other than Subpart G of 300. Waived to the extent necessary to allow provisions of the direct hire authorities as described in 79 FR 43722 and 82 FR 29280.

Sections 300.601 through 300.605: Time-in-Grade requirements. Restrictions eliminated under the demonstration.

Section 315.803(b): Agency Action during probationary period (general). Waived to allow for termination during an extended probationary period without using adverse action procedures under 5 CFR part 752, subpart D.

Section 315.901 and 315.907: Statutory requirements. This waiver applies only to the extent necessary to replace ''grade'' with ''pay band.''

Sections 316.301, 316.303, and 316.304: Term Employment. Waived to the extent necessary to allow modified term appointments and Flexible Length and Renewable Term Technical Appointments as described in this FRN.

Sections 330.103 through 330.105: Requirement to notify OPM. Waived to the extent necessary to allow the Technical Center to publish competitive announcements outside of USAJOBS.

Part 332 and 335: Related to competitive examination. Waived to the extent necessary to allow employees appointed on a Flexible Length and Renewable Term Technical Appointment to apply for federal positions as status candidates.

Section 332.401(b): Order on Registers. Waived to the extent that for non-professional or non-scientific positions equivalent to GS–9 and above, preference eligibles with a compensable service-connected disability of 10 percent or more who meet basic (minimum) qualification requirements will be entered at the top of the highest group certified without the need for further assessment.

Section 332.402: Referring candidates for appointment. ''Rule of three'' will not be used in the demonstration projects.

Section 332.404: Order of selection from certificates. Waived to the extent that order of selection is not limited to highest three eligibles.

Section 335.103: Agency promotion programs. Waived to the extent necessary to extend the length of details and temporary promotions without requiring competitive procedures.

Section 337.101(a): Rating applicants. Waived to the extent necessary to allow referral without rating when there are 15 or fewer qualified candidates and no qualified preference eligibles.

Section 338.301: Competitive service appointment. Waived to allow for Distinguished Scholastic Achievement Appointment grade point average requirements as described in this FRN.

Section 351.402(b): Competitive Areas. Waived to allow the Technical Center to be established as a single competitive area.

Section 351.403: Competitive level. Waived to the extent that payband is substituted for grade.

Section 351.504: Credit for Performance. Waived to the extent necessary to allow provisions described in this FRN.

Section 351.701: Assignment Involving Displacement. Waived to the extent that employees bump rights will be limited to one payband except in the case of 30 percent preference eligible, which is a position equivalent to five GS grades below the minimum grade level of his/her payband.

Section 359.705: Related to SES pay. Waived to allow demonstration project rules governing pay retention to apply to a former SES placed on a SSTM position.

Section 410.308(a–f): Training to obtain an academic degree. Waived to the extent necessary to allow provisions described in this FRN.

Section 410.309: Agreements to continue in service. This waiver applies to that portion that pertains to the authority of the head of the agency to determine continued service

requirements, to waive repayment of such requirements, and to the extent that the service obligation is to the Technical Center.

Part 430, Subpart B: Performance Appraisal for General Schedule, Prevailing Rate, and Certain Other Employees. Waived to the extent that employees under the demonstration project will not be subject to the requirements of Subpart B.

Sections 432.102–432.106(a): Related to Performance-based Actions. Modified to the extent that an employee may be removed, reduced in band level with a reduction in pay, reduced in pay without a reduction in band level and reduced in band level without a reduction in pay based on unacceptable performance. Modified also to delete reference to critical element.

Part 511: Classification Under the General Schedule. Waived to the extent necessary to allow classification provisions outlined in this FRN to include the list of issues that are neither appealable nor reviewable, the assignment of series under the project plan to appropriate career paths; and to allow appeals to be decided by the Technical Center Director. If the employee is not satisfied with the Technical Center Director's response to the appeal, they may then appeal to the DoD appellate level.

Part 530, Subpart C: Special salary rates. Waived in its entirety.

Part 531, Subparts B, D, and E: Determining rate of basic pay, within-grade increases, and quality step increases. Waived in its entirety.

Part 531, Subpart F: Locality-based comparability adjustments. This waiver applies only to the extent necessary to allow demonstration project employees, including SSTMs in Payband V, to be treated as General Schedule employees, and basic rates of pay under the demonstration project to be treated as scheduled annual rates of pay. This waiver does not apply to ST employees who continue to be covered by these provisions, as appropriate.

Part 536: Grade and pay retention. This waiver applies only to the extent necessary to (1) replace ''grade'' with ''payband''; (2) provide that pay retention provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced, and to reductions in pay due solely to the removal of a supervisory pay adjustment upon voluntarily leaving a supervisory position; (3) provide that an employee on pay retention whose performance rating is ''U'' is not entitled to 50 percent of the amount of the increase in the maximum rate of basic pay payable for the payband of the employee's position; (4) provide that pay retention provisions do not apply when reduction in basic pay is due solely to the reallocation of demonstration project pay rates in the implementation of a 'staffing supplement;' and (5) to the extent necessary to allow SSTMs to receive pay retention as described in the FRN.

Sections 550.105 and 550.106: Biweekly and annual maximum earnings limitations. These sections are adapted only to the extent necessary to provide that the GS–15 maximum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the ''applicable special rate'' in applying the pay cap provisions in 5 U.S.C. 5547.

Section 550.113(a): Computation of overtime pay. This section is adapted only to the extent necessary to provide that the GS–10 minimum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the ''applicable special rate'' in applying the pay cap provisions in 5 U.S.C. 5542.

Section 550.703: Severance Pay. This waiver applies only to the extent necessary to modify the definition of ''reasonable offer'' by replacing ''two grades or pay levels'' with ''one band level'' and ''grade or pay Level'' with ''band level.''

Section 550.902: Hazardous Duty Differential. This waiver applies only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees. This waiver does not apply to SSTM employees.

Part 575, Subparts A, B, C, and D: Recruitment Bonuses, Relocation Bonuses, Retention Allowances and Supervisory Differentials. This waiver applies to the extent necessary to allow employees and positions under the STRL demonstration project covered by paybanding to be treated as employees and positions under the General Schedule; to allow the Technical Center Director to pay a retention counteroffer up to 50 percent of basic pay of either a base pay and/or a cash payment to retain quality employees; and to the extent necessary to allow SSTMs to receive supervisory pay differentials. Criteria for retention determination and preparing written service agreements will be as prescribed in 5 U.S.C. 5754 and as waived herein.

Sections 752.201 and 752.401: Principal statutory requirements and coverage. Waived to the extent necessary to replace ''grade'' with ''payband''; and to the extent necessary to provide that adverse action provisions do not apply to (1) conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced, and (2) reductions in pay due to the removal of a supervisory pay adjustment upon voluntary movement to a nonsupervisory position.

APPENDIX A: PROJECT EVALUATION AND OVERSIGHT INTERVENTION IMPACT MODEL—DOD LAB DEMONSTRATION PROGRAM

Intervention	Expected effects	Measures	Data sources
1. Compensation			
a. Paybanding	—increased organizational flexibility.	—perceived flexibility	—attitude survey.
	—reduced administrative workload, paperwork reduction.	—actual/perceived time savings	—personnel office data, attitude survey.
	—advanced in-hire rates	—starting salaries of banded v. non-banded employees.	—workforce data.
	—increased pay potential	—progression of new hires over time by band, occupational family.	—workforce data.
		—mean salaries by band, occupational family, demographics, total payroll cost.	—workforce data.

APPENDIX A: PROJECT EVALUATION AND OVERSIGHT INTERVENTION IMPACT MODEL—DOD LAB DEMONSTRATION PROGRAM—Continued

Intervention	Expected effects	Measures	Data sources
	—increased satisfaction with advancement.	—employee perceptions of advancement.	—attitude survey.
	—increased pay satisfaction	—pay satisfaction, internal/external equity.	—attitude survey.
	—improved recruitment	—offer/acceptance ratios	—personnel office data.
		—percent declinations	—personnel office data.
b. Conversion buy-in	—employee acceptance	—employee perceptions of equity, fairness.	—attitude survey.
		—cost as a percent of payroll	—workforce data.
c. Supervisor pay differential/adjustments.	—Increased incentive to accept supervisory positions.	—perceived motivational power	—attitude survey.
2. Performance Management			
a. Cash awards/bonuses	—reward/motivate performance	—perceived motivational power	—attitude survey.
	—to support fair and appropriate distribution of awards.	—amount and number of awards by occupational family, demographics.	—workforce data.
		—perceived fairness of awards	—attitude survey.
		—satisfaction with monetary awards.	—attitude survey.
b. Performance based pay progression.	—increased pay-performance link	—perceived pay-performance link	—attitude survey.
		—perceived fairness of ratings	—attitude survey.
	—improved performance feedback.	—satisfaction with ratings	—attitude survey.
		—employee trust in supervisors	—attitude survey.
		—adequacy of performance feedback.	—attitude survey.
	—decreased turnover of high performers/increased turnover of low performers.	—turnover by performance rating category.	—workforce data.
	—differential pay progression of high/low performers.	—pay progression by performance rating category, occupational family.	—workforce data.
	—alignment of organizational and individual performance expectations and results.	—linkage of performance expectations to strategic plans/goals.	—attitude survey/focus groups.
	—increased employee involvement in performance planning and assessment.	—better communication of performance expectation.	—attitude survey/focus groups.
		—perceived involvement	—attitude survey/focus groups.
c. New appraisal process	—reduced administrative burden	—employee and supervisor perception of revised procedures.	—attitude survey.
	—improved communication	—perceived fairness of process	—focus groups.
d. Performance development	—better communication of performance expectations.	—feedback and coaching procedures used.	—attitude survey.
		—time, funds spent on training by demographics.	—workforce data/training records.
	—improved satisfaction and quality of workforce.	—organizational commitment	—attitude survey.
		—perceived workforce quality	—attitude survey.
3. Classification			
a. Improved classification system with generic standards.	—reduction in amount of time and paperwork spent on classification.	—time spent on classification procedures.	—workforce data.
		—reduction of paperwork/number of personnel actions (classification/promotion).	—workforce data.
	—ease of use	—managers' perceptions of time savings, ease of use, improved ability to recruit.	—attitude survey.
	—improved recruitment of employees with appropriate skills.	—quality of recruits	—focus groups/interviews.
		—perceived quality of recruits	—focus groups.
		—GPA of new hires, educational levels.	—personnel office.
b. Classification authority delegated to managers.	—increased supervisory authority/accountability.	—perceived authority	—attitude survey.
	—decreased conflict between management and personnel staff.	—number of classification disputes/appeals pre/post.	—personnel office.
		—management satisfaction with service provided by personnel office.	—attitude survey.

APPENDIX A: PROJECT EVALUATION AND OVERSIGHT INTERVENTION IMPACT MODEL—DOD LAB DEMONSTRATION PROGRAM—Continued

Intervention	Expected effects	Measures	Data sources
	—no negative impact on internal pay equity.	—internal pay equity	—attitude survey.
4. Combination of All Interventions			
All	—Improved organizational effectiveness.	—combination of personnel management measures.	—all data sources.
	—improved management of R&D workforce.	—employee/management satisfaction.	—attitude survey.
	—cross functional coordination	—perceived effectiveness of planning procedures.	—attitude survey.
		—actual/perceived coordination	—attitude survey.
	—increased product success	—customer satisfaction	—customer satisfaction surveys.
	—cost of innovation	—project training/development cost (staff salaries, contract cost, training hours per employee).	—demo project records. —contract documents.

Appendix B: Performance Elements

All employees will be rated against at least the five generic performance elements listed through ''e'' in this appendix. Technical competence is a mandatory critical element. Other elements may be identified as critical by agreement between the rater and the employee. In case of disagreements, the decision of the supervisor will prevail. Generally, any performance element weighted 25 or higher should be critical. However, only those employees whose duties require manager/leader responsibilities will be rated on element ''f.'' Supervisors will be rated against an additional critical performance element, listed at ''g.'' below:

a. *Technical Competence.* Exhibits and maintains current technical knowledge, skills, and abilities to produce timely and quality work with the appropriate level of supervision. Makes prompt, technically sound decisions and recommendations that add value to mission priorities and needs. For appropriate occupational families, seeks and accepts developmental and/or special assignments. Adaptive to technological change. (Weight range: 15 to 50).

b. *Working Relationships.* Accepts personal responsibility for assigned tasks. Considerate of others' views and open to compromise on areas of difference, if allowed by technology, scope, budget, or direction. Exercises tact and diplomacy and maintains effective relationships, particularly in immediate work environment and teaming situations. Always willing to give assistance. Shows appropriate respect and courtesy. (Weight Range: 5 to 15).

c. *Communications.* Provides or exchanges oral/written ideas and information in a manner that is timely, accurate and cogent. Listens effectively so that resultant actions show understanding of what was said. Coordinates so that all relevant individuals and functions are included in, and informed of, decisions and actions. (Weight Range: 5 to 15).

d. *Resource Management.* Meets schedules and deadlines, and accomplishes work in order of priority; generates and accepts new ideas and methods for increasing work efficiency; effectively utilizes and properly controls available resources; supports organization's resource development and conservation goals. (Weight Range: 15 to 50).

e. *Customer Relations.* Demonstrates care for customers through respectful, courteous, reliable, and conscientious actions. Seeks out and develops solid working relationships with customers to identify their needs, quantifies those needs, and develops practical solutions. Keeps customer informed and prevents surprises. Within the scope of job responsibility, seeks out and develops new programs and/or reimbursable customer work. (Weight Range: 10 to 50).

f. *Management/Leadership.* Actively furthers the mission of the organization. As appropriate, participates in the development and implementation of strategic and operational plans of the organization. Develops and implements tactical plans. Exercises leadership skills within the environment. Mentors junior personnel in career development, technical competence, and interpersonal skills. Exercises due responsibility of technical/acquisition/organizational positions assigned to them. (Weight Range: 0 to 50).

g. *Supervision/EEO.* Works toward recruiting, developing, motivating, and retaining quality team members; takes timely/appropriate personnel actions, applies EEO/merit principles; communicates mission and organizational goals; by example, creates a positive, safe, and challenging work environment; distributes work and empowers team members. (Weight Range: 15 to 50).

Dated: January 15, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–00832 Filed 1–17–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board, U.S. Department of Education.

ACTION: Announcement of an open teleconference meeting.

SUMMARY: This notice sets forth the agenda for a January 31, 2020 teleconference meeting of the National Assessment Governing Board (hereafter referred to as Governing Board).

DATES: January 31, 2020 from 2:30 p.m. to 3:30 p.m. Eastern Standard Time (EST).

ADDRESSES: Teleconference meeting.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Executive Officer/Designated Federal Official for the Governing Board, 800 North Capitol Street NW, Suite 825, Washington, DC 20002, telephone: (202) 357–6938, fax: (202) 357–6945, email: *Munira.Mwalimu@ed.gov.*

SUPPLEMENTARY INFORMATION:

Statutory Authority and Function: The Governing Board is established under the National Assessment of Educational Progress Authorization Act, Title III of Public Law 107–279. The Governing Board is established to formulate policy for NAEP administered by the National Center for Education Statistics (NCES). The Governing Board's responsibilities include the following: Selecting subject areas to be assessed, developing assessment frameworks and specifications, developing appropriate student achievement levels for each grade and subject tested, developing standards and procedures for interstate and national

comparisons, improving the form and use of NAEP, developing guidelines for reporting and disseminating results, and releasing initial NAEP results to the public. Governing Board members serve 4-year terms, subject to renewal for another 4 years, at the discretion of the Secretary of Education.

Meeting Agenda

On Friday, January 31, 2020, the National Assessment Governing Board will convene a teleconference meeting in open session to review, discuss, and take action on the draft Assessment and Item Specifications for the 2025 NAEP Mathematics Framework. The draft Mathematics Framework was adopted by the Governing Board on November 16, 2019. This action is being taken pursuant to the Governing Board's delegation of authority issued on November 16, 2019 to the Assessment Development Committee (ADC) and the Committee on Standards, Design, and Methodology (COSDAM) to review and take action on the Assessment and Item Specifications for the 2025 NAEP Mathematics Framework.

ADC and COSDAM members will meet jointly on January 31, 2020 from 2:30 p.m. to 3:30 p.m. ET to review the draft Assessment and Item Specifications for the 2025 NAEP Mathematics Framework. Following discussion, ADC and COSDAM will take joint action on the draft Assessment and Item Specifications for the 2025 NAEP Mathematics Framework. As a resource for developing test items for the 2025 operational assessment, timely review and Board approval of this specifications document provides clarifications of the Board-adopted framework that will support the National Center for Education Statistics (NCES) in assessment development for 2025.

Public Participation: Notice of the meeting is required under § 10(a)(2) of the Federal Advisory Committee Act (FACA). The meeting is open to the public. Written statements may be filed with the Governing Board either before or after the meeting. Members of the public who wish additional information on the meeting and participation may contact Munira Mwalimu at the address or telephone number listed above. The Governing Board is empowered to conduct the teleconference meeting in a manner that will facilitate the orderly conduct of business and accomplish meeting objectives in a timely manner.

Access to Records of the Meeting: Pursuant to FACA requirements, the public may inspect the meeting report of the teleconference at the National Assessment Governing Board office, 10 working days after the teleconference meeting.

Reasonable Accommodations: The NAGB website is accessible to individuals with disabilities. Written comments may be submitted electronically or in hard copy to the attention of the Executive Officer/Designated Federal Official (see contact information noted above). Information on the Governing Board and its work can be found at *www.nagb.gov.*

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the Adobe website. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: Pub. L. 107–279, Title III—National Assessment of Educational Progress § 301.

Lesley Muldoon,

Executive Director, National Assessment Governing Board (NAGB), U.S. Department of Education.

[FR Doc. 2020–00794 Filed 1–17–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

Applications for New Awards; Native Hawaiian Education Program; Amendment

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

ACTION: Notice; amendment.

SUMMARY: On December 13, 2019, we published in the **Federal Register** a notice inviting applications (NIA) for new awards for fiscal year (FY) 2020 for the Native Hawaiian Education (NHE) program, Catalog of Federal Domestic Assistance (CFDA) number 84.362A. Since that time, Congress passed and the President signed the Department of Education Appropriations Act, 2020 (Act), which provides funding for the awards under this competition. For fiscal year (FY) 2020, the Act overrides the limitation in section 6205(b) of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESEA), to provide that the 5 percent limitation on the use of funds for administrative purposes applies only to direct administrative costs. This document amends the NIA to clearly indicate that the administrative cost cap in ESEA section 6205(b) applies only to direct administrative costs for grants awarded using FY 2020 appropriations.

DATES: *Deadline for Transmittal of Applications:* February 11, 2020.

FOR FURTHER INFORMATION CONTACT: Joanne Osborne, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E306, Washington, DC 20202. Telephone: (202) 401–1265. Email: *Hawaiian@ed.gov.*

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

SUPPLEMENTARY INFORMATION: Following publication of the NIA (84 FR 68154), Congress passed and the President signed the Act, which provides funding for the awards under this competition. The Act provides that the 5 percent limitation in section 6205(b) of the ESEA on the use of funds for administrative purposes applies only to direct administrative costs. Accordingly, we are amending the NIA to notify prospective applicants that no more than five percent of funds awarded for a FY 2020 grant under this program may be used for *direct* administrative costs. Pursuant to this language, for funds awarded in this competition for the NHE program, this five percent limit only includes direct administrative costs, and not indirect costs.

All other requirements and conditions stated in the NIA remain the same.

Amendments

In FR Doc. No. 2019–26944, in the **Federal Register** of December 13, 2019 (84 FR 68154), on page 68157, in the middle column, we are replacing the text after the heading ''Funding Restrictions:'' with the following:

No more than five percent of FY 2020 funds awarded for a grant under this program may be used for direct administrative costs (ESEA section 6205(b) and the Department of Education Appropriations Act, 2020 (the Act)). This five percent limit does not include indirect costs.

Note: Pursuant to ESEA section 6205(b), in this competition under this program, the five percent limit includes direct and indirect administrative costs. However, in the Act,

Congress explicitly specified that for FY 2020 funds the administrative cost cap refers only to direct administrative costs.

We reference regulations outlining additional funding restrictions in the *Applicable Regulations* section of this notice.

Program Authority: Section 6205 of the ESEA (20 U.S.C. 7515).

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

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: January 15, 2020.

Frank T. Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2020–00864 Filed 1–17–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2019–ICCD–0132]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; DCIA Aging and Compliance Data Requirements for Guaranty Agencies

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before February 20, 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–0132. 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 Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: DCIA Aging and Compliance Data Requirements for Guaranty Agencies

OMB Control Number: 1845–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 550.

Total Estimated Number of Annual Burden Hours: 1,430.

Abstract: The Department is required to report to the U.S. Department of the Treasury (Treasury) the status and condition of its non-tax debt portfolio in accordance with the requirements of the Debt Collection Improvement Act of 1996 (DCIA) and the Digital Accountability and Transparency Act of 2014 (DATA Act). The Department is unable to prepare an accurate and compliant Treasury Report based on the data it currently receives from its Guaranty Agencies (GAs). The new guidance will require the GAs to: Age debt according to DCIA; report the eligibility of DCIA-aged debt for referral to the Treasury Offset Program (TOP); and report compliance with Form 1099–C reporting. The new reporting requirements are titled DCIA Aging and Compliance Data Requirements for Guaranty Agencies (the Requirements). The Department plans to issue the Requirements to the GAs by April 1, 2020 for implementation by the first quarter of FY 2021.

Dated: January 15, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2020–00862 Filed 1–17–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Exports of U.S-Origin Highly Enriched Uranium for Medical Isotope Production: Certification of Insufficient Supplies of Non-Highly Enriched Uranium (HEU)-Based Molybdenum-99 for United States Domestic Demand

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Notice.

SUMMARY: The Secretary of Energy, in accordance with the American Medical Isotopes Production Act of 2012 (AMIPA), issued a certification that there is an insufficient global supply of

molybdenum-99 (Mo-99) produced without the use of HEU available to satisfy the domestic U.S. market and that the export of U.S.-origin HEU for the purposes of medical isotope production is the most effective temporary means to increase the supply of Mo-99 to the domestic U.S. market. This certification is effective for no more than two years from the effective date of January 2, 2020.

FOR FURTHER INFORMATION CONTACT: Requests for additional information may be sent to: Joan Dix, Deputy Director, Office of Conversion, *Mo99@nnsa.doe.gov,* 202–586–2695.

SUPPLEMENTARY INFORMATION:

Authority and Background

The American Medical Isotopes Production Act of 2012 (AMIPA) (Subtitle F, Title XXXI of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239)), enacted on January 2, 2013, amended Section 134 of the Atomic Energy Act of 1954 (42 U.S.C. 2160d) by striking subsection c. and inserted language that prohibits the Nuclear Regulatory Commission (NRC) from issuing a license for the export of HEU from the United States for the purposes of medical isotope production, effective seven years after enactment of AMIPA, subject to a certification regarding the sufficiency of Mo-99 supply in the United States.

The law provides that the ban on HEU exports would become effective seven years after enactment of AMIPA only if the Secretary of Energy jointly certifies, with the Secretary of Health and Human Services, that there is a sufficient supply of Mo-99 produced without the use of HEU available to meet U.S. patient needs, and that it is not necessary to export U.S.-origin HEU for the purposes of medical isotope production. The law further provides that the Secretary of Energy can extend the deadline for the joint certification if the Secretary certifies that there is insufficient global supply of Mo-99 produced without the use of HEU available to satisfy the domestic market and that the export of U.S.-origin HEU for the purposes of medical isotope production is the most effective temporary means to increase the supply of Mo-99 to the domestic U.S. market, thereby delaying the effective date of the export license ban for up to six years.

In preparation for a Secretarial certification regarding the sufficiency of supply of non-HEU based Mo-99, the Department of Energy (DOE) published a notice and request for public comment in the **Federal Register** (84 FR 65378) on November 27, 2019 to collect input from the public on the state of the Mo-99 supply. DOE accepted comments, data, and information through December 27, 2019.

Based on these submissions, along with other publicly available healthcare data, and in coordination with the Department of Health and Human Services' Food and Drug Administration, the Secretary of Energy has certified that there is insufficient global supply of non-HEU-based Mo-99 to meet U.S. market needs and that the export of U.S.-origin HEU is the most effective temporary means to increase the supply of Mo-99 to the U.S. market. While the statute provides that the resulting delay in the effective date of the HEU export licensing ban can be for up to six years, the Secretary's certification is effective for a period of no more than two years, following the certification's effective date of January 2, 2020. DOE will conduct periodic reviews of the domestic U.S. and global Mo-99 market and will work toward a certification to Congress, regarding the sufficiency of supply as soon as the statutory conditions are satisfied.

Certification

I hereby certify, pursuant to 42 U.S.C. 2160d(d), that there is an insufficient global supply of molybdenum-99 produced without the use of highly enriched uranium available to satisfy the domestic U.S. market and that the export of U.S.-origin highly enriched uranium for the purposes of medical isotope production is the most effective temporary means to increase the supply of molybdenum-99 to the domestic U.S. market. This certification shall be effective on January 2, 2020, for a period of no more than two years from the effective date.

Dan Brouillette

JAN–2 2020

Dated: January 10, 2020.

For the Department of Energy.

Brent K. Park,

Deputy Administrator, Defense Nuclear Nonproliferation.

[FR Doc. 2020–00902 Filed 1–17–20; 8:45 am]

BILLING CODE 6450–01–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: RP20–423–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: DPEs—Gateway Expansion to be effective 2/9/2020.
Filed Date: 1/9/20.
Accession Number: 20200109–5061.
Comments Due: 5 p.m. ET 1/21/20.

Docket Numbers: RP20–424–000.
Applicants: East Tennessee Natural Gas, LLC.
Description: § 4(d) Rate Filing: ETNG Jan2020 Negotiated Rates Cleanup to be effective 2/9/2020.
Filed Date: 1/9/20.
Accession Number: 20200109–5072.
Comments Due: 5 p.m. ET 1/21/20.

Docket Numbers: RP20–425–000.
Applicants: Dominion Energy Carolina Gas Transmission LLC.
Description: Compliance filing DECG—2019 Interruptible Revenue Sharing Report.
Filed Date: 1/9/20.
Accession Number: 20200109–5123.
Comments Due: 5 p.m. ET 1/21/20.

Docket Numbers: RP20–426–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement—EQT Energy OVC to be effective 1/9/2020.
Filed Date: 1/9/20.
Accession Number: 20200109–5219.
Comments Due: 5 p.m. ET 1/21/20.

Docket Numbers: RP20–427–000.
Applicants: Guardian Pipeline, L.L.C.
Description: § 4(d) Rate Filing: Update to Guardian URL and Title Page to be effective 2/10/2020.
Filed Date: 1/9/20.
Accession Number: 20200109–5220.
Comments Due: 5 p.m. ET 1/21/20.

Docket Numbers: RP20–428–000.
Applicants: Guardian Pipeline, L.L.C.
Description: § 4(d) Rate Filing: Update Contact Information on Title Sheet—2019 to be effective 2/10/2020.
Filed Date: 1/9/20.
Accession Number: 20200109–5221.
Comments Due: 5 p.m. ET 1/21/20.

Docket Numbers: RP20–429–000.
Applicants: Midwestern Gas Transmission Company.
Description: § 4(d) Rate Filing: Update to Midwestern URL and Title Page to be effective 2/10/2020.
Filed Date: 1/9/20.
Accession Number: 20200109–5222.
Comments Due: 5 p.m. ET 1/21/20.

Docket Numbers: RP20–430–000.
Applicants: OkTex Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Update to OkTex URL and Title Page to be effective 2/10/2020.
Filed Date: 1/9/20.
Accession Number: 20200109–5223.

Comments Due: 5 p.m. ET 1/21/20.

Docket Numbers: RP20–431–000.

Applicants: Viking Gas Transmission Company.

Description: § 4(d) Rate Filing: Update to Viking URL 2019 to be effective 2/10/2020.

Filed Date: 1/9/20.

Accession Number: 20200109–5224.

Comments Due: 5 p.m. ET 1/21/20.

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: January 13, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–00793 Filed 1–17–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12611–014]

Verdant Power, LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

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.:* 12611–014.

c. *Date Filed:* December 30, 2019.

d. *Applicant:* Verdant Power, LLC.

e. *Name of Project:* Roosevelt Island Tidal Energy Project.

f. *Location:* On the East River in New York 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:* Mr. Ronald F. Smith, President and Chief Operating Officer, Verdant Power, LLC, P.O. Box 282, Roosevelt Island, New York, New York 10044. Phone: (703) 328–6842. Email: *rsmith@verdantpower.com.*

i. *FERC Contact:* Andy Bernick at (202) 502–8660; or email at *andrew.bernick@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See, 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* February 28, 2020.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status 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–12611–014.

m. This application is not ready for environmental analysis at this time.

n. *The existing pilot project license authorizes the following project facilities:* (a) Thirty 35-kilowatt, 5-meter-diameter axial flow turbine-generator units; (b) ten triframe mounts, each supporting three turbine-generator units; (c) 480-volt underwater cables from each triframe mount to five shoreline switchgear vaults that interconnect to a control room and interconnection points; and (d) appurtenant facilities for navigation safety and operation.

Under the current pilot project license, which expires on December 31, 2021, Verdant installed, tested, and then removed a total of five turbine-generator units. Verdant also proposes to install three turbine-generator units attached to one tri-frame mount in 2020, under the existing pilot project license.

The proposed project would consist of a maximum of fifteen 35-kilowatt, 5-meter-diameter axial flow turbine-generator units with a total installed capacity of 0.525 megawatt, with underwater cables connecting five triframe mounts to two shoreline switchgear vaults. The project would operate using the natural tidal currents of the East River, during both ebb and flood tidal periods. As the direction of tidal flow changes, each turbine-generator unit would rotate (or yaw) to align the rotor to the direction of flow, through a passive system caused by hydrodynamic forces on the turbine-generator unit. The annual generation is expected to be from 840 to 1,200 megawatt-hours.

o. 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.

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.

p. *Procedural schedule and final amendments:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter (if necessary)—March 2020
Request Additional Information—2020 March
Issue Acceptance Letter—2020 June
Issue Scoping Document 1 for comments—July 2020
Issue Scoping Document 2 (if necessary)—2020 September
Issue notice of ready for environmental analysis—2020 September
Issue Single EA—2021 March
Comments on EA—2021 April

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: January 14, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–00921 Filed 1–17–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC20–31–000.
Applicants: Refresh Wind, LLC, Refresh Wind 2, LLC, Tehachapi Plains Wind, LLC, Terra-Gen 251 Wind, LLC, Victory Garden Phase IV, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Refresh Wind, LLC, et al.
Filed Date: 1/13/20.
Accession Number: 20200113–5214.
Comments Due: 5 p.m. ET 2/3/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER14–758–000.
Applicants: Exelon Generation Company, LLC.
Description: Report Filing: Reactive Refund Report Filing—Exelon to be effective N/A.
Filed Date: 1/13/20.
Accession Number: 20200113–5173.
Comments Due: 5 p.m. ET 2/3/20.

Docket Numbers: ER17–580–001.
Applicants: Axium Modesto Solar, LLC.
Description: Notice of Change in Facts Axium Modesto Solar, LLC under ER17–580.
Filed Date: 1/13/20.
Accession Number: 20200113–5232.
Comments Due: 5 p.m. ET 2/3/20.

Docket Numbers: ER17–801–007.
Applicants: Constellation Power Source Generation, LLC.
Description: Report Filing: Reactive Refund Report Filing—Constellation to be effective N/A.
Filed Date: 1/14/20.
Accession Number: 20200114–5006.
Comments Due: 5 p.m. ET 2/4/20.

Docket Numbers: ER17–803–004.
Applicants: Handsome Lake Energy, LLC.
Description: Report Filing: Reactive Refund Report Filing—Handsome Lake Energy to be effective N/A.
Filed Date: 1/13/20.
Accession Number: 20200113–5179.
Comments Due: 5 p.m. ET 2/3/20.

Docket Numbers: ER20–399–000.
Applicants: Rhode Island Engine Genco, LLC.
Description: Report Filing: Supplement to Notice of Change in Status Request to Cancel Tariff ID No. 364 to be effective N/A.
Filed Date: 1/14/20.
Accession Number: 20200114–5101.
Comments Due: 5 p.m. ET 2/4/20.

Docket Numbers: ER20–400–000; ER12–672–013.
Applicants: Rhode Island LFG Genco, LLC, Brea Power II, LLC.
Description: Report Filing: Supplement to Notice of Non-Material Change in Status, Change in Category Seller to be effective N/A.
Filed Date: 1/14/20.
Accession Number: 20200114–5098.
Comments Due: 5 p.m. ET 2/4/20.

Docket Numbers: ER20–531–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2020–01–14 SA 3381 Duke-Greensboro Solar Center Substitute GIA (J903) to be effective 11/21/2019.
Filed Date: 1/14/20.
Accession Number: 20200114–5084.
Comments Due: 5 p.m. ET 2/4/20.

Docket Numbers: ER20–763–000.
Applicants: ISO New England Inc.
Description: § 205(d) Rate Filing: Filing to True Up Section III.13.2 of ISO–NE Tariff to be effective 12/18/2019.
Filed Date: 1/9/20.
Accession Number: 20200109–5276.
Comments Due: 5 p.m. ET 1/30/20.

Docket Numbers: ER20–777–000.
Applicants: MidAmerican Energy Company.
Description: § 205(d) Rate Filing: Interconnection Agt—MEC and La Porte City (eff. 11–1–19) to be effective 11/1/2019.
Filed Date: 1/14/20.
Accession Number: 20200114–5008.
Comments Due: 5 p.m. ET 2/4/20.

Docket Numbers: ER20–778–000.
Applicants: Emera Maine.
Description: Tariff Cancellation: Notice of Termination of Expired Service Agreement—Houlton Water Company to be effective 2/28/2014.
Filed Date: 1/14/20.
Accession Number: 20200114–5011.
Comments Due: 5 p.m. ET 2/4/20.

Docket Numbers: ER20–779–000.
Applicants: Rush Springs Wind Energy, LLC.
Description: Baseline eTariff Filing: Rush Springs and Rush Springs Storage SFA to be effective 1/14/2020.
Filed Date: 1/14/20.
Accession Number: 20200114–5015.
Comments Due: 5 p.m. ET 2/4/20.

Docket Numbers: ER20–780–000.
Applicants: Sooner Wind, LLC.
Description: Baseline eTariff Filing: Sooner Wind, LLC Application for Market-Based Rates to be effective 3/14/2020.
Filed Date: 1/14/20.
Accession Number: 20200114–5016.
Comments Due: 5 p.m. ET 2/4/20.

Docket Numbers: ER20–781–000.
Applicants: Source Power & Gas LLC.
Description: Tariff Cancellation: Cancellation of Source Power Gas LLC MBR Tariff to be effective 1/15/2020.
Filed Date: 1/14/20.
Accession Number: 20200114–5017.
Comments Due: 5 p.m. ET 2/4/20.

Docket Numbers: ER20–782–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Rate Schedule No. 130 between Tri-State and High West Energy, Inc. to be effective 3/23/2020.
Filed Date: 1/14/20.
Accession Number: 20200114–5026.
Comments Due: 5 p.m. ET 1/24/20.

Docket Numbers: ER20–783–000.
Applicants: Rosewater Wind Farm LLC.
Description: Compliance filing: Compliance Filing and Revised Market-Based Rate Tariff to be effective 12/16/2019.
Filed Date: 1/14/20.
Accession Number: 20200114–5063.
Comments Due: 5 p.m. ET 2/4/20.

Docket Numbers: ER20–784–000.
Applicants: PacifiCorp.
Description: § 205(d) Rate Filing: 3 Phases Renewables (OR D.A.) Rev 3 to be effective 1/1/2020.
Filed Date: 1/14/20.
Accession Number: 20200114–5080.
Comments Due: 5 p.m. ET 2/4/20.

Docket Numbers: ER20–785–000.
Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: MAIT submits (3) ECSAs, Service Agreement Nos. 5278, 5510, and 5513 to be effective 3/14/2020.
Filed Date: 1/14/20.
Accession Number: 20200114–5082.
Comments Due: 5 p.m. ET 2/4/20.

Docket Numbers: ER20–786–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2020–01–14_SA 3408 Ameren Illinois-Glacier Sands Wind Power GIA (J1055) to be effective 12/20/2019.
Filed Date: 1/14/20.

Accession Number: 20200114–5086.
Comments Due: 5 p.m. ET 2/4/20.

Docket Numbers: ER20–787–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Agreement Replacement Circuit Breakers McCullough Switchyard—LADWP, DesertLink to be effective 1/15/2020.
Filed Date: 1/14/20.
Accession Number: 20200114–5090.
Comments Due: 5 p.m. ET 2/4/20.

Docket Numbers: ER20–788–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Agreement Replacement of Circuit Breakers Marketplace Sub—LADWP, DesertLink to be effective 1/15/2020.
Filed Date: 1/14/20.
Accession Number: 20200114–5094.
Comments Due: 5 p.m. ET 2/4/20.

Docket Numbers: ER20–789–000.
Applicants: Baltimore Gas and Electric Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: BGE submits revisions to OATT, Attachment H–2A re: Materials and Supplies to be effective 1/14/2020.
Filed Date: 1/14/20.
Accession Number: 20200114–5105.
Comments Due: 5 p.m. ET 2/4/20.

Docket Numbers: ER20–790–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2020–01–14_SA 3409 City of Springfield, IL–ZEP Grand Prairie Wind GIA (J750) to be effective 12/30/2019.
Filed Date: 1/14/20.
Accession Number: 20200114–5106.
Comments Due: 5 p.m. ET 2/4/20.

Docket Numbers: ER20–791–000.
Applicants: Midcontinent Independent System Operator, Inc, Otter Tail Power Company.
Description: § 205(d) Rate Filing: 2020–01–14_SA 3386 OTP-Tatanka Ridge Wind FSA (J493) Hankinson-Wahpeton to be effective 3/15/2020.
Filed Date: 1/14/20.
Accession Number: 20200114–5111.
Comments Due: 5 p.m. ET 2/4/20.

Docket Numbers: ER20–792–000.
Applicants: Oklahoma Wind, LLC.
Description: Baseline eTariff Filing: Oklahoma Wind, LLC Application for Market-Based Rates to be effective 3/15/2020.
Filed Date: 1/14/20.
Accession Number: 20200114–5113.
Comments Due: 5 p.m. ET 2/4/20.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF20–511–000.
Applicants: Tate & Lyle Ingredients Americas LLC.
Description: Form 556 of Tate & Lyle Ingredients Americas LLC [Lafayette South].
Filed Date: 1/13/20.
Accession Number: 20200113–5224.
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: January 14, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–00872 Filed 1–17–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC20–30–000.
Applicants: Innovative Solar 42, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Innovative Solar 42, LLC.
Filed Date: 1/10/20.
Accession Number: 20200110–5265.
Comments Due: 5 p.m. ET 1/31/20.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–63–000.
Applicants: Oklahoma Wind, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Oklahoma Wind, LLC.
Filed Date: 1/10/20.
Accession Number: 20200110–5251.
Comments Due: 5 p.m. ET 1/31/20.

Docket Numbers: EG20–64–000.
Applicants: Sooner Wind, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Sooner Wind, LLC.
Filed Date: 1/10/20.
Accession Number: 20200110–5255.
Comments Due: 5 p.m. ET 1/31/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–705–004.
Applicants: Pacific Gas and Electric Company.
Description: Compliance filing: Compliance filing City and County of San Francisco IA and TFAs (SA 284) to be effective 7/23/2015.
Filed Date: 1/13/20.
Accession Number: 20200113–5076.
Comments Due: 5 p.m. ET 2/3/20.

Docket Numbers: ER15–705–005.
Applicants: Pacific Gas and Electric Company.
Description: Compliance filing: Compliance Filing City and County of San Francisco TIA and TFAs (SA 284) to be effective 7/1/2015.
Filed Date: 1/13/20.
Accession Number: 20200113–5084.
Comments Due: 5 p.m. ET 2/3/20.

Docket Numbers: ER20–108–001.
Applicants: Southwest Power Pool, Inc.
Description: Tariff Amendment: 3127R1 Montana-Dakota NITSA NOA—Deficiency Response to be effective 12/1/2019.
Filed Date: 1/13/20.
Accession Number: 20200113–5106.
Comments Due: 5 p.m. ET 2/3/20.

Docket Numbers: ER20–410–001.
Applicants: High Desert Power Project, LLC.
Description: Tariff Amendment: Amendment to 3 to be effective 11/20/2019.
Filed Date: 1/13/20.
Accession Number: 20200113–5046.
Comments Due: 5 p.m. ET 2/3/20.

Docket Numbers: ER20–688–001.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Tariff Amendment: Amendment to Other Transmission Service Agreements under the OATT to be effective 3/23/2020.
Filed Date: 1/10/20.
Accession Number: 20200110–5222.
Comments Due: 5 p.m. ET 1/21/20.

Docket Numbers: ER20–691–001.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Tariff Amendment: Amendment to Rate Schedule No. 216 to be effective 3/23/2020.

Filed Date: 1/10/20.
Accession Number: 20200110–5225.
Comments Due: 5 p.m. ET 1/21/20.

Docket Numbers: ER20–695–001.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Tariff Amendment: Amendment to Rate Schedule Nos. 121 and 129 to be effective 3/23/2020.
Filed Date: 1/10/20.
Accession Number: 20200110–5234.
Comments Due: 5 p.m. ET 1/21/20.

Docket Numbers: ER20–772–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Tariff Cancellation: Notice of Cancellation of Rate Schedule Nos. 172 and 173 to be effective 3/23/2020.
Filed Date: 1/10/20.
Accession Number: 20200110–5237.
Comments Due: 5 p.m. ET 1/31/20.

Docket Numbers: ER20–773–000.
Applicants: Duke Energy Progress, LLC.
Description: Notice of Cancellation of Service Agreements (Nos. 75, et al.) of Duke Energy Progress, LLC.
Filed Date: 1/10/20.
Accession Number: 20200110–5256.
Comments Due: 5 p.m. ET 1/31/20.

Docket Numbers: ER20–774–000.
Applicants: Tucson Electric Power Company.
Description: 205(d) Rate Filing: Concurrence to CAISO RS No. 6046 to be effective 1/14/2020.
Filed Date: 1/13/20.
Accession Number: 20200113–5050.
Comments Due: 5 p.m. ET 2/3/20.

Docket Numbers: ER20–775–000.
Applicants: Southwest Power Pool, Inc.
Description: 205(d) Rate Filing: 3618 Little Blue Wind, LLC GIA to be effective 12/19/2019.
Filed Date: 1/13/20.
Accession Number: 20200113–5063.
Comments Due: 5 p.m. ET 2/3/20.

Docket Numbers: ER20–776–000.
Applicants: Appalachian Power Company, PJM Interconnection, L.L.C.
Description: 205(d) Rate Filing: PJM Transmission Owners submit revisions to OATT, Sch. 12 re: Economic Projects to be effective 3/13/2020.
Filed Date: 1/13/20.
Accession Number: 20200113–5140.
Comments Due: 5 p.m. ET 2/3/20.

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: January 13, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–00792 Filed 1–17–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP20–432–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: REX 2020–01–13 Negotiated Rate Agreements to be effective 1/14/2020.
Filed Date: 1/13/20.
Accession Number: 20200113–5170.
Comments Due: 5 p.m. ET 1/27/20.

Docket Numbers: RP20–433–000.
Applicants: Adelphia Gateway, LLC.
Description: § 4(d) Rate Filing: Adelphia NAESB update Filing 1–13–20 to be effective 1/13/2020.
Filed Date: 1/13/20.
Accession Number: 20200113–5175.
Comments Due: 5 p.m. ET 1/27/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 14, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–00870 Filed 1–17–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Proposed Salt Lake City Area Integrated Projects Firm Power Rate and Colorado River Storage Project Transmission and Ancillary Services Rates—Rate Order No. WAPA–190

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed firm power rate and transmission and ancillary services formula rates.

SUMMARY: Western Area Power Administration (WAPA) proposes a new Salt Lake City Area Integrated Projects (SLCA/IP) firm power rate and revised Colorado River Storage Project (CRSP) transmission and ancillary services formula rates. The existing rates for these services expire on September 30, 2020. Currently, there is a 4.25 percent projected decrease to the firm power composite rate. WAPA also proposes modifications to the Cost Recovery Charge (CRC) formula. WAPA proposes changes to the annual transmission revenue requirement. WAPA also proposes to add generator imbalance service to the energy imbalance rate schedule and implement a new rate schedule for the sale of surplus products.

DATES: A consultation and comment period will begin January 21, 2020 and end April 20, 2020. WAPA will present a detailed explanation of the proposed rates and modifications at a public information forum on the following date and time: March 12, 2020, 11 a.m. MDT to 1 p.m. MDT. WAPA will accept oral and written comments at a public comment forum on the following date and time: March 12, 2020, 1:30 p.m. to no later than 3 p.m. MDT. WAPA will accept written comments any time during the consultation and comment period.

ADDRESSES: Written comments and requests to be informed about Federal Energy Regulatory Commission (FERC) actions concerning the proposed rates submitted by WAPA to FERC for approval should be sent to: Mr. Steven Johnson, CRSP Manager, Colorado River Storage Project Management Center,

Western Area Power Administration, 299 South Main Street, Suite 200, Salt Lake City, UT 84111, (801) 524–6372, or email: *johnsons@wapa.gov* or *CRSPMC-RATE-ADJ@WAPA.GOV.* WAPA will post information about the proposed rates and written comments received to its website at: *https://www.wapa.gov/regions/CRSP/rates/Pages/rates.aspx.*

The public information and comment forum location is 299 South Main Street, 23rd Floor Conference Room, Salt Lake City, Utah.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Hackett, Rates Manager, Colorado River Storage Project Management Center, Western Area Power Administration, (801) 524–5503, or email: *CRSPMC-rate-adj@wapa.gov.*

SUPPLEMENTARY INFORMATION: On December 29, 2016, FERC approved and confirmed, under Rate Order No. WAPA–169 on a final basis through September 30, 2020,[1] the following Rate Schedules: SLIP–F10 for SLCA/IP Firm Power, SP–PTP8 for Firm Point-To-Point Transmission Service, SP–NW4 for Network Integration Transmission Service, SP–NFT7 for Non-Firm Point-To-Point Transmission Service, SP–SD4 for Scheduling, System Control, and Dispatch Service, SP–RS4 for Reactive Supply and Voltage Control from Generation and Other Sources Service, SP–EI4 for Energy Imbalance Service, SP–FR4 for Regulation and Frequency Response Service, SP–SSR4 for Operating Reserves—Spinning and Supplemental Reserve Services, and SP–UU1 for Unreserved Use Penalties. FERC subsequently approved and confirmed, under Rate Order No. WAPA–174[2] on a final basis through September 30, 2021, the following Rate Schedules: L–AS1 for Scheduling, System Control, and Dispatch Service, L–AS2 for Reactive Supply and Voltage Control from Generation or Other Sources Service, and L–AS3 for Regulation and Frequency Response Service, which superseded Rate Schedules SP–SD4, SP–RS4, and SP–FR4, respectively.

The proposed firm power rate is a fixed rate, and WAPA will continue to use the formula-based methodology for the proposed transmission and ancillary services rates, which include an annual update to the applicable financial and load data. WAPA intends the proposed rates to be effective October 1, 2020. The charges under the formula rates will be annually updated each October 1 thereafter. The proposed rates will remain in effect until September 30, 2025, or until WAPA supersedes or changes the rates through another public rate process pursuant to 10 CFR part 903, whichever occurs first.

The proposed rates will provide WAPA with sufficient revenue to recover annual Operation, Maintenance and Replacement (OM&R) expenses, interest expense, irrigation assistance, and capital repayment requirements while ensuring repayment of the project within the cost recovery criteria set forth in Department of Energy (DOE) Order Resource Application 6120.2.

SLCA/IP Firm Power Rate

Under the current Rate Schedule SLIP–10, the energy rate is 12.19 mills per kilowatthour (mills/kWh), and the capacity rate is $5.18 per kilowattmonth ($/kWmonth). The composite rate of all charges, used for reference only as a comparison against other wholesale power rates, is 29.42 mills/kWh.

The revenue requirement for the proposed rate is based upon the most current data available, specifically the fiscal year (FY) 2018 historical financial data and the FY 2021 work plans for WAPA and the Bureau of Reclamation (Reclamation). WAPA plans to use the FY 2019 historical financial data and FY 2022 work plans, if available, in the final rate setting study and rate order submission.

TABLE 1—COMPARISON OF EXISTING AND PROPOSED FIRM POWER RATES

Rate schedule	Existing rate under rate schedule SLIP–F10 effective October 1, 2015	Proposed rate under rate schedule SLIP–F11 effective October 1, 2020	Change (%)
Base Rate:			
Firm Energy: (mills/kWh)	12.19	11.79	−3.28
Firm Capacity: ($kW/month)	5.18	5.01	−3.28
Composite Rate[3]: (mills/kWh)	29.42	28.17	−4.25

Currently, WAPA uses Reclamation's April, 24-month, long-term, average hydrological study in combination with Reclamation's August Colorado River Simulation System (CRSS) model traces to forecast 5 years of firming-energy purchase requirements. WAPA proposes using the most-probable water releases reported in Reclamation's *August 24-Month Study* to determine the first year of firming-energy-purchase projections. For subsequent years, WAPA will continue to use Reclamation's August CRSS model traces to estimate energy purchase projections while using a rolling median value to minimize fluctuations. In addition, WAPA proposes projecting the required firming-energy purchases, for a period that overlaps the years in which a subsequent rate would become effective, in order to avoid gaps in the forecasts.

Finally, WAPA plans to remove the $4 million per year in purchase power out years in the current rate schedule, which was previously used as a broad-cost estimate of operational energy purchases for the Energy Marketing and Management Office in Montrose, Colorado. Improved modeling tools that incorporate outages and scheduled maintenance produce more accurate estimates of purchase power expenses have rendered this requirement obsolete.

Cost Recovery Charge

WAPA would continue to use the CRC, if necessary, as a mechanism to adequately recover and maintain a sufficient balance in the Upper Colorado River Basin Fund (Basin Fund)[4] in the event projected expenses significantly exceed projected revenue estimates. The CRC is an additional surcharge on all

[1] Order Confirming and Approving Rate Schedules on a Final Basis, FERC Docket Nos. EF15–10–000, 155 FERC ¶ 61,042 (2016).

[2] WAPA–174 was approved by the Deputy Secretary of Energy on August 12, 2016 (81 FR 56632). FERC Order Confirming and Approving Rate Schedules on a Final Basis, FERC Docket No. EF16–5–000, 158 FERC ¶ 62,181 (2017).

[3] The composite rate is used for reference only as a comparison against other wholesale power rates.

[4] Upper Colorado River Basin Fund was established through the CRSP Act of 1956, to receive revenues collected in connection with the projects, to be made available for defraying the project's costs of operation, maintenance, and emergency expenditures.

Sustainable Hydro Power (SHP)[5] energy deliveries. The CRC may be implemented when, among other things, the Basin Fund's cash balance is at risk due to low hydropower generation, high prices for firming power, and funding for capitalized investments. The volatility of hydropower generation and power prices continues to be a concern for cost-recovery issues for the SLCA/IP. The CRC is based only on Basin Fund cash analysis and is independent of the Power Repayment Study calculations.

WAPA proposes to move the CRC from a FY timeline to a calendar year (CY) timeline and to use Reclamation's *August 24-month Study* to calculate projected purchase power expenses. This aligns the purchase power projections for the CRC with those in the firm power rate. This proposal would change the annual notification date from May 1 to October 1. WAPA would provide its customers with information concerning the anticipated CRC and allow them 45 days to request a waiver or accept the CRC. The established CRC would be in effect for 12 months from the date implemented. If circumstances dictate the need to reassess an enacted CRC, the updated CRC would supersede the previous CRC and remain in effect for 12 months.

The CRC is implemented at WAPA's discretion based on the balance of the Basin Fund and WAPA's ability to meet contractual requirements.[6] The minimum Basin Fund carryover balance is $40 million.

TABLE 3—CRC IMPLEMENTATION TIERS

Tier	Criteria, if the Basin Fund beginning balance is:	Review
i	Greater than $150 million with an expected decrease to below $75 million	Annually.
ii	Less than $150 million but greater than $120 million with an expected 50 percent decrease in the next CY.	
iii	Less than $120 million but greater than $90 million with an expected 40 percent decrease in the next CY.	
iv	Less than $90 million but greater than $60 million with an expected 25 percent decrease in the next CY.	Semi-Annual (May/November).
v	Less than $60 million but greater than $40 million with an expected decrease to below $40 million in the next CY.	Monthly.

WAPA also reserves the right to consider a CRC if annual water releases from Glen Canyon Dam fall below 8.23 million acre-feet regardless of the Basin Fund balance.

Customers can accept either the CRC or WL, not a combination of the two. For these customers, WAPA will establish an energy waiver level (WL) using the CRC formula. The WL provides WAPA the ability to reduce purchase power expenses by scheduling less energy than its contractual obligations. For those customers who agree to schedule no more energy than their proportionate share of the WL, WAPA will waive the CRC for that year.

WAPA also proposes modifications in SLIP–F11 to account for lost revenue associated with the decreased energy deliveries that occur when a customer requests the WL. The details of the calculations will be provided in the customer brochure prior to the public information forum. WAPA also proposes to decrease a customer's monthly SHP capacity allocation proportionally under the WL to match the monthly energy reduction.

Transmission Services

Annual Transmission Revenue Requirement (ATRR)

Under this proposal, WAPA would not change the existing formula rate for calculating the Annual Transmission Revenue Requirement (ATRR), which is applicable to both Network Integration and Point-to-Point transmission services. The ATRR is the annual cost of the CRSP Transmission System, adjusted for Non-Firm Point-to-Point revenue credits, other miscellaneous charges or credits, and the prior year true-up. WAPA is, however, proposing to change the projection period for calculating the ATRR in order to recover transmission O&M costs on a current basis rather than on a historical basis. Using the current-basis methodology would more accurately align cost recovery with cost incurrence. WAPA proposes to estimate transmission costs and loads for the current year in the annual rate calculation, thus changing how the inputs are developed rather than the formula rate itself. WAPA would then true-up cost estimates to actual costs and any revenue collected in excess of WAPA's actual net revenue requirement would be returned to customers through a credit against the transmission rates in a subsequent year. Actual revenues that collect less than the net revenue requirement would, likewise, need to be recovered through an increased revenue requirement in a subsequent year. The true-up procedure would help ensure WAPA recovers no more and no less than the actual transmission costs for the year.

Unreserved Use Penalties

WAPA proposes no changes to the Unreserved Use penalty rate.

Ancillary Services

Energy Imbalance and Generator Imbalance Services

WAPA proposes adding Generator Imbalance Service (GIS), Schedule 9 to WAPA's Open Access Transmission Tariff to the Energy Imbalance Service Rate Schedule. GIS is provided to CRSP, as a Transmission Service Provider, by the Western Area Colorado Missouri Balancing Authority under Rate Schedule L–AS9.

Spinning and Supplemental Reserves

WAPA proposes no changes to the Operating Reserves—Spinning and Supplemental Reserves Services formula rate.

Sale of Surplus Products (SP–SS1)

WAPA proposes implementing a new rate schedule applicable to the sale of the following surplus energy and capacity products: Energy, regulation, reserves, and frequency response. WAPA would determine the charge for each product at the time of the sale based on market rates, plus applicable administrative costs, and would use separate agreement(s) to specify the terms of sale(s). The customer would be responsible for acquiring transmission

[5] SHP Energy—Sustainable Hydro Power energy is the minimum quantity of firm energy, expressed in kWh, that each Salt Lake City Area Integrated Projects firm electric service customer/contractor is entitled to receive each Winter Season and each Summer Season as set forth in the respective firm electric service contract with each customer/contractor.

[6] *See* Table 3.

service necessary to deliver the product(s), for which a separate charge may be incurred.

Legal Authority

Existing DOE procedures for public participation in power and transmission rate adjustments (10 CFR part 903) were published on September 18, 1985, and February 21, 2019.[7]

The proposed action is a major rate adjustment, as defined by 10 CFR 903.2(e). In accordance with 10 CFR 903.15(a) and 10 CFR 903.16(a), WAPA will hold public information and public comment forums for this rate adjustment. WAPA will review and consider all timely public comments at the conclusion of the consultation and comment period and make amendments or adjustments to the proposal as appropriate. Proposed rates will be forwarded to the Assistant Secretary for Electricity for approval on an interim basis.

WAPA is proposing the SLCA/IP firm power rate and revised CRSP transmission and ancillary services formula rates in accordance with section 302 of the DOE Organization Act (42 U.S.C. 7152). This Act transferred to, and vested in, the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and other acts that specifically apply to the projects involved.

By Delegation Order No. 00–037.00B, effective November 19, 2016, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to WAPA's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, or to remand or disapprove such rates to FERC. By Delegation Order No. 00–002.00Q, effective November 1, 2018, the Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Under Secretary of Energy. By Redelegation Order No. 00–002.10D, effective June 4, 2019, the Under Secretary of Energy further delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Assistant Secretary for Electricity.

Availability of Information

All brochures, studies, comments, letters, memoranda, or other documents that WAPA initiates or uses to develop the proposed rates are available for inspection and copying at the Colorado River Storage Project Management Center, 299 South Main Street, Suite 200, Salt Lake City, Utah. Many of these documents and supporting information are also available on WAPA's website at *https://www.wapa.gov/regions/CRSP/rates/Pages/rates.aspx.*

Ratemaking Procedure Requirements

Environmental Compliance

WAPA is in the process of determining whether an environmental assessment or an environmental impact statement should be prepared or if this action can be categorically excluded from those requirements.[8]

Determination Under Executive Order 12866

WAPA has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Dated: January 10, 2020.

Mark A. Gabriel,

Administrator.

[FR Doc. 2020–00890 Filed 1–17–20; 8:45 am]

BILLING CODE 6450–01–P

[7] 50 FR 37835 (September 18, 1985) and 84 FR 5347 (February 21, 2019).

[8] In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321–4347); the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10004–35–ORD]

Human Studies Review Board; Notification of Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA), Office of the Science Advisor, Policy, and Engagement announces two separate public meetings of the Human Studies Review Board (HSRB) to advise the Agency on the ethical and scientific review of research involving human subjects.

DATES: A virtual public meeting will be held on Thursday, January 30, 2020 from 1 p.m. to approximately 5:30 p.m. Eastern Time. A separate, subsequent teleconference meeting is planned for Tuesday, March 17, 2020, from 2 p.m. to approximately 3:30 p.m. Eastern Time for the HSRB to finalize its Report of the January 30, 2020 meeting and review other possible topics.

ADDRESSES: All of these meetings will be conducted entirely by telephone and on the internet. For detailed access information visit the HSRB website: *http://www2.epa.gov/osa/human-studies-review-board.*

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to receive further information should contact the HSRB Designated Federal Official (DFO), Thomas O'Farrell on telephone number (202) 564–8451; fax number: (202) 564–2070; email address: *ofarrell.thomas@epa.gov*; or mailing address: Environmental Protection Agency, Office of the Science Advisor, Mail code 8105R, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Meeting access: These meetings will be open to the public. The full agenda with access information and meeting materials will be available at the HSRB website: *http://www2.epa.gov/osa/human-studies-review-board.* For questions on document availability, or if you do not have access to the internet, consult with the DFO, Thomas O'Farrell, listed under **FOR FURTHER INFORMATION CONTACT**.

Special accommodations. For information on access or services for individuals with disabilities, or to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

How may I participate in this meeting?

The HSRB encourages the public's input. You may participate in these meetings by following the instructions in this section.

1. *Oral comments.* To pre-register to make oral comments, please contact the DFO, Thomas O'Farrell, listed under **FOR FURTHER INFORMATION CONTACT**. Requests to present oral comments during the meeting will be accepted up to Noon Eastern Time on Thursday, January 23, 2020, for the January 30, 2020 meeting and up to Noon Eastern Time on Tuesday, March 10, 2020 for the March 17, 2020 meeting. To the extent that time permits, interested persons who have not pre-registered may be permitted by the HSRB Chair to present oral comments during either meeting at the designated time on the

agenda. Oral comments before the HSRB are generally limited to five minutes per individual or organization. If additional time is available, further public comments may be possible.

2. *Written comments.* Submit your written comments prior to the meetings. For the Board to have the best opportunity to review and consider your comments as it deliberates, you should submit your comments via email or fax by Noon Eastern Time on Thursday, January 23, 2020, for the January 30, 2020 meeting and by Noon Eastern Time on Tuesday, March 10, 2020 for the March 17, 2020 meeting. If you submit comments after these dates, those comments will be provided to the HSRB members, but you should recognize that the HSRB members may not have adequate time to consider your comments prior to their discussion. You should submit your comments to the DFO, Thomas O'Farrell listed under **FOR FURTHER INFORMATION CONTACT**. There is no limit on the length of written comments for consideration by the HSRB.

Background

The HSRB is a Federal advisory committee operating in accordance with the Federal Advisory Committee Act 5 U.S.C. App.2 § 9. The HSRB provides advice, information, and recommendations on issues related to scientific and ethical aspects of third-party human subjects research that are submitted to the Office of Pesticide Programs (OPP) to be used for regulatory purposes.

Topic for discussion. On January 30, 2020, the HSRB will consider a study titled ''Determination of Dermal and Inhalation Exposure to Workers during Closed System Loading of Liquids in Returnable and Non-Returnable Containers'' and a report titled ''Agricultural Handler Scenario Monograph: Mechanical Transfer of Liquids'', both submitted by the Agricultural Handlers Exposure Task Force.

The agenda and meeting materials for this topic will be available in advance of the meeting at *http://www2.epa.gov/osa/human-studies-review-board.*

On March 17, 2020, the HSRB will review and finalize their draft Final Report from the January 30, 2020 meeting, in addition to other topics that may come before the Board. The HSRB may also discuss planning for future HSRB meetings. The agenda and the draft report will be available prior to the meeting at *http://www2.epa.gov/osa/human-studies-review-board.*

Meeting minutes and final reports. Minutes of these meetings, summarizing the matters discussed and recommendations made by the HSRB, will be released within 90 calendar days of the meeting. These minutes will be available at *http://www2.epa.gov/osa/human-studies-review-board.* In addition, information regarding the HSRB's Final Report, will be found at *http://www2.epa.gov/osa/human-studies-review-board* or from Thomas O'Farrell listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: January 9, 2020.

Jennifer Orme-Zavaleta,

EPA Science Advisor.

[FR Doc. 2020–00877 Filed 1–17–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2019–0045; FRL–10003–19]

Pesticide Product Registration; Receipt of Applications for New Uses (November 2019)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before February 20, 2020.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number and the File Symbol or the EPA Registration Number of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets/about-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (RD) (7505P), main telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov;* or Robert McNally, Biopesticides and Pollution Prevention Division (BPPD) (7511P), main telephone number: (703) 305–7090, email address: *BPPDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Registration Applications

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

Notice of Receipt—New Uses

1. *EPA Registration Numbers:* 100–1478, 100–1471, and 100–1480. *Docket ID number:* EPA–HQ–OPP–2019–0586. *Applicant:* Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419. *Active ingredient:* Benzovindiflupyr. *Product type:* Fungicide. *Proposed use:* Beet, sugar, dried pulp; beet, sugar, roots; and beet, sugar, tops. *Contact:* RD.

2. *EPA File Symbol:* 59639–EUG. *Docket ID number:* EPA–HQ–OPP–2019–0664. *Applicant:* Mitsui Chemicals Agro, Inc., Nihonbashi Dia Building, 1–19–1 Nihonbashi Chuo-ku Tokyo 103–0027, Japan c/o Landis International, Inc., P.O. Box 5126, Valdosta, GA 31603–5126. *Active ingredient:* Dinotefuran. *Product type:* Insecticide. *Proposed use:* Soybeans. *Contact:* RD.

3. *EPA Registration Number:* 62719–539, 62719–541, 62719–545. *Docket ID number:* EPA–HQ–OPP–2019–0526. *Applicant:* Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268. *Active ingredient:* Spinetoram. *Product type:* Insecticide. *Proposed use:* Dragon fruit; berry, low growing, except strawberry, subgroup 13–07H; vegetable, brassica, head and stem, group 5–16; brassica leafy greens, subgroup 4–16B; leaf petiole vegetable subgroup 22B; leafy greens subgroup 4–16A; celtuce; fennel, Florence, fresh leaves and stalk; and kohlrabi. *Contact:* RD.

4. *EPA Registration Number:* 62719–621, 62719–266. *Docket ID number:* EPA–HQ–OPP–2019–0525. *Applicant:* Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268. *Active ingredient:* Spinosad. *Product type:* Insecticide. *Proposed use:* Dragon fruit; berry, low growing, except strawberry, subgroup 13–07H; vegetable, brassica, head and stem, group 5–16; vegetable, leafy, group 4–16; leaf petiole vegetable subgroup 22B; celtuce; fennel, Florence, fresh leaves and stalk; and kohlrabi. *Contact:* RD.

5. *File Symbol:* 70644–O. *Docket ID number:* EPA–HQ–OPP–2019–0670. *Applicant:* LidoChem, Inc., 20 Village Ct., Hazlet, NJ 07730. *Active ingredient: Bacillus amyloliquefaciens* strain PTA–4838. *Product type:* Fungicide, nematicide, and plant regulator. *Proposed use:* Residential and outdoor uses with foliar application to crops/plants, ornamentals, and turf to suppress phytopathogenic fungi and nematodes and promote plant growth. *Contact:* BPPD.

6. *EPA Registration Number/File Symbol:* 71512–7 and 71512–UR (EPA–HQ–OPP–2016–0013). *Applicant:* ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, OH 44077. *Active ingredient:* Flonicamid. *Product type:* Insecticide. *Proposed use:* Residential outdoor use on roses, flowers, shrubs, and small (non-fruit bearing) trees. *Contact:* RD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: December 18, 2019.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2020–00825 Filed 1–17–20; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Privacy Act of 1974; Establishment of a New System of Records

AGENCY: Export-Import Bank of the United States.

ACTION: Notice of new electronic System of Records—Financial Management System—Next Generation (FMS–NG).

SUMMARY: EXIM Bank (EXIM) proposes to add a new electronic System of Records, Financial Management System—Next Generation (FMS–NG), subject to the Privacy Act of 1974 (5 U.S.C. 522a), as amended. This notice is necessary to meet the requirements of the Privacy Act which is to publish in the **Federal Register** a notice of the existence and character of records maintained by the agency (5 U.S.C. 522s(e)(4)). Included in this notice is the System of Records Notice (SORN) for FMS–NG. The system is currently operational.

DATES: This action is effective without further notice on February 17th, 2020 unless comments are received that would result in a contrary determination.

ADDRESSES: Comments may be submitted electronically on *www.regulations.gov* or by mail to Gabriela Smith-Sherman, Chief Information Security Officer, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571.

FOR FURTHER INFORMATION CONTACT: For privacy questions, please contact: Gabriela Smith-Sherman, Chief Information Security Officer, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571.

SUPPLEMENTARY INFORMATION: The Financial Management System—Next Generation (FMS–NG) supports flexible financial accounting, control and disbursement of funds, management accounting, and financial report processes.

SYSTEM OF RECORDS NOTICE

Financial Management System—Next Generation (FMS–NG).

SYSTEM IDENTIFIER:

EXIM/FMS–NG.

SYSTEM NAME:

Financial Management System—Next Generation (FMS–NG).

SECURITY CLASSIFICATION:

Moderate.

SYSTEM LOCATION:

This electronic system is used via a web interface by EXIM staff from the Headquarters of the Export-Import Bank of the United States, 811 Vermont Avenue NW, Washington, DC 20571. The physical location and technical operation of the system is at the Amazon Web Services (AWS) facility in Northern Virginia.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

The FMS–NG system holds information on EXIM customers, employees, contractors, vendors, and invitational travelers who have been asked to speak at or attend a function at the request of EXIM and who are seeking reimbursements for expenses incurred.

CATEGORIES OF RECORDS IN THE SYSTEM:

FMS–NG contains information related to the financial obligations of EXIM to and from individuals and corporate entities from the point of obligation through the point of final disbursement. EXIM provides complete loan and guarantee servicing over the entire life of a credit. The FMS–NG system contains Personally Identifiable Information (PII) on EXIM employees and public individuals that incurred

expenses pre-authorized for reimbursement, EXIM product applicants, contracted suppliers, and other business partners.

The following Table 1, Categories of Records lists significant data categories contained in the FMS–NG system. Only the Administrative categories may contain PII data. The Category of Bank Products is normally used by larger corporate entities and is unlikely to contain PII for sole proprietors of businesses or other individuals.

TABLE 1—CATEGORIES OF RECORDS IN THE FMS–NG SYSTEM

Bank products.
Rescheduled Loan.
Project Finance Loan.
Aircraft Financing Loan.
Tied Aid Loan.
Renewable Express Loan.
Global Credit Express.
Letter of Credit for a Direct Loan.
Working Capital Guarantee.
Standard Guarantee.
Credit Guarantee Facility.
Finance Lease Guarantee.
Project Finance Guarantee.
Aircraft Finance Guarantee.
Co-Financing Guarantee.
Renewable Express Guarantee.
Supply Chain Guarantee.
Administrative records.
Budget based on object class and fund segment.
Procurement purchase order.
Inter-Agency Agreements.
Payments to Administrative Suppliers.
Procurement Card.
Travel purchase order.
Payment Vouchers.
Refunds.
Sponsored Travel.
Petty Cash.
Employee Debt.
Conference fee collections.
General Ledger.

TABLE 2—REPRESENTATIVE PII DATA ELEMENTS WITHIN ADMINISTRATIVE RECORDS

PII Data elements
Bank products:
ACCOUNT_HOLDER_NAME.
ACCTTYPEID.
ADDRESSID.
BANK_ACCOUNT_NAME.
BANKACCOUNTID.
BANKSWIFTCODE.
BRANCHID.
BRANCHNAME.
CHECK_DIGITS.
PARENT_VENDOR_ID.
PARENT_VENDOR_NAME.
TAX_ID.
VENDOR_ID.
VENDOR_NAME.
VENDOR_NAME_ALT.
VENDOR_NUMBER.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

EXIM requests the information in this application under the following authorizations:

Authority of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635 *et seq.*), Executive Order 9397 as amended by Executive Order 13478 signed by President George W. Bush on November 18, 2008, relating to Federal agency use of Social Security Numbers.

PURPOSE:

The Financial Management System—Next Generation (FMS–NG) is a custom configured Commercial-off-the-Shelf (COTS) solution, which supports flexible financial accounting, control and disbursement of funds, management accounting, loan and guarantee servicing, and financial report processes. More specifically, FMS–NG maintains EXIM's spending budget, supports purchase of goods and services, vendor payments, records general ledger entries, reports to Department of Treasury and the Office of Management and Budget (OMB), verifies data accuracy, properly clears and closes ledgers and journals, and provides complete loan and guarantee servicing over the entire life of a credit.

FMS–NG is comprised of the following functional modules:

- Budget Execution,
- Accounts Payable,
- Accounts Receivable,
- General Ledger,
- Purchasing, and
- Processing of loans and guarantees related financial data.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM; INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures that are generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside EXIM as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

a. For the Bank employees to support purchase of goods and services;

b. For the Bank employees to support vendor payments;

c. To disclose information for audits and oversight purposes performed by EXIM employees, report to the Department of Treasury and the Office of Management and Budget in Monthly, Quarterly, Semi-annual, and Annual reporting;

d. To provide information to a Congressional Office from the record of an individual in response to an inquiry from that Office;

e. To share data with contractors, grantees, and experts to perform Office of Personnel Management (OPM) authorized activities, including performing and monitoring of select business transactions;

f. For investigations of potential violations of law;

g. For EXIM employees to collect information from third parties including credit reporting agencies and to collect credit scores to establish credit worthiness of applicants;

h. To disclose information to EXIM contractors in support of EXIM authorized activities;

i. For litigation;

j. By National Archives and Records Administration for record management inspections in its role as Archivist;

k. For data breach and mitigation response.

l. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation or another purpose, when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulations.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

EXIM may report its credit experience to the applicable commercial consumer reporting agencies (credit bureaus), such as: Dun & Bradstreet, FICO, and TransUnion.

STORAGE:

The records reside in the data tables of the FMS–NG System implemented in the Oracle® U.S. Federal Financials Release 12, a COTS Financial Management System from Oracle Corporation.

RETRIEVABILITY:

Information may be retrieved by transaction number, business entity name or individual name and EIN.

SAFEGUARDS:

Information will be stored in electronic format within the FMS–NG. FMS–NG has configurable responsibilities-based (processes and data) user access rules. User access is granted only to the authorized internal users. The authorized FMS–NG users will have restricted access only to the data subset necessary to perform their job function. This access is managed via Oracle Application System Administration, User and Responsibility security functions. FMS–NG underlying application—Oracle Federal Financials, is compliant with the Federal Risk and Authorization Management Program (FedRAMP). The PII information in FMS–NG is stored encrypted in place.

HTTPS protocol is employed in accessing FMS–NG.

RETENTION AND DISPOSAL:

Retention and disposal of the records contained in FMS–NG complies with EXIM's Record Schedule for FMS–NG Electronic Records System DAA–0275–2014–0002. The schedule was proposed for approval by EXIM in the Electronic Records Archives (ERA) system of the National Archives and Records Administration (NARA).

SYSTEM MANAGER AND ADDRESS:

Vice President—Controller Office of the CFO, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571.

NOTIFICATION PROCEDURE:

Individuals wishing to determine whether this system of records contains information about them may do so by writing to:

Vice President—Controller Office of the CFO, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571.

And provide the following information:

1. Name.
2. Tax ID, as applicable.
3. Type of information requested.
4. Address to which the information should be sent.
5. Signature.

RECORD ACCESS PROCEDURE:

Individuals wishing to make an amendment of records about them should write to:

Vice President—Controller Office of the CFO, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571.

And provide the following information:

1. Name.
2. Tax ID, as applicable.
3. Type of information to be amended.
4. Signature.

CONTESTING RECORD PROCEDURES:

Individuals wishing to contest records about them should write to:

Vice President—Controller Office of the CFO, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571.

And provide the following information:

1. Name.
2. Tax ID, as applicable.
3. Signature.
4. Precise identification of the information to be contested.

RECORD SOURCE CATEGORIES:

The record information contained in the FMS–NG is obtained using one of two methods: Manual entry, and through data consumption from source flat files imported after validating data with business rules using PLSQL procedural upload to the FMS–NG database.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Bassam Doughman,

IT Specialist.

[FR Doc. 2020–00820 Filed 1–17–20; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0214, 3060–0844, 3060–0980 and 3060–1065; FRS 16413]

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 February 20, 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 Number: 3060–0214.

Title: Sections 73.3526 and 73.3527, Local Public Inspection Files; Sections 73.1212, 76.1701 and 73.1943, Political Files.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; Not for profit institutions; State, Local or Tribal government; Individuals or households.

Number of Respondents and Responses: 23,984 respondents; 62,839 responses.

Estimated Time per Response: 1–52 hours.

Frequency of Response: On occasion reporting requirement, Recordkeeping requirement, Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for these collections is contained in Sections 151, 152, 154(i), 303, 307 and 308 of the Communications Act of 1934, as amended.

Total Annual Burden: 2,043,805 hours.

Total Annual Cost: None.

Privacy Impact Assessment: The Commission prepared a system of records notice (SORN), FCC/MB–2, ''Broadcast Station Public Inspection Files,'' that covers the PII contained in the broadcast station public inspection files located on the Commission's website. The Commission will revise appropriate privacy requirements as necessary to include any entities and information added to the online public file in this proceeding.

Nature and Extent of Confidentiality: Most of the documents comprising the public file consist of materials that are not of a confidential nature. Respondents complying with the information collection requirements may request that the information they submit be withheld from disclosure. If confidentiality is requested, such requests will be processed in accordance with the Commission's rules, 47 CFR 0.459.

In addition, the Commission has adopted provisions that permit respondents subject to the information collection requirement for Shared Service Agreements to redact confidential or proprietary information from their disclosures.

Needs and Uses: In 2019, the Commission adopted new rules governing the delivery and form of carriage election notices. Electronic Delivery of MVPD Communications, Modernization of Media Regulation Initiative, MB Docket Nos. 17–105, 17–317, Report and Order and Further Notice of Proposed Rulemaking, FCC 19–69, 2019 WL 3065517 (rel. Jul. 11, 2019). Pursuant to that decision, the public file obligations of full power television broadcasters were slightly modified, although the resulting burdens will be unchanged. The modified information collection requirements are as follows:

47 CFR 73.3526(e)(15)—Must-carry or retransmission consent election. Statements of a commercial television or Class A television station's election with respect to either must-carry or re-transmission consent, as defined in §§ 76.64 and 76.1608 of this chapter. These records shall be retained for the duration of the three-year election period to which the statement applies. Commercial television stations shall, no later than July 31, 2020, provide an up-to-date email address and phone number for carriage-related questions and respond as soon as is reasonably possible to messages or calls from MVPDs. Each commercial television station is responsible for the continuing accuracy and completeness of the information furnished.

47 CFR 73.3527(e)(12)—Must-carry requests. States noncommercial television stations shall, no later than July 31, 2020, provide an up-to-date email address and phone number for carriage-related questions and respond as soon as is reasonably possible to messages or calls from MVPDs. Each noncommercial television station is responsible for the continuing accuracy and completeness of the information furnished. Any such station requesting mandatory carriage pursuant to Part 76 of this chapter shall place a copy of such request in its public file and shall retain both the request and relevant correspondence for the duration of any period to which the request applies.

OMB Control Number: 3060–0844.

Title: Carriage of the Transmissions of Television Broadcast Stations: Section 76.56(a), Carriage of qualified noncommercial educational stations; Section 76.57, Channel positioning; Section 76.61(a)(1)–(2), Disputes concerning carriage; Section 76.64, Retransmission consent.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 4,872 respondents and 7,052 responses.

Estimated Time per Response: 0.5 to 5 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 1, 4(i) and (j), 325, 336, 614 and 615 of the Communications Act of 1934, as amended.

Total Annual Burden: 4,471 hours.

Total Annual Cost: No cost.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: In 2019, the Commission adopted new rules governing the delivery and form of carriage election notices. Electronic Delivery of MVPD Communications, Modernization of Media Regulation Initiative, MB Docket Nos. 17–105, 17–317, Report and Order and Further Notice of Proposed Rulemaking, FCC 19–69, 2019 WL 3065517 (rel. Jul. 11, 2019). Pursuant to that decision, the obligations of broadcasters and cable operators were slightly modified (see 47 CFR 76.64(h) below for the modified rule which requires review and approval from the Office of Management and Budget (OMB)). Under 47 CFR 76.64 the information collection requirements are as follows:

○ *(h)(1):* On or before each must-carry/retransmission consent election deadline, each television broadcast station shall place a copy of its election statement, and copies of any election change notices applying to the upcoming carriage cycle, in the station's public file.

○ *(h)(2):* Each cable operator shall, no later than July 31, 2020, provide an up-to-date email address for carriage election notice submissions with respect to its systems and an up-to-date phone number for carriage-related questions. Each cable operator is responsible for the continuing accuracy and completeness of the information furnished. It must respond to questions from broadcasters as soon as is reasonably possible.

○ *(h)(3):* A station shall send a notice of its election to a cable operator only if changing its election with respect to one or more of that operator's systems. Such notice shall be sent to the email address provided by the cable system and carbon copied to *ElectionNotices@FCC.gov*. A notice must include, with respect to each station referenced in the notice, the:

- Call sign;
- community of license;
- DMA where the station is located;
- specific change being made in election status;
- email address for carriage-related questions;
- phone number for carriage-related questions;
- name of the appropriate station contact person; and,
- if the station changes its election for some systems of the cable operator but not all, the specific cable systems for which a carriage election applies.

○ *(h)(4):* Cable operators must respond via email as soon as is reasonably possible, acknowledging receipt of a television station's election notice.

OMB Control Number: 3060–0980.

Title: Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues and Retransmission Consent Issues, 47 CFR Section 76.66.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 3,410 respondents; 4,388 responses.

Estimated Time per Response: 0.5 hour to 5 hours.

Frequency of Response: Third party disclosure requirement; On occasion reporting requirement; Once every three years reporting requirement; Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 325, 338, 339 and 340.

Total Annual Burden: 3,576 hours.

Total Annual Cost: $24,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: In 2019, the Commission adopted new rules governing the delivery and form of carriage election notices. Electronic Delivery of MVPD Communications, Modernization of Media Regulation Initiative, MB Docket Nos. 17–105, 17–317, Report and Order and Further Notice of Proposed Rulemaking, FCC 19–69, 2019 WL 3065517 (rel. Jul. 11, 2019). Pursuant to that decision, the public file obligations of DBS providers, and the notice requirements of broadcasters, were slightly modified. The rule modifications were made to 47 CFR 76.66(d)(1)(ii)–(vi) and 76.66(d)(3)(ii) as indicated above. These modifications need OMB review and approval. They are as follows:

47 CFR 76.66(d)(1)(ii) requires DBS providers to place an up-to-date email address for carriage election notice submissions and an up-to-date phone number for carriage-related questions in their public file, to keep that information updated, and to respond to questions from broadcasters expeditiously.

47 CFR 76.66(d)(1)(iii) states that stations only have to send notice when changing an election, and that notices must be sent to the email address provided by the satellite carrier and carbon copied to *ElectionNotices@FCC.gov.*

47 CFR 76.66(d)(1)(iv) states that a television station's written notification shall include, with respect to each station referenced in the notice, the:

(A) Call sign;

(B) community of license;

(C) DMA where the station is located;

(D) specific change being made in election status;

(E) email address for carriage-related questions;

(F) phone number for carriage-related questions; and

(G) name of the appropriate station contact person.

47 CFR 76.66(d)(1)(v) states that a satellite carrier must respond via email as soon as is reasonably possible, acknowledging receipt of a television station's election notice.

47 CFR 76.66(d)(1)(vi) states that, within 30 days of receiving a television station's carriage request, a satellite carrier shall notify in writing:

(A) Those local television stations it will not carry, along with the reasons for such a decision; and

(B) those local television stations it intends to carry.

47 CFR 76.66(d)(3)(ii) states that a new television station shall make its election request, in writing, sent to the satellite carrier's email address provided by the satellite carrier and carbon copied to *ElectionNotices@FCC.gov,* between 60 days prior to commencing broadcasting and 30 days after commencing broadcasting. This written notification shall include the information required by paragraph (d)(1)(iv) of this section.

OMB Control Number: 3060–1065.

Title: Section 25.701 of the Commission's Rules, Direct Broadcast Satellite Public Interest Obligations.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 2 respondents; 2 responses.

Estimated Time per Response: 1–10 hours.

Frequency of Response: Recordkeeping requirement; on occasion reporting requirement; one time reporting requirement; annual reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority which covers this information collection is contained in Section 335 of the Communications Act of 1934, as amended.

Total Annual Burden: 49 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impacts.

Nature and Extent of Confidentiality: Although the Commission does not believe that any confidential information will need to be disclosed in order to comply with the information collection requirements, applicants are free to request that materials or information submitted to the Commission be withheld from public inspection. (See 47 CFR 0.459).

Needs and Uses: In 2019, the Commission adopted new rules governing the delivery and form of carriage election notices. Electronic Delivery of MVPD Communications, Modernization of Media Regulation Initiative, MB Docket Nos. 17–105, 17–317, Report and Order and Further Notice of Proposed Rulemaking, FCC 19–69, 2019 WL 3065517 (rel. Jul. 11, 2019). Pursuant to that decision, the public file obligations of DBS providers were slightly modified.

Therefore, the following information collection requirement needs review and approval from the Office of Management and Budget (OMB):

47 CFR 25.701(f)(6)(i)(D) requires that each satellite carrier shall provide an up-to-date email address for carriage election notice submissions and an up-to-date phone number for carriage-related questions. Each satellite carrier is responsible for the continuing accuracy and completeness of the information furnished. It must respond to questions from broadcasters as soon as is reasonably possible.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–00845 Filed 1–17–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0767; FRS 16414]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

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 Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. 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 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 Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before March 23, 2020.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the Title as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0767.

Title: Sections 1.2110, 1.2111 and 1.2112, Auction and Licensing Disclosures—Ownership and Designated Entity Status.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit, Not-for-profit institutions, and State, local or tribal government.

Number of Respondents: 310 respondents; 310 responses.

Estimated Time per Response: 0.50 hours to 2 hours.

Frequency of Response: On occasion reporting requirement, Third party disclosure requirement, and Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authorization for this collection of information is contained in 47 U.S.C. 154(i) and 309(j). sections 154(i) and 309(j) of the Communications Act, as amended, 47 U.S.C. 4(i) and 309(j)(5).

Total Annual Burden: 470 hours.

Total Annual Costs: $31,500.

Nature and Extent of Confidentiality: The Commission is not requesting that respondents submit confidential information to the Commission as part of this information collection. However, to the extent a respondent wishes to request confidential treatment of information submitted in response to this collection, it may do so in accordance with section 0.459 of the Commission's rules, 47 CFR 0.459.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: A request for extension of this information collection (no change in requirements) will be submitted to the Office of Management and Budget (OMB) after this 60-day comment period in order to obtain the full three-year clearance from OMB. Beginning first on May 5, 1997, OMB approved under OMB Control No. 3060–0767 the Commission's collections of information pursuant to sections 1.2110, 1.2111, and 1.2112 of the Commission's rules, 47 CFR 1.2110, 1.2111, and 1.2112, and their predecessors, regarding ownership and designated entity status of parties involved with Commission licenses. The Commission collects this information in several contexts, including when determining the eligibility of applicants to participate in Commission auctions (including eligibility to claim designated entity benefits), the eligibility of parties to hold a Commission license/authorization (including eligibility for designated entity benefits), the eligibility of parties to whom licenses/authorizations are being assigned or transferred, and the repayment by license/authorization holders of the amount of bidding credits received in Commission auctions to avoid unjust enrichment. Applicants and licensees/authorization holders claiming eligibility for designated entity status are subject to audits and a record-keeping requirement regarding FCC-licensed service concerning such claims of eligibility, to confirm that their representations are, and remain, accurate. The collection of this information will enable the Commission to determine whether applicants are qualified to bid on and hold Commission licenses/authorizations and, if applicable, to receive designated entity benefits, and is designed to ensure the fairness of the auction, licensing, and license/authorization assignment and transfer processes. The information collected will be reviewed and, if warranted, referred to the Commission's Enforcement Bureau for possible investigation and administrative action. The Commission may also refer allegations of anticompetitive auction conduct to the Department of Justice for investigation. OMB has approved separately the routine collections of information pursuant to these Commission rules in applications to participate in Commission auctions) under OMB Control No. 3060–0600 (FCC Form 175), in Commission licensing applications under OMB Control No. 3060–0798 (FCC Form 601), and in assignment/transfer of control applications under OMB Control No. 3060–0800 (FCC Form 603). On occasion, the Commission may collect information from auction applicants, winning bidders and others applying for licenses/authorizations, and license/authorization holders pursuant to these rules under this information collection to clarify information provided in these application forms or in circumstances to which the standard forms may not directly apply.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–00846 Filed 1–17–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0972; FRS 16409]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

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 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. 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 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 Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before March 23, 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 Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0972.

Title: Multi-Association Group (MAG) Plan Order, Parts 54 and 69 Filing Requirements for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers.

Form Number(s): N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents and Responses: 202 respondents; 69 responses.

Estimated Time per Response: 20–90 hours.

Frequency of Response: On occasion and three year reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority is contained in 47 U.S.C. 1–4, 10, 154(i), 154(j), and 201–205.

Total Annual Burden: 1,512 hours.

Total Annual Cost: $55,500.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however request confidential treatment for information they believe to confidential 47 CFR 0.459 of the Commission's rules.

Needs and Uses: Following the passage of the Telecommunications Act of 1996, the Commission adopted interstate access charge and universal service support reforms. These reforms were designed to establish a ''procompetitive, deregulatory national policy framework'' for the United States telecommunications industry. Specifically, the Commission aligned the interstate access rate structure more closely with the manner in which costs are incurred, and created a universal service support mechanism for rate-of-return carriers (Interstate Common Line Support (ICLS)) to replace implicit support in interstate access charges with explicit support that is portable to all eligible telecommunications carriers. To administer the ICLS mechanism, the Universal Service Administrative Company required, among other things, that rate-of-return carriers collect projected cost and revenue data. In addition, carriers are required to submit tariff data, including certain cost studies, to ensure that their rates are just and reasonable.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–00844 Filed 1–17–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0816; FRS 16417]

Information Collection 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 February 20, 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 Number: 3060–0816.

Title: Local Telephone Competition and Broadband Reporting, Report and Order, FCC Form 477, (WC Docket No. 19–195, WC Docket No, 11–10, FCC 19–79).

Form Number: FCC Form 477.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions; and state, local, or tribal governments.

Number of Respondents and Responses: 2,515 respondents; 5,030 responses.

Estimated Time per Response: 387 hours (average).

Frequency of Response: Semi-annual reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 4(i), 201, 218–220, 251–252, 271, 303(r), 332, and 403 of the Communications Act of 1934, as amended, and in section 706 of the Telecommunications Act of 1996, as amended, codified in section 1302 of the Broadband Data Improvement Act, 47 U.S.C. 1302.

Total Annual Burden: 1,946,610 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission will no longer treat as confidential service providers' minimum advertised or expected speed data for mobile broadband services. Thus, provider-specific coverage data will be publicly released for all subsequent Form 477 filings. This action is necessary to ensure that consumers can easily use the information that is disclosed to the public, including minimum advertised or expected speed data, because such information is only beneficial if consumers know where service coverage is available.

Needs and Uses: After the 60-day comment period expires, the Commission will submit the revised information collection to the Office of Management and Budget (OMB) to obtain a full three-year clearance.

The revisions to the information collection are necessitated by a Report and Order in WC Docket Nos. 19–195 and 11–10, FCC 19–79, adopted on August 1, 2019. In this Order, the Commission makes targeted changes to the existing Form 477 data collection to reduce reporting burdens for all filers and incorporate new technologies.

The Order adopts the 5G–NR (New Radio) technology standards developed by the 3rd Generation Partnership Project (3GPP) with Release 15 and requires providers to submit 5G deployment data that meet the specifications of Release 15 (or any successor release that may be adopted by the Commission's Bureaus). The Order also requires mobile providers to submit broadband and voice subscriber data at the census-tract level based on the subscriber's place of primary use for postpaid subscribers and based on the subscriber's telephone number for prepaid and resold subscribers. These changes are necessary because the deployment data collected on Form 477 are no longer sufficient for targeting universal service funds. The actions to improve the Form 477 data collection are designed to increase the usefulness of the information to the Commission, Congress, the industry, and the public.

The Order reduces the burden on broadband providers by removing the requirement that facilities-based providers submit separate coverage maps depicting their broadband network coverage areas for each transmission technology and each frequency band. It also modifies the requirement that mobile broadband providers report coverage information for each technology deployed in their networks by reducing the number of categories from nine to four. The Order eliminates the requirement that facilities-based providers submit a list of census tracts in which the provider advertises its mobile wireless broadband service and in which the service is available to actual and potential subscribers. Finally, the Order removes the requirement that fixed providers offering business/enterprise/government services to report the maximum downstream and upstream contractual or guaranteed data throughput rate (committed information rate) available in each reported census block.

As part of these revisions to the Form 477 data collection, the Commission is requesting approval of certain changes to the form and the related instructions. These changes are necessary to streamline the filing process, implement revisions to the data collection, eliminate burdensome filings requirements, and increase the usefulness of the information to the Commission, Congress, the industry, and the public.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–00863 Filed 1–17–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0250, OMB 3060–1211; FRS 16418]

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 February 20, 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 Number: 3060–0250.

Title: Sections 73.1207, 74.784 and 74.1284, Rebroadcasts.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, local or tribal government.

Number of Respondents and Responses: 6,462 respondents; 11,012 responses.

Estimated Time per Response: 0.50 hours.

Frequency of Response: Recordkeeping requirement; on occasion reporting requirement; semi-annual reporting requirement; third party disclosure requirement.

Total Annual Burden: 5,506 hours.

Total Annual Cost: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 154(i) and 325(a) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: The information collection requirements contained in 47 CFR 73.1207 require that licensees of broadcast stations obtain written permission from an originating station prior to retransmitting any program or any part thereof. A copy of the written consent must be kept in the station's files and made available to the FCC upon request. Section 73.1207 also specifies procedures that broadcast stations must follow when rebroadcasting time signals, weather bulletins, or other material from non-broadcast services.

The information collection requirements contained in 47 CFR 74.784(b) require that a licensee of a low power television or TV translator station shall not rebroadcast the programs of any other TV broadcast station without obtaining prior consent of the station whose signals or programs are proposed to be retransmitted. Section 74.784(b) requires licensees of low power television and TV translator stations to notify the Commission when rebroadcasting programs or signals of another station. This notification shall include the call letters of each station rebroadcast. The licensee of the low power television or TV translator station shall certify that written consent has been obtained from the licensee of the station whose programs are retransmitted.

Lastly, the information collection requirements contained in 47 CFR 74.1284 require that the licensee of a FM translator station obtain prior consent to rebroadcast programs of any broadcast station or other FM translator. The licensee of the FM translator station must notify the Commission of the call letters of each station rebroadcast and must certify that written consent has been received from the licensee of that station. Also, AM stations are allowed to use FM translator stations to rebroadcast the AM signal.

OMB Control Number: 3060–1211.

Title: Sections 96.17; 96.21; 96.23; 96.25; 96.33; 96.35; 96.39; 96.41; 96.43; 96.45; 96.51; 96.57; 96.59; 96.61; 96.63; 96.67, Commercial Operations in the 3550–3650 MHz Band.

Form Number: N/A.

Type of Review: Extension of a currently approved information collection.

Respondents: Business or other for-profit entities, state, local, or tribal government and not for profit institutions.

Number of Respondents: 110,782 respondents; 226,099 responses.

Estimated Time per Response: .25 to 1 hour.

Frequency of Response: One-time and on occasion reporting requirements; other reporting requirements—as-needed basis for equipment safety certification that is no longer in use, and consistently (likely daily) responses automated via the device.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for, these collections are contained in 47 U.S.C. 151, 152, 154(i), 154(j), 155(c), 302(a), 303, 304, 307(e), and 316 of the Communications Act of 1934.

Total Annual Burden: 64,561 hours.

Total Annual Cost: $13,213,975.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The FCC adopted an Order on Reconsideration and Second Report and Order, FCC 16–55, that amends rules established in the First Report and Order, FCC 15–47, for commercial use of 150 megahertz in the 3550–3700 MHz (3.5 GHz) band and a new Citizens Broadband Radio Service, on April 28, 2016, published at 81 FR 49023 (July 26, 2016). The rule changes and information requirements contained in the First Report and Order are also approved under this Office of Management and Budget (OMB) control number and have not changed since they were last approved by OMB.

The Commission also received approval from OMB for the information collection requirements contained in FCC 16–55. The amendments contained in the Second Report and Order create additional capacity for wireless broadband by adopting a new approach to spectrum management to facilitate more intensive spectrum sharing between commercial and federal users and among multiple tiers of commercial users. The Spectrum Access System (SAS) will use the information to authorize and coordinate spectrum use for Citizen Broadband Radio Service Devices (CBSDs). The Commission will use the information to coordinate among the spectrum tiers and determine

Protection Areas for Priority Access Licensees (PALs).

The following is a description of the information collection requirements for is approved under this collection:

Section 96.25(c)(1)(i) requires PALs to inform the SAS if a CBSD is no longer in use.

Section 96.25(c)(2)(i) creates a default protection contour for any CBSD at the outer limit of the PAL Protection Area, but allows a PAL to self-report a contour smaller than that established by the SAS.

These rules which contain information collection requirements are designed to provide for flexible use of this spectrum, while managing three tiers of users in the band, and create a low-cost entry point for a wide array of users. The rules will encourage innovation and investment in mobile broadband use in this spectrum while protecting incumbent users. Without this information, the Commission would not be able to carry out its statutory responsibilities.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–00860 Filed 1–17–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0971; FRS 16408]

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 of 1995 (PRA), the Federal Communications 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 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 PRA comments should be submitted on or before March 23, 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 Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0971.

Title: Section 52.15, Request for ''For Cause'' Audits and State Commission's Access to Numbering Resource Application Information.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit and state, local or tribal government.

Number of Respondents and Responses: 2,105 respondents; 63,005 responses.

Estimated Time per Response: 0.166 hours–3 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 153, 154, 201–205, and 251.

Total Annual Burden: 10,473 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Carrier numbering resource applications and audits of carrier compliance will be treated as confidential and will be exempt from public disclosure under 5 U.S.C. 552(b)(4).

Needs and Uses: There are two Paperwork Reduction Act related obligations under this OMB Control Number: 1. The North American Numbering Plan Administrator (NANPA), the Pooling Administrator, or a state commission may draft a request to the auditor stating the reason for the request, such as misleading or inaccurate data, and attach supporting documentation; and 2. Requests for copies of carriers' applications for numbering resources may be made directly to carriers. The information collected will be used by the FCC, state commissions, the NANPA and the Pooling Administrator to verify the validity and accuracy of such data and to assist state commissions in carrying out their numbering responsibilities, such as area code relief.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–00843 Filed 1–17–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL TRADE COMMISSION

Revised Jurisdictional Thresholds for Section 8 of the Clayton Act

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission announces the revised thresholds for interlocking directorates required by the 1990 amendment of Section 8 of the Clayton Act. Section 8 prohibits, with certain exceptions, one person from serving as a director or officer of two competing corporations if two thresholds are met. Competitor corporations are covered by Section 8 if each one has capital, surplus, and undivided profits aggregating more than $10,000,000, with the exception that no corporation is covered if the competitive sales of either corporation are less than $1,000,000. Section 8(a)(5) requires the Federal Trade Commission to revise those thresholds annually, based on the change in gross national product. The new thresholds, which take effect immediately, are $38,204,000 for Section 8(a)(1), and $3,820,400 for Section 8(a)(2)(A).

DATES: January 21, 2020.

FOR FURTHER INFORMATION CONTACT: James F. Mongoven (202–326–2879), Bureau of Competition, Office of Policy and Coordination.

(Authority: 15 U.S.C. 19(a)(5)).

April J. Tabor,

Acting Secretary.

[FR Doc. 2020–00784 Filed 1–17–20; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2020–0005]

Achieving Health Equity in the Advancement of Tobacco Control Practices To Prevent Initiation of Tobacco Use Among Youth and Young Adults, Eliminate Exposure to Secondhand Tobacco Product Emissions, and Identify and Eliminate Disparities in Tobacco Use and Secondhand Exposure Among Population Groups; Request for Information

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Request for information.

SUMMARY: The Centers for Disease Control and Prevention (CDC) within the Department of Health and Human Services (HHS) leads comprehensive efforts to prevent the initiation of tobacco use among youth and young adults; eliminate exposure to secondhand tobacco product emissions (*e.g.*, secondhand smoke and aerosol); help current smokers quit; and identify and eliminate tobacco-related disparities. From 2017 to late 2018, CDC solicited input from the public through a **Federal Register** Notice (FRN Docket Number: CDC–2017–0103); regarding these comprehensive prevention efforts. CDC has reviewed these comments, posted to *www.regulations.gov,* and received helpful feedback. Now, CDC is seeking additional information to inform future activities that assist in achieving health equity in tobacco prevention and control by eliminating differences in tobacco use and dependency and exposure to secondhand tobacco product emissions (*e.g.,* secondhand smoke and aerosol) among certain population groups.

DATES: Electronic or written comments must be received by March 23, 2020.

ADDRESSES: You may submit comments, identified by CDC–2020–0005 by any one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov,* Please follow the directions on the site to submit comments; or
- *Mail:* Karena Sapsis, Office on Smoking and Health, Centers for Disease Control and Prevention, 4770 Buford Hwy., Mail Stop S107–7, Atlanta, GA 30341.

Instructions: All information received in response to this notice must include the agency name and docket number (CDC–2020–0005). All relevant comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Karena Sapsis, Office on Smoking and Health, Centers for Disease Control and Prevention, 4770 Buford Hwy., Mail Stop S107–7, Atlanta, GA 30341; Telephone (770) 488–3080; Email: *OSHFRN@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Scope of Problem

Tobacco use is the leading cause of preventable disease, disability, and death in the United States (Ref. 1). Cigarette smoking alone causes more than 480,000 deaths each year, including more than 41,000 secondhand smoke related deaths, and costs the country over $300 billion annually in health care spending and lost productivity (Refs. 1 and 2). Cigarette smoking is causally linked to numerous types of cancer, respiratory and cardiovascular diseases, diabetes, eye disease, complications to pregnancy and reproduction, and compromises the immune system.

Tobacco product use among youth, irrespective of whether it is smoked, smokeless, or electronic, is also a public health concern (Ref. 3). In 2018, nearly 4.9 million United States middle and high school students currently used (≥1 day in past 30 days) at least one type of tobacco product, with e-cigarettes being the most commonly used tobacco product (Ref. 3). The use of e-cigarettes may also lead to future cigarette smoking among some youth (Ref. 4). In addition to e-cigarettes, youth also use several other types of tobacco products (*e.g.*, cigarettes, flavored hookahs, smokeless tobacco, cigars, tobacco in pipes), and disparities in use of these products (*e.g.*, menthol cigarette use among non-Hispanic blacks) exist across population groups (Ref. 5).

In addition to concerns regarding the safety of tobacco product use, exposure to secondhand tobacco product emissions (*e.g.*, secondhand smoke and aerosol) can also be harmful. The U.S. Surgeon General has concluded that there is no risk-free level of secondhand smoke exposure; even brief exposure can be harmful to health (Refs. 6 and 7). During 2011–2012, about 58 million nonsmokers in the United States were exposed to secondhand smoke, and exposure remains higher among children, non-Hispanic blacks, those living in poverty, and those who rent their housing (Ref. 8).

Achieve Health Equity and Identify and Eliminate Tobacco-Related Disparities

Health Equity in tobacco prevention and control is an opportunity for all people to live a ''healthy, tobacco-free life, regardless of their race or ethnicity, level of education, gender identity, sexual orientation, the job they have, the neighborhood they live in, or whether or not they have a disability'' (Ref. 9). Advancing health equity is rooted in addressing social determinants of health, which are the conditions in which people are born, grow, live, work and age, and include the wider set of forces and systems shaping the conditions of daily life (Ref. 10). Although progress has been made in reducing tobacco use and dependency in the general population, tobacco use and dependency and exposure to tobacco product emissions (*e.g.,* secondhand smoke and aerosol) is still higher among certain population groups (Ref. 9). Persistent disparities can affect populations on the basis of certain factors, including but not limited to: (Refs. 9, 11, and 12).

- Age
- Disability
- Educational attainment
- Geographic location (*e.g.,* rural/urban)
- Income
- Mental health and substance abuse conditions
- Employment status
- Race/ethnicity
- Sex
- Sexual orientation and gender identity
- Veteran and military status
- Housing instability
- Incarceration status

Addressing the social and environmental factors that influence tobacco use and exposure to secondhand tobacco product emissions can advance equity in tobacco prevention and control, and reduce tobacco-related disparities among populations disproportionately impacted by tobacco use (Refs. 10 and 13). These efforts can help reduce the overall prevalence of tobacco use in addition to the prevalence of tobacco use within one or across several population groups.

Approach

Health equity is achieved when every person has the opportunity to attain his or her ''highest level of health'' and everyone is ''valued equally with focused and ongoing societal efforts to address avoidable inequalities, historical and contemporary injustices, and the elimination of health and healthcare disparities'' (Ref. 14). CDC is

seeking input to inform future activities to achieve health equity in the advancement of tobacco control practices to prevent initiation of tobacco use among youth and young adults; eliminate exposure to secondhand tobacco product emissions; and identify and eliminate tobacco-related disparities. The information gathered will be used to inform activities that support or are otherwise related to state tobacco control programming (*e.g.,* mass media campaigns; cessation; recommending policies related to smoke-free and tobacco pricing) and collaborative work with national governmental and nongovernmental partners, who share CDC's goals to prevent initiation of tobacco use among youth and young adults; eliminate exposure to secondhand tobacco product emissions; and identify and eliminate tobacco-related disparities.

CDC is specifically interested in receiving information on the following issues:

(1) What evidence-based or well-evaluated approaches/strategies, specifically addressing the social determinants of health, are being used to advance health equity goals related to tobacco use, dependency, and exposure to secondhand tobacco product emissions (*e.g.,* secondhand smoke and aerosol) in states, intra-state regions, counties, cities and/or communities/neighborhoods? Please provide the following information: (1) A description of indicated approaches/strategies; (2) where or from whom can CDC find additional information on identified approaches/strategies; and (3) the places (*e.g.,* state, region, city name) and populations covered by any identified approaches/strategies.

(2) What logic models, indicators, and measurement tools have been used to evaluate the effectiveness and efficacy of health equity strategies implemented in states or intra-state regions, counties, cities, and/or communities/neighborhoods (process and outcomes), including but not limited to those regarding tobacco prevention and control? Please provide a description for each logic model, indicator and measurement tool identified, including where it has been utilized and how it can be accessed (*e.g.,* publication reference, website address).

(3) What promising practices are working in states or intra-state regions, counties, cities, and/or communities/neighborhoods to advance health equity goals: (1) Related to tobacco use, dependency, and exposure to secondhand tobacco product emissions (*e.g.,* secondhand smoke and aerosol); (2) specifically among population groups with the greatest burden of tobacco use, dependency and exposure to secondhand tobacco product emissions, or (3) both?

(4) What science, tools, or resources on health equity would be useful to enhance and sustain tobacco prevention and control efforts among different population groups?

(5) In addition to building workforce capacity, are there other ways through which CDC may support state and local health departments and their partners to advance health equity related to tobacco use, dependency, and secondhand tobacco product emissions?

(6) What partners and stakeholders might CDC seek to engage to advance tobacco related health equity? Please list partners in the following sectors whose work is related to or can affect tobacco use, dependency, and secondhand tobacco product emissions:

- Public health
- Business (*e.g.,* Agriculture, Industry, Production, Manufacturing, Transport, Advertising)
- Healthcare
- Research/academic institutions
- Government
- Other

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Dated: January 15, 2020.

Sandra Cashman,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2020–00819 Filed 1–17–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–5646]

Food and Drug Administration Rare Disease Day 2020: Supporting the Future of Rare Disease Product Development; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing a public meeting and an opportunity for public comment on ''FDA Rare Disease Day 2020: Supporting the Future of Rare Disease Product Development.'' Developing a treatment for a rare disease can present unique challenges. The goal of this meeting is to obtain stakeholders' perspectives on challenges and solutions in rare disease product development and identify commonalities that can support product development across a variety of rare diseases.

DATES: The public meeting will be held on February 24, 2020, from 9 a.m. to 5 p.m. Submit either electronic or written comments on the public meeting by March 29, 2020. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public meeting will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Entrance for the public meeting participants (non-FDA employees) is through Building 1, where routine security check procedures will be performed. For parking and security information, please refer to *https://www.fda.gov/about-fda/white-oak-campus-information/public-meetings-fda-white-oak-campus*.

You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before March 29, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 29, 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–5646 for ''FDA Rare Disease Day 2020: Supporting the Future of Rare Disease Product Development.'' 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: Eleanor Dixon-Terry, Office of Orphan Products Development, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5163, Silver Spring, MD 20993, 301–796–7634, *OOPDOrphanEvents@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Rare diseases, often referred to as orphan diseases, are diseases that affect less than 200,000 persons in the United States. While these diseases are individually rare, collectively they are not rare. There are more than 7,000 rare diseases affecting an estimated 30 million people in the United States. Many of these rare diseases are serious or life-threatening and many affect children.

The combination of government incentives and scientific advances has fueled extraordinary development in orphan drugs. Since the Orphan Drug Act was first passed in 1983, drugs and biologics for over 800 rare disease indications have been developed and

approved for marketing. In addition to drugs and biologics, there has been progress in the development of medical devices for rare diseases. Since the implementation of the Humanitarian Use Device program in 1996, FDA has approved 77 medical devices for an orphan indication under the Agency's Humanitarian Device Exemption program. Unfortunately, most rare diseases still do not have approved treatments.

Developing a treatment for a rare disease can present unique challenges. Potential challenges include the small number of individuals affected, lack of understanding of the natural history of the disease, phenotypic heterogeneity, and lack of validated endpoints for use in clinical trials. Overcoming these challenges requires the collaboration between many stakeholders, including scientists, product developers, regulators, policy makers, and patients. In addition, as scientific understanding and technological development advances, it is essential for these stakeholders to stay abreast of the new challenges and opportunities in rare disease product development. Some challenges that need to be addressed include consideration of manufacturing needs to support the development of novel products, such as gene therapies, and considerations related to products developed for diseases or conditions affecting one or a few individuals. FDA is committed to working with stakeholders to advance treatment options for patients with rare diseases.

On April 29, 2019, FDA held a public meeting focusing on the perspectives of those affected by rare diseases. The FDA Rare Disease Day 2020 meeting will build on the previous meeting and include perspectives from additional stakeholders in rare disease product development, such as academic investigators and pharmaceutical companies. While the differences between rare diseases are critically important, this meeting will look to find commonalities that may help the Agency and medical product developers further understand and advance the development of treatments for rare diseases. The specific goal of this upcoming meeting is to identify challenges and solutions in rare disease product development to optimize rare disease medical product development. Potential ways to accomplish this goal may include identifying common clinical trial designs and analytical plans for natural history or registry studies that would be applicable to many rare diseases.

This meeting will include participation of FDA, the patient community, patient advocacy groups, academic investigators, medical product developers, and other interested stakeholders.

II. Topics for Discussion at the Public Meeting

This public meeting will consist of presentations and interactive panel discussions. The presentations will provide information to outline different perspectives in rare disease product development. The panel discussions will be moderated and allow additional panelists to provide individual perspectives. There will be an opportunity for discussion between the panelists and the audience.

The meeting will focus on several related topics. First, FDA would like to hear from rare disease stakeholders on strategies to optimize registry and natural history data collection to support rare disease product development. Second, FDA would like to hear from rare disease stakeholders on new opportunities and challenges in rare disease product development in the setting of recent scientific advancements that may enable the development of medical products for diseases or conditions affecting one or a few individuals. FDA staff will also offer their perspective on these topics. We invite the public to register and participate in the public meeting. A detailed agenda will be posted on the following website in advance of the meeting: *https://www.fda.gov/news-events/fda-meetings-conferences-and-workshops/fda-rare-disease-day-2020-supporting-future-rare-disease-product-development-02242020-02242020.*

III. Participating in the Public Meeting

Registration: To register for the public meeting, please visit the following website by February 17, 2020: *https://www.eventbrite.com/e/supporting-the-future-of-rare-disease-product-development-public-meeting-registration-77190744595.* Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone.

Registration is free and based on space availability, with priority given to early registrants. Persons interested in attending this public meeting must register by February 17, 2020, 5 p.m. Eastern Time. Early registration is recommended because seating is limited; therefore, FDA may limit the number of participants from each organization. Registrants will receive confirmation when their registration has been received. If time and space permit, onsite registration on the day of the public meeting will be provided beginning an hour prior to the start of the meeting.

If you need special accommodations due to a disability, please contact Eleanor Dixon-Terry, at 301–796–7634, or *OOPDOrphanEvents@fda.hhs.gov* no later than February 17, 2020.

An agenda for the meeting and any other background materials will be made available 5 days before the meeting at *https://www.fda.gov/news-events/fda-meetings-conferences-and-workshops/fda-rare-disease-day-2020-supporting-future-rare-disease-product-development-02242020-02242020.*

Requests for Open Public Comment Period Speakers: FDA will hold an open public comment period to give the public an opportunity to comment on the meeting topics. Registration for open public comment will occur in the meeting registration and at the registration desk on the day of the meeting on a first-come, first-served basis. The open public comment period is for in-person attendees only.

Open public comment period speakers will be notified of their selection approximately 7 days before the public meeting. We will try to accommodate all who wish to speak, either through the open public comment period or audience participation during the meeting; however, the duration of comments may be limited by time constraints.

Streaming Webcast of the Public Meeting: For those unable to attend in person, FDA will provide a live webcast of the meeting. To register for the streaming webcast of the public meeting, please visit the following website by February 23, 2020: *https://www.fda.gov/news-events/fda-meetings-conferences-and-workshops/fda-rare-disease-day-2020-supporting-future-rare-disease-product-development-02242020-02242020.*

If you have never attended a FDA York Media event before, test your connection at *http://www.yorkmedia.com/webcast/systemrequirements/.* FDA has verified the website addresses in this document, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

Transcripts: Please be advised that as soon as a transcript of the public meeting is available, it will be accessible at *https://www.regulations.gov.* It may be viewed at the Dockets Management Staff (see **ADDRESSES**). A link to the transcript will also be available on the internet at *https://www.fda.gov/news-events/fda-meetings-conferences-and-workshops/fda-rare-disease-day-2020-*

supporting-future-rare-disease-product-development-02242020-02242020.

Dated: January 13, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–00829 Filed 1–17–20; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–0008]

Request for Nominations for Individuals and Consumer Organizations for Advisory Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting that any consumer organizations interested in participating in the selection of voting and/or nonvoting consumer representatives to serve on its advisory committees or panels notify FDA in writing. FDA is also requesting nominations for voting and/or nonvoting consumer representatives to serve on advisory committees and/or panels for which vacancies currently exist or are expected to occur in the near future. Nominees recommended to serve as a voting or nonvoting consumer representative may be self-nominated or may be nominated by a consumer organization. FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore, encourages nominations of appropriately qualified candidates from these groups.

DATES: Any consumer organization interested in participating in the selection of an appropriate voting or nonvoting member to represent consumer interests on an FDA advisory committee or panel may send a letter or email stating that interest to FDA (see **ADDRESSES**) by February 20, 2020, for vacancies listed in this notice. Concurrently, nomination materials for prospective candidates should be sent to FDA (see **ADDRESSES**) by February 20, 2020. Nominations will be accepted for current vacancies and for those that will or may occur through December 31, 2020.

ADDRESSES: All statements of interest from consumer organizations interested in participating in the selection process should be submitted electronically to *ACOMSSubmissions@fda.hhs.gov,* by mail to Advisory Committee Oversight and Management Staff, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002, or by Fax: 301–847–8640.

Consumer representative nominations should be submitted electronically by logging into the FDA Advisory Committee Membership Nomination Portal: *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm,* by mail to Advisory Committee Oversight and Management Staff, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002, or by Fax: 301–847–8640. Additional information about becoming a member of an FDA advisory committee can also be obtained by visiting FDA's website at *http://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: For questions relating to participation in the selection process: Kimberly Hamilton, Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002, 301–796–8220, email *kimberly.hamilton@fda.hhs.gov.*

For questions relating to specific advisory committees or panels, contact the appropriate contact person listed in table 1.

TABLE 1—ADVISORY COMMITTEE CONTACTS

Contact person	Committee/panel
Kathleen Hayes, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 6307C, Silver Spring, MD 20993–0002, 301–796–7864, email: *Kathleen.Hayses@fda.hhs.gov*.	Allergenic Products Advisory Committee.
Kalyani Bhatt, Center for Drugs Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2438, Silver Spring, MD 20993–0002, 301–796–9005, email: *Kalyani.Bhatt@fda.hhs.gov*.	Bone, Reproductive and Urological Drugs Advisory Committee, Psychopharmacologic Drugs Advisory Committee.
LaToya Bonner, Center for Drugs Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2428, Silver Spring, MD 20993–0002, 301–796–2855, email: *LaToya.Bonner@fda.hhs.gov*.	Dermatologic and Ophthalmic Drugs Advisory Committee.
Philip Bautista, Center for Drugs Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2430, Silver Spring, MD 20993–0002, 240–762–8729, email: *Philip.Bautista@fda.hhs.gov*.	Drug Safety and Risk Management Advisory Committee.
Patricio Garcia, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G610, Silver Spring, MD 20993–0002, 301–796–6875, email: *Patricio.Garcia@fda.hhs.gov*.	Clinical Chemistry and Clinical Toxicology Devices Panel, Gastroenterology and Urology Devices Panel, Obstetrics and Gynecology Devices Panel.
Sara Anderson, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G616, Silver Spring, MD 20993–0002, 301–796–7047, email: *Sara.Anderson@fda.hhs.gov*.	Dental Products Devices Panel.
Evella Washington, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G640, Silver Spring, MD 20993–0002, 301–796–6683, email: *Evella.Washington@fda.hhs.gov*.	Circulatory Systems Devices Panel.
Joannie Adams-White, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5519, Silver Spring, MD 20993–0002, 301–796–5421, email: *Joannie.Adams-White@fda.hhs.gov*.	Medical Devices Dispute Resolution Panel.
Aden Asefa, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G642, Silver Spring, MD 20993–0002, 301–796–0400, email: *Aden.Asefa@fda.hhs.gov*.	Immunology Devices Panel; Microbiology Devices Panel.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting and/or nonvoting consumer representatives for the vacancies listed in table 2:

TABLE 2—COMMITTEE DESCRIPTIONS, TYPE OF CONSUMER REPRESENTATIVE VACANCY, AND APPROXIMATE DATE NEEDED

Committee/panel/areas of expertise needed	Type of vacancy	Approximate date needed
Allergenic Products Advisory Committee—Knowledgeable in the fields of allergy, immunology, pediatrics, internal medicine, biochemistry, and related specialties.	1–Voting	August 31, 2020.
Bone, Reproductive and Urological Drugs Advisory Committee—Knowledgeable in the fields of osteoporosis and metabolic bone disease, obstetrics, gynecology, urology, pediatrics, epidemiology, or statistics and related specialties.	1–Voting	Immediately.
Psychopharmacologic Drugs Advisory Committee—Knowledgeable in the fields of psychopharmacology, psychiatry, epidemiology or statistics, and related specialties.	1–Voting	Immediately.
Dermatologic and Ophthalmic Drugs Advisory Committee—Knowledgeable in the fields of dermatology, ophthalmology, internal medicine, pathology, immunology, epidemiology or statistics, and other related professions.	1–Voting	August 31, 2020.
Drug Safety and Risk Management Advisory Committee—Knowledgeable in risk communication, risk management, drug safety, medical, behavioral, and biological sciences as they apply to risk management, and drug abuse.	1–Voting	May 31, 2020.
Clinical Chemistry and Clinical Toxicology Devices Panel—Doctor of Medicine or philosophy with experience in clinical chemistry (*e.g.,* cardiac markers), clinical toxicology, clinical pathology, clinical laboratory medicine, and endocrinology.	1–Non-Voting	Immediately.
Gastroenterology and Urology Devices Panel—Gastroenterologists, urologists and nephrologists.	1–Non-Voting	Immediately.
Obstetrics and Gynecology Devices Panel—Experts in perinatology, embryology, reproductive endocrinology, pediatric gynecology, gynecological oncology, operative hysteroscopy, pelviscopy, electro-surgery, laser surgery, assisted reproductive technologies, contraception, postoperative adhesions, and cervical cancer and colposcopy; biostatisticians and engineers with experience in obstetrics/gynecology devices; urogynecologists; experts in breast care; experts in gynecology in the older patient; experts in diagnostic (optical) spectroscopy; experts in midwifery; labor and delivery nursing.	1–Non-Voting	Immediately.
Dental Products Device Panel—Dentists, engineers and scientists who have expertise in the areas of dental implants, dental materials, periodontology, tissue engineering, and dental anatomy.	1–Non-Voting	Immediately.
Circulatory Systems Devices Panel—Interventional cardiologists, electrophysiologists, invasive (vascular) radiologists, vascular and cardiothoracic surgeons, and cardiologists with special interest in congestive heart failure.	1–Non-Voting	Immediately.
Medical Devices Dispute Resolution—Experts with broad, cross-cutting scientific, clinical, analytical or mediation skills.	1–Non-Voting	Immediately.
Immunology Devices Panel—Persons with experience in medical, surgical, or clinical oncology, internal medicine, clinical immunology, allergy, molecular diagnostics, or clinical laboratory medicine.	1–Non-Voting	Immediately.
Microbiology Devices Panel—Clinicians with an expertise in infectious disease, *e.g.,* pulmonary disease specialists, sexually transmitted disease specialists, pediatric infectious disease specialists, experts in tropical medicine and emerging infectious diseases, mycologists; clinical microbiologists and virologists; clinical virology and microbiology laboratory directors, with expertise in clinical diagnosis and in vitro diagnostic assays, e.g., hepatologists; molecular biologists.	1–Non-Voting	Immediately.
Radiology Devices Panel—Physicians with experience in general radiology, mammography, ultrasound, magnetic resonance, computed tomography, other radiological subspecialties and radiation oncology; scientists with experience in diagnostic devices, radiation physics, statistical analysis, digital imaging and image analysis.	1–Non-Voting	Immediately.

I. Functions and General Description of the Committee Duties

A. Allergenic Products Advisory Committee

Reviews and evaluates available data concerning the safety, effectiveness, and adequacy of labeling of marketed and investigational allergenic biological products or materials that are administered to humans for the diagnosis, prevention, or treatment of allergies and allergic disease as well as the affirmation or revocation of biological product licenses, on the safety, effectiveness, and labeling of the products, on clinical and laboratory studies of such products, on amendments or revisions to regulations governing the manufacture, testing and licensing of allergenic biological products, and on the quality and relevance of FDA's research programs.

B. Bone, Reproductive and Urologic Drugs Advisory Committee

Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of osteoporosis and metabolic bone disease, obstetrics, gynecology, urology, and related specialties.

C. Psychopharmacologic Drugs Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the practice of psychiatry and related fields.

D. Dermatologic and Ophthalmic Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of dermatologic and ophthalmic disorders.

E. Drug Safety and Risk Management Advisory Committee

Risk management, risk communication, and quantitative evaluation of spontaneous reports for drugs for human use and for any other

product for which the FDA has regulatory responsibility. Scientific and medical evaluation of all information gathered by the Department of Health and Human Services (DHHS) and the Department of Justice with regard to safety, efficacy, and abuse potential of drugs or other substances, and recommends actions to be taken by the DHHS with regard to the marketing, investigation, and control of such drugs or other substances.

F. Certain Panels of the Medical Devices Advisory Committee

Reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, advises on the classification or reclassification of devices into one of three regulatory categories; advises on any possible risks to health associated with the use of devices; advises on formulation of product development protocols; reviews premarket approval applications for medical devices; reviews guidelines and guidance documents; recommends exemption of certain devices from the application of portions of the Federal Food, Drug, and Cosmetic Act; advises on the necessity to ban a device; and responds to requests from the Agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, may also make appropriate recommendations to the Commissioner of Food and Drugs (the Commissioner) on issues relating to the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

The Dental Products Panel also functions at times as a dental drug panel. The functions of the dental drug panel are to evaluate and recommend whether various prescription drug products should be changed to over-the-counter status and to evaluate data and make recommendations concerning the approval of new dental drug products for human use.

The Medical Devices Dispute Resolution Panel provides advice to the Commissioner on complex or contested scientific issues between FDA and medical device sponsors, applicants, or manufacturers relating to specific products, marketing applications, regulatory decisions and actions by FDA, and Agency guidance and policies. The Panel makes recommendations on issues that are lacking resolution, are highly complex in nature, or result from challenges to regular advisory panel proceedings or Agency decisions or actions.

II. Criteria for Members

Persons nominated for membership as consumer representatives on committees or panels should meet the following criteria: (1) Demonstrate an affiliation with and/or active participation in consumer or community-based organizations, (2) be able to analyze technical data, (3) be able to understand research design, (4) be able to discuss benefits and risks, and (5) be able to evaluate the safety and efficacy of products under review. The consumer representative should be able to represent the consumer perspective on issues and actions before the advisory committee; serve as a liaison between the committee and interested consumers, associations, coalitions, and consumer organizations; and facilitate dialogue with the advisory committees on scientific issues that affect consumers.

III. Selection Procedures

Selection of members representing consumer interests is conducted through procedures that include the use of organizations representing the public interest and public advocacy groups. These organizations recommend nominees for the Agency's selection. Representatives from the consumer health branches of Federal, State, and local governments also may participate in the selection process. Any consumer organization interested in participating in the selection of an appropriate voting or nonvoting member to represent consumer interests should send a letter stating that interest to FDA (see **ADDRESSES**) within 30 days of publication of this document.

Within the subsequent 30 days, FDA will compile a list of consumer organizations that will participate in the selection process and will forward to each such organization a ballot listing at least two qualified nominees selected by the Agency based on the nominations received, together with each nominee's current curriculum vitae or résumé. Ballots are to be filled out and returned to FDA within 30 days. The nominee receiving the highest number of votes ordinarily will be selected to serve as the member representing consumer interests for that particular advisory committee or panel.

IV. Nomination Procedures

Any interested person or organization may nominate one or more qualified persons to represent consumer interests on the Agency's advisory committees or panels. Self-nominations are also accepted. Nominations must include a current, complete résumé or curriculum vitae for each nominee and a signed copy of the *Acknowledgement and Consent* form available at the FDA Advisory Nomination Portal (see **ADDRESSES**), and a list of consumer or community-based organizations for which the candidate can demonstrate active participation.

Nominations must also specify the advisory committee(s) or panel(s) for which the nominee is recommended. In addition, nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will ask potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflicts of interest. Members will be invited to serve for terms up to 4 years.

FDA will review all nominations received within the specified timeframes and prepare a ballot containing the names of qualified nominees. Names not selected will remain on a list of eligible nominees and be reviewed periodically by FDA to determine continued interest. Upon selecting qualified nominees for the ballot, FDA will provide those consumer organizations that are participating in the selection process with the opportunity to vote on the listed nominees. Only organizations vote in the selection process. Persons who nominate themselves to serve as voting or nonvoting consumer representatives will not participate in the selection process.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: January 14, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–00869 Filed 1–17–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–6063]

Agency Information Collection Activities; Proposed Collection; Comment Request; Customer/Partner Service Surveys

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on voluntary customer satisfaction service surveys.

DATES: Submit either electronic or written comments on the collection of information by March 23, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before March 23, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 23, 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–6063 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Customer/Partner Service Surveys.'' 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: 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: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on

respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Customer/Partner Service Surveys

OMB Control Number 0910–0360—Extension

Under section 1003 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393), FDA is authorized to conduct research and public information programs about regulated products and responsibilities of the Agency. Executive Order 12862, entitled ''Setting Customer Service Standard,'' directs Federal Agencies that ''provide significant services directly to the public'' to ''survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.'' FDA is seeking extension of an existing OMB clearance to conduct a series of surveys to implement Executive Order 12862. Participation in the surveys is voluntary. This request covers customer/partner service surveys of regulated entities, such as food processors; cosmetic, drug, biologic, and medical device manufacturers; consumers; and health professionals. The request also covers ''partner'' (State and local governments) customer service surveys.

FDA will use the information from these surveys to identify strengths and weaknesses in service to customers/partners and to make improvements. The surveys will measure timeliness, appropriateness and accuracy of information, courtesy, and problem resolution in the context of individual programs.

FDA estimates conducting 15 customer/partner service surveys per year, each requiring an average of 15 minutes for review and completion. We estimate respondents to these surveys to be between 100 and 20,000 customers. Some of these surveys will be repeats of earlier surveys for purposes of monitoring customer/partner service and developing long-term data.

Respondents to this collection of information cover a broad range of stakeholders who have specific characteristics related to certain products or services regulated by FDA.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Type of survey	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Mail, telephone, web-based	55,000	1	55,000	0.25 (15 minutes)	13,750

[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: January 13, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–00822 Filed 1–17–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0583]

Agency Information Collection Activities; Proposed Collection; Comment Request; Radioactive Drug Research Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements contained in regulations governing the use of radioactive drugs for basic informational research.

DATES: Submit either electronic or written comments on the collection of information by March 23, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before March 23, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 23, 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–2010–N–0583 for ''Radioactive Drug Research Committees.'' 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: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Radioactive Drug Research Committees—21 CFR 361.1

OMB Control Number 0910–0053—Extension

Under sections 201, 505, and 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 355, and 371), FDA has the authority to issue regulations governing the use of radioactive drugs for basic scientific research. This information collection request supports those regulations. Specifically, section 361.1 (21 CFR 361.1) sets forth specific regulations about establishing and composing radioactive drug research committees (RDRCs) and their role in approving and monitoring basic research studies using radiopharmaceuticals. No basic research study involving any administration of a radioactive drug to research subjects is permitted without the authorization of an FDA-approved RDRC (§ 361.1(d)(7)). The type of research that may be undertaken with a radiopharmaceutical drug must be intended to obtain basic information and not to carry out a clinical trial for safety or efficacy. The types of basic research permitted are specified in the regulations and include studies of metabolism, human physiology, pathophysiology, or biochemistry.

Section 361.1(c)(2) requires that each RDRC will select a chairman, who will sign all applications, minutes, and reports of the committee. Each committee will meet at least once each quarter in which research activity has been authorized or conducted. Minutes will be kept and will include the numerical results of votes on protocols involving use in human subjects. Under § 361.1(c)(3), each RDRC will submit an annual report to FDA. The annual report will include the names and qualifications of the members of and of any consultants used by the RDRC, using Form FDA 2914. The annual report will also include a summary of each study conducted during the preceding year, using Form FDA 2915.

Under § 361.1(d)(5), each investigator will obtain the proper consent required under the regulations. Each female research subject of childbearing potential must state in writing that she is not pregnant or, based on a pregnancy test, be confirmed as not pregnant.

Under § 361.1(d)(8), the investigator will immediately report to the RDRC all adverse effects associated with use of the drug, and the committee will then report to FDA all adverse reactions probably attributed to the use of the radioactive drug.

Section 361.1(f) sets forth labeling requirements for radioactive drugs. These requirements are not in the reporting burden estimate because they are information supplied by the Federal Government to the recipient for the purposes of disclosure to the public (5 CFR 1320.3(c)(2)).

Types of research studies not permitted under the regulations are also specified and include those intended for immediate therapeutic, diagnostic, or similar purposes or to determine the safety or effectiveness of the drug in humans for such purposes (*i.e.,* to carry out a clinical trial for safety or efficacy). These studies require filing of an investigational new drug application under 21 CFR part 312, and the associated information collections are covered in OMB control number 0910–0014.

The primary purpose of this collection of information is to determine whether the research studies are being conducted in accordance with required

regulations and that human subject safety is assured. If these studies were not reviewed, human subjects could be subjected to inappropriate radiation or pharmacologic risks. Respondents to this information collection are the chairperson or chairpersons of each individual RDRC, investigators, and participants in the studies. The burden estimates are based on our experience with these reporting and recordkeeping requirements and the number of submissions we received under the regulations over the past 3 years.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1] [2]

21 CFR Section and applicable form	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
§ 361.1(c)(3) reports and (c)(4) approval (Form FDA 2914: Membership Summary) [3].	62	1	62	1	62
§ 361.1(c)(3) reports (Form FDA 2915: Study Summary) [4].	40	10	434	3.5 (3 hours, 30 minutes)	1,519
§ 361.1(d)(8) adverse events	10	1	10	.5 (30 minutes)	5
Total			506		1,586

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Numbers may not sum due to rounding.
[3] *https://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/UCM094979.pdf.*
[4] *https://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/UCM074720.pdf.*

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1] [2]

21 CFR Section	Number of recordkeepers	Number of records per recordkeepers	Total annual records	Average burden per recordkeeping	Total hours
§ 361.1(c)(2) RDRC	62	4	248	10	2,480
§ 361.1(d)(5) human research subjects.	40	10	434	.75 (45 minutes)	326
Total			682		2,806

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Numbers may not sum due to rounding.

We have adjusted our estimate for the information collection to reflect an annual decrease of 525 hours and 147 responses since last OMB review. This adjustment corresponds to fewer submissions we have received under the information collection over the last few years.

Dated: January 14, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–00873 Filed 1–17–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–5666]

Agency Information Collection Activities; Proposed Collection; Comment Request; Empirical Study of Promotional Implications of Proprietary Prescription Drug Names

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on a proposed study entitled ''Empirical Study of Promotional Implications of Proprietary Prescription Drug Names.''

DATES: Submit either electronic or written comments on the collection of information by March 23, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before March 23, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 23, 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–5666 for ''Empirical Study of Promotional Implications of Proprietary Prescription Drug Names.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

FOR FURTHER INFORMATION CONTACT: 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: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Empirical Study of Promotional Implications of Proprietary Prescription Drug Names

OMB Control Number 0910–NEW

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes FDA to conduct research relating to health information. Section 1003(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 393(d)(2)(C)) authorizes FDA to conduct research relating to drugs and other FDA regulated products in carrying out the provisions of the FD&C Act.

The mission of the Office of Prescription Drug Promotion (OPDP) is to protect the public health by helping to ensure that prescription drug promotional material is truthful, balanced, and accurately communicated, so that patients and healthcare providers (HCPs) can make informed decisions about treatment options. OPDP's research program provides scientific evidence to help ensure that our policies related to prescription drug promotion will have the greatest benefit to public health. Toward that end, we have consistently conducted research to evaluate the aspects of prescription drug promotion that are most central to our mission, focusing in particular on three main topic areas: Advertising features, including content and format; target populations; and research quality. Through the evaluation of advertising features we assess how elements such as graphics, format, and disease and product characteristics impact the communication and understanding of prescription drug risks and benefits; focusing on target populations allows us to evaluate how understanding of prescription drug risks and benefits may vary as a function of audience; and our focus on research quality aims at maximizing the quality of research data through analytical methodology development and investigation of sampling and response issues. This

study will inform the first two topic areas.

Because we recognize the strength of data and the confidence in the robust nature of the findings is improved through the results of multiple converging studies, we continue to develop evidence to inform our thinking. We evaluate the results from our studies within the broader context of research and findings from other sources, and this larger body of knowledge collectively informs our policies as well as our research program. Our research is documented on our homepage, which can be found at: *https://www.fda.gov/aboutfda/centersoffices/officeofmedicalproductsandtobacco/cder/ucm090276.htm.* The website includes links to the latest **Federal Register** notices and peer-reviewed publications produced by our office. The website maintains information on studies we have conducted, dating back to a direct-to-consumer (DTC) survey conducted in 1999.

During the prescription drug approval process, sponsors propose proprietary names for their products. These names undergo a proprietary name review that involves the Office of Drug Safety, the relevant medical office, and the OPDP. OPDP reviews names to assess for alignment with the FD&C Act, which provides that labeling or advertising can misbrand a product if misleading representations are made (see 21 U.S.C. 321(n)). A proprietary name, which appears in labeling, could result in such misbranding if it is false or misleading. OPDP focuses its misbranding review on identifying names that overstate the efficacy or safety of the drug, expand drug indications, suggest superiority without substantiation, or are of a fanciful nature that misleadingly implies unique effectiveness or composition. While there are several ways proprietary names can be misleading, this research will primarily focus on overstatement of the efficacy of the drug product.

The proposed study is designed to provide systematic, empirical evidence to answer two research questions:

- Primary research question: How, if at all, do names that suggest the drug's indication affect consumers' and/or healthcare providers' perceptions of the prescription drug?
- Secondary research question: How, if at all, do names that suggest an overstatement of the efficacy of the drug affect consumers' and/or healthcare providers' perceptions of prescription drugs?

The ideas generated in the Prescription Drug User Fee Amendments pilot project proprietary name review concept paper of 2008 [1] provided a starting point for the study. Based on ideas from that document, a review of the linguistics and social sciences literature, and an environmental scan, FDA developed and pretested an extreme, explicitly suggestive name (*e.g.,* CureAll) and a neutral name for two indications, high cholesterol and gastroesophageal reflux disease (OMB control number 0910–0695). In the proposed main study, approximately 500 consumers from the general population and 500 HCPs (including physicians, nurse practitioners, and physician assistants) will see these pretested extreme and neutral names plus five target (to be tested) names per indication and answer questions about the names, before and after they have been told what each drug's indication is. Target names will vary such that some efficacy implications are more apparent than others and some will more clearly imply indication or benefits than others. Dependent variables will include indication identification, efficacy, and perceptions.

To our knowledge, this study is the first to provide a systemic investigation of a variety of proprietary prescription drug names.

The questionnaire is available upon request from *DTCResearch@fda.hhs.gov.*

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response [2]	Total hours
Consumer Screener	1,233	1	1,233	0.08 (5 minutes)	99
HCP Screener	1,233	1	1,233	0.08 (5 minutes)	99
Consumer Study	493	1	493	0.33 (20 minutes)	163
HCP Study	493	1	493	0.33 (20 minutes)	163
Total					524

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Burden estimates of less than 1 hour are expressed as a fraction of an hour in decimal format.

Dated: January 13, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–00823 Filed 1–17–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Findings of research misconduct have been made against Ozgur Tataroglu, Ph.D. (Respondent), former postdoctoral fellow, Department of Neurobiology, University of Massachusetts Medical School (UMMS). Dr. Tataroglu engaged in research misconduct in research supported by U.S. Public Health Service (PHS) funds, specifically National Institute of General Medical Sciences (NIGMS), National Institutes of Health (NIH), grants R01 GM066777 and R01 GM079182. The administrative actions, including supervision for a period of three (3) years, were implemented beginning on December 30, 2019, and are detailed below.

FOR FURTHER INFORMATION CONTACT: Elisabeth A. Handley, Interim Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 240, Rockville, MD 20852, (240) 453–8200.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Office of Research

[1] *https://www.regulations.gov/docket?D=FDA-2008-N-0281.*

Integrity (ORI) has taken final action in the following case:

Ozgur Tataroglu, Ph.D., University of Massachusetts Medical School: Based on the report of an investigation conducted by UMMS and additional analysis conducted by ORI in its oversight review, ORI found that Dr. Ozgur Tataroglu, former postdoctoral fellow, Department of Neurobiology, UMMS, engaged in research misconduct in research supported by PHS funds, specifically NIGMS, NIH, grants R01 GM066777 and R01 GM079182.

Respondent neither admits nor denies ORI's findings of research misconduct. The settlement is not an admission of liability on the part of the Respondent. The parties entered into a Voluntary Settlement Agreement (Agreement) to conclude this matter without further expenditure of time, finances, or other resources.

ORI found that Respondent engaged in research misconduct by knowingly, intentionally, and/or recklessly falsifying data included in the following one (1) paper and two (2) grant applications submitted to NIGMS, NIH:

- Calcium and SOL Protease Mediate Temperature Resetting of Circadian Clocks. *Cell* 2015 Nov 19;163(5):1214–1224 (hereafter referred to as ''*Cell* 2015''). Retracted in: *Cell* 2017 Sep 21;171(1):256.
- R01 GM079182–05A1, ''Synchronization of *Drosophila* Circadian Rhythms by Temperature Cycles,'' submitted to NIGMS, NIH, on July 18, 2014.
- R35 GM118087–01, ''Molecular and neural mechanisms generating and synchronizing circadian rhythms,'' submitted to NIGMS, NIH, on May 19, 2015.

Specifically, ORI found that Respondent engaged in research misconduct by knowingly, intentionally, and/or recklessly falsifying data in bar graphs representing phase shift of circadian clock activity between *Drosophila* without and with heat pulse (HP) treatment in: Figures 1G, 2F, 3C, and 4C of *Cell* 2015; Figures 7D, 8G, and 9C in grant application R01 GM079182–05A1; Figures 3C and 4 in grant application R35 GM118087–01; and two (2) figures recorded in his unpublished data files, by selectively altering the original *Drosophila* behavior locomotor data in his primary data files. The data manipulations resulted in the creation or exaggeration of phase shifts caused by either HP treatment or over-expression of the calpain protease SOL, to support the hypothesis that temperature phase shifts the *Drosophila* circadian clock through the regulated degradation of the pacemaker protein TIMELESS mediated by SOL.

Dr. Tataroglu entered into an Agreement and voluntarily agreed:

(1) To have his research supervised for a period of three (3) years beginning on December 30, 2019; Respondent agreed that prior to the submission of an application for PHS support for a research project on which Respondent's participation is proposed and prior to Respondent's participation in any capacity on PHS-supported research, Respondent shall ensure that a plan for supervision of Respondent's duties is submitted to ORI for approval; the supervision plan must be designed to ensure the scientific integrity of Respondent's research contribution; Respondent agreed that he shall not participate in any PHS-supported research until such a supervision plan is submitted to and approved by ORI; Respondent agreed to maintain responsibility for compliance with the agreed supervision plan;

(2) that the requirements for Respondent's supervision plan are as follows:

i. A committee of 2–3 senior faculty members at the institution who are familiar with Respondent's field of research, but not including Respondent's supervisor or collaborators, will provide oversight and guidance for three (3) years beginning on December 30, 2019; the committee will review primary data from Respondent's laboratory on a quarterly basis and submit a report to ORI at six (6) month intervals setting forth the committee meeting dates, Respondent's compliance with appropriate research standards, and confirming the integrity of Respondent's research; and

ii. the committee will conduct an advance review of any PHS grant applications (including supplements, resubmissions, etc.), manuscripts reporting PHS-funded research submitted for publication, and abstracts; the review will include a discussion with Respondent of the primary data represented in those documents and will include a certification to ORI that the data presented in the proposed application/publication is supported by the research record;

(3) that for a period of three (3) years beginning on December 30, 2019, any institution employing him shall submit, in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported in the application, report, manuscript, or abstract;

(4) that if no supervisory plan is provided to ORI, Respondent shall provide certification to ORI at the conclusion of the supervision period that he has not engaged in, applied for, or had his name included on any application, proposal, or other request for PHS funds without prior notification to ORI; and

(5) to exclude himself voluntarily from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for a period of three (3) years beginning on December 30, 2019.

Elisabeth A. Handley,

Interim Director, Office of Research Integrity.

[FR Doc. 2020–00874 Filed 1–17–20; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Vaccine Advisory Committee

AGENCY: Office of Infectious Disease and HIV/AIDS Policy, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that the National Vaccine Advisory Committee (NVAC) will hold a two-day meeting in-person meeting. The meeting will be open to the public and public comment sessions will be held during the meeting.

DATES: The meeting will be held on Tuesday and Wednesday, February 13–14, 2020. The confirmed meeting times and agenda will be posted on the NVAC website at *http://www.hhs.gov/nvpo/nvac/meetings/index.html* as soon as they become available.

ADDRESSES: Instructions regarding attending this meeting will be posted online at: *http://www.hhs.gov/nvpo/nvac/meetings/index.html* at least one week prior to the meeting. Pre-registration is required for those who wish to attend the meeting or participate in one of the public comment sessions. Please register at *http://www.hhs.gov/nvpo/nvac/meetings/index.html.*

FOR FURTHER INFORMATION CONTACT: Ann Aikin, Acting Designated Federal Officer, at the Office of Infectious

Disease and HIV/AIDS Policy, U.S. Department of Health and Human Services, Mary E. Switzer Building, Room L618, 330 C Street SW, Washington, DC 20024. Phone: (202) 795–7611; email: *nvac@hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 2101 of the Public Health Service Act (42 U.S.C. 300aa–1), the Secretary of HHS was mandated to establish the National Vaccine Program to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines. The NVAC was established to provide advice and make recommendations to the Director of the National Vaccine Program on matters related to the Program's responsibilities. The Assistant Secretary for Health serves as Director of the National Vaccine Program.

During the February 2020 NVAC meeting, sessions will focus on vaccine innovation and vaccine confidence with updates from subcommittees and members. Please note that agenda items are related to charges of the committee and are subject to change, as priorities dictate. Information on the final meeting agenda will be posted prior to the meeting on the NVAC website: *http://www.hhs.gov/nvpo/nvac/index.html.*

Members of the public will have the opportunity to provide comments at the NVAC meeting during the public comment periods designated on the agenda. Public comments made during the meeting will be limited to three minutes per person to ensure time is allotted for all those wishing to speak. Individuals are also welcome to submit written comments. Written comments should not exceed three pages in length. Individuals submitting written comments should email their comments to the National Vaccine Program Office (*nvac@hhs.gov*) at least five business days prior to the meeting.

Dated: January 3, 2020.

Ann Aikin,

Acting Designated Federal Official, Office of Infectious Disease and HIV/AIDS Policy.

[FR Doc. 2020–00882 Filed 1–17–20; 8:45 am]

BILLING CODE 4150–44–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 Arthritis Connective Tissue and Skin Sciences.

Date: February 12, 2020.

Time: 10:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Pentagon City, 550 Army Navy Drive, Arlington, VA 22202.

Contact Person: Rajiv Kumar, Ph.D., IRG Chief, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7802, Bethesda, MD 20892, (301) 435–1212, *kumarra@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group Skeletal Biology Development and Disease Study Section.

Date: February 18–19, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott at Metro Center, 775 12th Street NW, Washington, DC 20005.

Contact Person: Aruna K Behera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, (301) 435–6809, *beheraak@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group Macromolecular Structure and Function A Study Section.

Date: February 18–19, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Spero, 405 Taylor Street, San Francisco, CA 94102.

Contact Person: David R Jollie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, (301) 408–9072, *jollieda@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group Vector Biology Study Section.

Date: February 18–19, 2020.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Catamaran Resort, 3999 Mission Boulevard, San Diego, CA 92109.

Contact Person: Liangbiao Zheng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, MSC 7808, Bethesda, MD 20892, (301) 402–5671, *zhengli@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR17–190: Maximizing Investigators' Research Award for Early Stage Investigators (R35).

Date: February 18–19, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Jonathan Arias, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, (301) 435–2406, *ariasj@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group Prokaryotic Cell and Molecular Biology Study Section.

Date: February 18–19, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington, DC Downtown Hotel, 999 Ninth Street NW, Washington, DC 20001–4427.

Contact Person: Luis Dettin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, Bethesda, MD 20892, (301) 451–1327, *dettinle@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Fellowships: Behavioral Neuroscience.

Date: February 18–19, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: Mei Qin, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213, Bethesda, MD 20892, (301) 875–2215, *qinmei@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group Chemosensory Systems Study Section.

Date: February 18, 2020.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Macromolecular Structure and Function A Study Section.

Date: February 18, 2020.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Spero, 405 Taylor St., San Francisco, CA 94102.

Contact Person: C–L Albert Wang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7806, Bethesda, MD 20892, (301) 435–1016, *wangca@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 14, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–00788 Filed 1–17–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

U.S. Customs and Border Protection 2020 Trade Symposium

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security (DHS).

ACTION: Notice of Trade Symposium.

SUMMARY: This document announces that CBP will convene the 2020 Trade Symposium in Anaheim, CA, on Tuesday, March 10, 2020, and Wednesday, March 11, 2020. The 2020 Trade Symposium will feature agency personnel, members of the trade community, and other government agencies in panel discussions on the agency's role in international trade initiatives and programs. Members of the international trade and transportation communities and other interested parties are encouraged to attend.

DATES: Tuesday, March 10, 2020 (opening remarks and general sessions, including the CBP Leadership Town Hall, 8:00 a.m.–5:00 p.m. PDT), and Wednesday, March 11, 2020 (breakout sessions, 8:00 a.m.–5:00 p.m. PDT).

ADDRESSES: The 2020 Trade Symposium will be held at the Anaheim Hilton located at 777 W Convention Way, Anaheim, CA 92802.

Registration: Registration will be open from 12:00 p.m. EST on January 9, 2020, through 4:00 p.m. EST on February 10, 2020. All registrations must be made online at the CBP website (*http://www.cbp.gov/trade/stakeholder-engagement/trade-symposium*) and will be confirmed with payment by credit card only. The registration fee is $210.00 per person. Interested parties are requested to register immediately, as space is limited. Members of the public who are registered to attend and later need to cancel, may do so by sending an email to *tradeevents@cbp.dhs.gov.* Please include your name and confirmation number with your cancellation request. Cancellation requests made after Friday, February 21, 2020, will not receive a refund.

FOR FURTHER INFORMATION CONTACT: Natalie Thompson, Office of Trade Relations (OTR) at (202) 344–1440, or at *tradeevents@cbp.dhs.gov.* The most current 2020 Trade Symposium information can be found at *http://www.cbp.gov/trade/stakeholder-engagement/trade-symposium.*

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact OTR at (202) 344–1440, or at *tradeevents@cbp.dhs.gov* as soon as possible.

SUPPLEMENTARY INFORMATION: This document announces that CBP will convene the 2020 Trade Symposium in Anaheim, CA, on Tuesday, March 10, 2020, and Wednesday, March 11, 2020. The format of the 2020 Trade Symposium will consist of general sessions on the first day and breakout sessions on the second day. The 2020 Trade Symposium will feature panels composed of agency personnel, members of the trade community and other government agencies. The panel discussions include United States-Mexico-Canada Agreement (USMCA) collaboration, interagency collaboration, innovation, forced labor, and e-Commerce. In addition, there will be a Binding Rulings Workshop, Partner Government Agency (PGA) speed chat sessions, and one-on-one sessions with personnel from the Centers of Excellence and Expertise. The 2020 Trade Symposium agenda can be found on the CBP website: *http://www.cbp.gov/trade/stakeholder-engagement/trade-symposium.*

Hotel accommodations have been made at the Anaheim Hilton located at 777 W Convention Way, Anaheim, CA 92802. Hotel room block reservation information can be found on the CBP website (*http://www.cbp.gov/trade/stakeholder-engagement/trade-symposium*).

Dated: January 15, 2020.

Valarie M. Neuhart,

Acting Executive Director, Office of Trade Relations.

[FR Doc. 2020–00878 Filed 1–17–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0002; Internal Agency Docket No. FEMA–B–2000]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before April 20, 2020.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2000, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472,

(202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Salt Lake County, Utah and Incorporated Areas Project: 15–08–0753S Preliminary Date: July 12, 2019	
City of Bluffdale	City Hall, 2222 West 14400 South, Bluffdale, UT 84065.
City of Draper	City Hall, 1020 East Pioneer Road, Draper, UT 84020.
City of Herriman	City Hall, 5355 West Herriman Main Street, Herriman, UT 84096.
City of Millcreek	City Hall, 3330 South 1300 East, Millcreek, UT 84106.
City of Riverton	City Hall, 12830 South Redwood Road, Riverton, UT 84065.
City of Salt Lake City	Engineering Division, 349 South 200 East, Suite 600, Salt Lake City, UT 84111.
City of Sandy City	Public Utilities, 10000 Centennial Parkway, Suite 241, Sandy City, UT 84070.
City of South Jordan	City Hall, 1600 West Towne Center Drive, South Jordan, UT 84095.
City of West Jordan	City Hall, 8000 South Redwood Road, West Jordan, UT 84088.
Unincorporated Areas of Salt Lake County	Salt Lake County Public Works, Engineering, 2001 South State Street, Suite N3–120, Salt Lake City, UT 84190.

[FR Doc. 2020–00811 Filed 1–17–20; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0002; Internal Agency Docket No. FEMA–B–2003]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected

communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before April 20, 2020.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminary floodhazarddata* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2003, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazard data* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Lancaster County, Virginia and Incorporated Areas **Project: 18–03–0032S Preliminary Date: July 1, 2019**	
Town of Kilmarnock	Town Hall, 1 North Main Street, Kilmarnock, VA 22482.
Unincorporated Areas of Lancaster County	Lancaster County Administration Building, 8311 Mary Ball Road, Lancaster, VA 22503.
Richmond County, Virginia and Incorporated Areas **Project: 18–03–0034S Preliminary Date: July 19, 2019**	
Town of Warsaw	Robert W. Lowery Municipal Building, 78 Belle Ville Lane, Warsaw, VA 22572.
Unincorporated Areas of Richmond County	Richmond County Administrative Office, 101 Court Circle, Warsaw, VA 22572.
Westmoreland County, Virginia and Incorporated Areas **Project: 19–03–0001S Preliminary Date: July 1, 2019**	
Town of Montross	Town Hall, 15869 Kings Highway, Montross, VA 22520.
Unincorporated Areas of Westmoreland County	Westmoreland County, George D. English, Sr. Memorial Building, 111 Polk Street, Montross, VA 22520.

[FR Doc. 2020–00812 Filed 1–17–20; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Colorado:					
Douglas (FEMA Docket No.: B–1958).	Town of Castle Rock (18–08–1226P).	The Honorable Jason Gray, Mayor, Town of Castle Rock, 100 North Wilcox Street, Castle Rock, CO 80104.	Water Department, 175 Kellogg Court, Castle Rock, CO 80109.	Dec. 6, 2019	080050
Douglas (FEMA Docket No.: B–1958).	Unincorporated areas of Douglas County (18–08–1226P).	The Honorable Roger A. Partridge, Chairman, Douglas County Board of Commissioners, 100 3rd Street, Castle Rock, CO 80104.	Douglas County Public Works, Engineering Division, 100 3rd Street, Castle Rock, CO 80104.	Dec. 6, 2019	080049
El Paso (FEMA Docket No.: B–1958).	Town of Palmer Lake (19–08–0006P).	The Honorable John Cressman, Mayor, Town of Palmer Lake, P.O. Box 208, Palmer Lake, CO 80133.	Town Hall, 42 Valley Crescent Street, Palmer Lake, CO 80133.	Dec. 17, 2019	080065
Jefferson (FEMA Docket No.: B–1967).	City of Arvada (19–08–0295P).	The Honorable Marc Williams, Mayor, City of Arvada, 8101 Ralston Road, Arvada, CO 80002.	Engineering Department, 8101 Ralston Road, Arvada, CO 80002.	Dec. 20, 2019	085072
Jefferson (FEMA Docket No.: B–1967).	Unincorporated areas of Jefferson County (19–08–0295P).	The Honorable Libby Szabo, Chair, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Suite 5550, Golden, CO 80419.	Jefferson County Department of Planning and Zoning, 100 Jefferson County Parkway, Suite 3550, Golden, CO 80419.	Dec. 20, 2019	080087
Jefferson (FEMA Docket No.: B–1958).	Unincorporated areas of Jefferson County (19–08–0696P).	The Honorable Libby Szabo, Chair, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Suite 5550, Golden, CO 80419.	Jefferson County Department of Planning and Zoning, 100 Jefferson County Parkway, Suite 3550, Golden, CO 80419.	Dec. 6, 2019	080087
Pueblo (FEMA Docket No.: B–1958).	City of Pueblo, (19–08–0224P).	The Honorable Nicholas A. Gradisar, Mayor, City of Pueblo, 1 City Hall Place, Pueblo, CO 81003.	Public Works Department, 211 East D Street, Pueblo, CO 81003.	Dec. 9, 2019	085077

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Pueblo (FEMA Docket No.: B–1958).	City of Pueblo (19–08–0225P).	The Honorable Nicholas A. Gradisar, Mayor, City of Pueblo, 1 City Hall Place, Pueblo, CO 81003.	Public Works Department, 211 East D Street, Pueblo, CO 81003.	Dec. 2, 2019	085077
Pueblo (FEMA Docket No.: B–1958).	Unincorporated areas of Pueblo County (19–08–0224P).	The Honorable Garrison Ortiz, Chairman, Pueblo County Board of Commissioners, 215 West 10th Street, Pueblo, CO 81003.	Pueblo County Planning and Development Department, 229 West 12th Street, Pueblo, CO 81003.	Dec. 9, 2019	080147
Pueblo (FEMA Docket No.: B–1958).	Unincorporated areas of Pueblo County (19–08–0225P).	The Honorable Garrison Ortiz, Chairman, Pueblo County Board of Commissioners, 215 West 10th Street, Pueblo, CO 81003.	Pueblo County Planning and Development Department, 229 West 12th Street, Pueblo, CO 81003.	Dec. 2, 2019	080147
Florida:					
Bay (FEMA Docket No.: B–1967).	Unincorporated areas of Bay County (19–04–0600P).	The Honorable Philip Griffitts, Jr., Chairman, Bay County Board of Commissioners, 840 West 11th Street, Panama City, FL 32401.	Bay County Government Center, 840 West 11th Street, Panama City, FL 32401.	Dec. 23, 2019	120004
Collier (FEMA Docket No.: B–1958).	City of Marco Island (19–04–4090P).	Mr. Mike McNees, Manager, City of Marco Island, 50 Bald Eagle Drive, Marco Island, FL 34145.	Building Services Department, 50 Bald Eagle Drive, Marco Island, FL 34145.	Dec. 9, 2019	120426
Collier (FEMA Docket No.: B–1967).	City of Marco Island (19–04–4346P).	Mr. Mike McNees, Manager, City of Marco Island, 50 Bald Eagle Drive, Marco Island, FL 34145.	Building Services Department, 50 Bald Eagle Drive, Marco Island, FL 34145.	Dec. 18, 2019	120426
Lee (FEMA Docket No.: B–1967).	Unincorporated areas of Lee County (19–04–4318P).	Mr. Rodger Desjarlais, Lee County Manager, P.O. Box 398, Fort Myers, FL 33902.	Lee County Building Department, 1500 Monroe Street, Fort Myers, FL 33901.	Dec. 16, 2019	125124
Monroe (FEMA Docket No.: B–1967).	Unincorporated areas of Monroe County (19–04–2961P).	The Honorable Sylvia Murphy, Mayor, Monroe County Board of Commissioners, 102050 Overseas Highway, Suite 234, Key Largo, FL 33037.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33037.	Dec. 18, 2019	125129
Monroe (FEMA Docket No.: B–1958).	Unincorporated areas of Monroe County (19–04–4308P).	The Honorable Sylvia Murphy, Mayor, Monroe County Board of Commissioners, 102050 Overseas Highway, Suite 234, Key Largo, FL 33037.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Dec. 6, 2019	125129
Monroe (FEMA Docket No.: B–1958).	Unincorporated areas of Monroe County (19–04–4321P).	The Honorable Sylvia Murphy, Mayor, Monroe County Board of Commissioners, 102050 Overseas Highway, Suite 234, Key Largo, FL 33037.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Dec. 9, 2019	125129
Monroe (FEMA Docket No.: B–1967).	Unincorporated areas of Monroe County (19–04–4407P).	The Honorable Sylvia Murphy, Mayor, Monroe County Board of Commissioners, 102050 Overseas Highway, Suite 234, Key Largo, FL 33037.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33037.	Dec. 23, 2019	125129
Orange (FEMA Docket No.: B–1958).	City of Orlando (19–04–3135P).	The Honorable Buddy Dyer, Mayor, City of Orlando, 400 South Orange Avenue, Orlando, FL 32801.	Public Works Department, Engineering Division, 400 South Orange Avenue, 8th Floor, Orlando, FL 32801.	Dec. 4, 2019	120186
Pinellas (FEMA Docket No.: B–1958).	Town of Redington Shores (19–04–5852P).	The Honorable MaryBeth Henderson, Mayor, Town of Redington Shores, 17425 Gulf Boulevard, Redington Shores, FL 33708.	Building Department, 17425 Gulf Boulevard, Redington Shores, FL 33708.	Dec. 9, 2019	125141
Sarasota (FEMA Docket No.: B–1958).	City of Sarasota (19–04–4109P).	The Honorable Liz Alpert, Mayor, City of Sarasota, 1565 1st Street, Room 101, Sarasota, FL 34236.	Development Department, 1565 1st Street, Sarasota, FL 34236.	Dec. 6, 2019	125150
Sarasota (FEMA Docket No.: B–1958).	Unincorporated areas of Sarasota County (19–04–3511P).	The Honorable Charles D. Hines, Chairman, Sarasota County Board of Commissioners, 1660 Ringling Boulevard, Sarasota, FL 34236.	Sarasota County Planning and Development Services Department, 1001 Sarasota Center Boulevard, Sarasota, FL 34240.	Dec. 11, 2019	125144
Louisiana:					
Lafayette (FEMA Docket No.: B–1967).	City of Lafayette (19–06–0044P).	The Honorable Joel Robideaux, Mayor-President, Lafayette Consolidated Government, P.O. Box 4017–C, Lafayette, LA 70502.	Department of Development and Planning, 220 West Willow Street Building B, Lafayette, LA 70501.	Dec. 16, 2019	220105
Lafayette (FEMA Docket No.: B–1967).	Unincorporated areas of Lafayette Parish (19–06–0044P).	The Honorable Joel Robideaux, Mayor-President, Lafayette Consolidated Government, P.O. Box 4017–C, Lafayette, LA 70502.	Department of Development and Planning, 220 West Willow Street Building B, Lafayette, LA 70501.	Dec. 16, 2019	220101
New Mexico:					
Bernalillo (FEMA Docket No.: B–1967).	City of Albuquerque (19–06–0661P).	The Honorable Timothy M. Keller, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	Planning Department, 600 2nd Street Northwest, Albuquerque, NM 87102.	Dec. 23, 2019	350002
Taos (FEMA Docket No.: B–1970).	Town of Taos (19–06–1165P).	The Honorable Daniel R. Barrone, Mayor, Town of Taos, 400 Camino De La Placita, Taos, NM 87571.	Department of Public Works, 400 Camino De La Placita, Taos, NM 87571.	Dec. 13, 2019	350080
Oklahoma: Wagoner (FEMA Docket No.: B–1958).	City of Wagoner (18–06–3911P).	The Honorable Albert Jones, Mayor, City of Wagoner, 231 East Church Street, Wagoner, OK 74467.	City Hall, 231 East Church Street, Wagoner, OK 74467.	Dec. 19, 2019	400219
Texas:					
Denton (FEMA Docket No.: B–1970).	City of Carrollton (19–06–1616X).	The Honorable Kevin Falconer, Mayor, City of Carrollton, P.O. Box 110535, Carrollton, TX 75011.	Engineering Department, 1945 East Jackson Road, Carrollton, TX 75006.	Dec. 23, 2019	480167

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Denton (FEMA Docket No.: B–1970).	City of Lewisville (19–06–1616X).	The Honorable Rudy Durham, Mayor, City of Lewisville, P.O. Box 299002, Lewisville, TX 75029.	Engineering Division, 151 West Church Street, Lewisville, TX 75057.	Dec. 23, 2019	480195
Denton (FEMA Docket No.: B–1958).	Town of Flower Mound (19–06–0627P).	The Honorable Steve Dixon, Mayor, Town of Flower Mound, 2121 Cross Timbers Road, Flower Mound, TX 75028.	Town Hall, 2121 Cross Timbers Road, Flower Mound, TX 75028.	Dec. 17, 2019	480777
Denton (FEMA Docket No.: B–1967).	Town of Northlake (19–06–1881P).	The Honorable David Rettig, Mayor, Town of Northlake, 1500 Commons Circle, Suite 300, Northlake, TX 76226.	Public Works Department, 1400 FM 407, Northlake, TX 76247.	Dec. 23, 2019	480782
El Paso (FEMA Docket No.: B–1967).	City of El Paso (19–06–2306P).	Mr. Tommy Gonzalez, Manager, City of El Paso, 300 North Campbell Street, El Paso, TX 79901.	Land Development Department, 801 Texas Avenue, El Paso, TX 79901.	Dec. 23, 2019	480214
Gillespie (FEMA Docket No.: B–1958).	City of Fredericksburg (19–06–0111P).	The Honorable Linda Langerhans, Mayor, City of Fredericksburg, 126 West Main Street, Fredericksburg, TX 78624.	City Hall, 126 West Main Street, Fredericksburg, TX 78624.	Dec. 5, 2019	480252
Gillespie (FEMA Docket No.: B–1958).	Unincorporated areas of Gillespie County (19–06–0111P).	The Honorable Mark Stroeher, Gillespie County Judge, 101 West Main Street, Fredericksburg, TX 78624.	Gillespie County Courthouse, 101 West Main Street, Fredericksburg, TX 78624.	Dec. 5, 2019	480696
Guadalupe (FEMA Docket No.: B–1958).	City of Seguin (18–06–3667P).	The Honorable Don Keil, Mayor, City of Seguin, 205 North River Street, Seguin, TX 78155.	City Hall, 205 North River Street, Seguin, TX 78155.	Dec. 11, 2019	485508
Johnson (FEMA Docket No.: B–1958).	City of Joshua (19–06–1085P).	The Honorable Kenny Robinson, Mayor, City of Joshua, 101 South Main Street, Joshua, TX 76058.	City Hall, 101 South Main Street, Joshua, TX 76058.	Dec. 12, 2019	480882
Tarrant (FEMA Docket No.: B–1958).	City of Arlington (19–06–1806P).	The Honorable Jeff Williams, Mayor, City of Arlington, P.O. Box 90231, Arlington, TX 76004.	Public Works and Transportation Department, 101 West Abram Street, Arlington, TX 76010.	Dec. 12, 2019	485454
Tarrant (FEMA Docket No.: B–1958).	City of Fort Worth (19–06–1552P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Department, 200 Texas Street, Fort Worth, TX 76102.	Dec. 5, 2019	480596
Tarrant (FEMA Docket No.: B–1967).	City of Fort Worth (19–06–2917P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Department, 200 Texas Street, Fort Worth, TX 76102.	Dec. 23, 2019	480596

[FR Doc. 2020–00810 Filed 1–17–20; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below. The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The date of June 5, 2020 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Mobile County, Alabama and Incorporated Areas Docket No.: FEMA–B–1823 and FEMA–B–1921	
City of Bayou La Batre	City Hall, 13785 South Wintzell Avenue, Bayou La Batre, AL 36509.
City of Chickasaw	City Hall, 224 North Craft Highway, Chickasaw, AL 36611.
City of Citronelle	City Hall, 19135 South Main Street, Citronelle, AL 36522.
City of Creola	City Hall, 9615 Old Highway 43, Creola, AL 36525.
City of Mobile	City Hall, Engineering Department, 205 Government Street, Mobile, AL 36644.
City of Prichard	City Hall, 216 East Prichard Avenue, Prichard, AL 36610.
City of Saraland	Building Department, 933 Saraland Boulevard South, Saraland, AL 36571.
City of Satsuma	City Hall, 5464 Old Highway 43, Satsuma, AL 36572.
City of Semmes	City Hall, 7875 Moffett Road, Suite F, Semmes, AL 36575.
Town of Dauphin Island	Town Hall, 1011 Bienville Boulevard, Dauphin Island, AL 36528.
Town of Mount Vernon	Town Hall, 1565 Boyles Avenue, Mount Vernon, AL 36560.
Unincorporated Areas of Mobile County	Mobile County Department of Public Works, Engineering Department, Government Plaza, 205 Government Street, Mobile, AL 36644.
Saline County, Arkansas and Incorporated Areas Docket No.: FEMA–B–1663 and FEMA–B–1903	
City of Alexander	Municipal Complex, 15605 Alexander Road, Alexander, AR 72002.
City of Benton	Municipal Complex, 114 South East Street, Benton, AR 72015.
City of Bryant	Central Public Safety Facility, 312 Roya Lane, Bryant, AR 72022.
City of Haskell	Haskell City Hall, 2520 Highway 229, Benton, AR 72015.
City of Shannon Hills	City Hall, 10401 High Road East, Shannon Hills, AR 72103.
City of Traskwood	Community Center, 212 Main Street, Traskwood, AR 72167.
Town of Bauxite	City Hall, 6055 Stanley Circle, Bauxite, AR 72011.
Unincorporated Areas of Saline County	Saline County Complex, 215 North Main Street, Suite 7, Benton, AR 72015.
Pasco County, Florida and Incorporated Areas Docket No.: FEMA–B–1905	
City of New Port Richey	City Hall, 5919 Main Street, New Port Richey, FL 34652.
City of Port Richey	City Hall, Planning Department, 6333 Ridge Road, Port Richey, FL 34668.
Unincorporated Areas of Pasco County	Pasco County Building Construction Services Department, 8731 Citizens Drive, Suite 230, New Port Richey, FL 34654.
Sumter County, Florida and Incorporated Areas Docket No.: FEMA–B–1823	
City of Center Hill	City Hall, 94 South Virginia Avenue, Center Hill, FL 33514.
City of Webster	City Hall, 85 East Central Avenue, Webster, FL 33597.
City of Wildwood	Development Services Department, 100 North Main Street, Wildwood, FL 34785.
Unincorporated Areas of Sumter County	Sumter County Development Services Department, 7375 Powell Road, Suite 115, Wildwood, FL 34785.
Cerro Gordo County, Iowa and Incorporated Areas Docket No.: FEMA–B–1864	
City of Clear Lake	Public Works Office, 1419 2nd Avenue South, Clear Lake, IA 50428.
City of Dougherty	City Hall, 81 East Patrick Street, Dougherty, IA 50433.
City of Mason City	City Hall, 10 1st Street Northwest, Mason City, IA 50401.
City of Meservey	City Hall, 428 1st Street, Meservey, IA 50457.
City of Plymouth	City Hall, 616 Broad Street, Plymouth, IA 50464.
City of Rock Falls	City Hall, 3 South Nottingham Street, Rock Falls, IA 50467.
City of Rockwell	City Hall, 114 3rd Street North, Rockwell, IA 50469.
City of Swaledale	City Office, 506 Main Street, Swaledale, IA 50477.
City of Thornton	City Hall, 404 Main Street, Thornton, IA 50479.
City of Ventura	City Hall, 101 Sena Street, Ventura, IA 50482.

Community	Community map repository address
Unincorporated Areas of Cerro Gordo County	Cerro Gordo County Courthouse, 220 Northwest Washington Avenue, Mason City, IA 50401.
Mitchell County, Iowa and Incorporated Areas Docket No.: FEMA–B–1869	
City of Carpenter	City Hall, 506 William Street, Carpenter, IA 50426.
City of McIntire	City Hall, 310 Main Street, McIntire, IA 50455.
City of Mitchell	City Hall, 125 East Van Buren Street, Mitchell, IA 50461.
City of Orchard	City Hall Office, 202 Main Street, Orchard, IA 50460.
City of Osage	City Hall, 806 Main Street, Osage, IA 50461.
City of Stacyville	City Hall, 115 South Broad Street, Stacyville, IA 50476.
City of St. Ansgar	City Hall, 111 South Mitchell Street, St. Ansgar, IA 50472.
Unincorporated Areas of Mitchell County	Mitchell County Courthouse, 212 South 5th Street, Osage, IA 50461.
Crittenden County, Kentucky and Incorporated Areas Docket No.: FEMA–B–1709 and FEMA–B–1915	
Unincorporated Areas of Crittenden County	Crittenden County Courthouse, Clerk's Office, 107 South Main Street, Suite 203, Marion, KY 42064.
Franklin County, Missouri and Incorporated Areas Docket No.: FEMA–B–1914	
City of Pacific	City Hall, 300 Hoven Drive, Pacific, MO 63069.
City of St. Clair	City Hall, #1 Paul Parks Drive, St. Clair, MO 63077.
City of Union	City Hall, 500 East Locust Street, Union, MO 63084.
Unincorporated Areas of Franklin County	Franklin County Office, 400 East Locust Street, Union, MO 63084.
Village of Miramiguoa Park	Franklin County Office, 400 East Locust Street, Union, MO 63084.
Washington County, Missouri and Incorporated Areas Docket No.: FEMA–B–1914	
City of Irondale	City Hall, 110 South Oak Street, Irondale, MO 63648.
City of Potosi	City Hall, 121 East High Street, Potosi, MO 63664.
Unincorporated Areas of Washington County	Washington County Courthouse, 102 North Missouri Street, Potosi, MO 63664.
Village of Caledonia	Village Hall, 130 Webster Road, Caledonia, MO 63631.
Village of Mineral Point	Village Hall, 702 State Street, Mineral Point, MO 63660.
Burt County, Nebraska and Incorporated Areas Docket No.: FEMA–B–1920	
City of Lyons	City Office, 335 Main Street, Lyons, NE 68038.
City of Oakland	City Auditorium, 401 North Oakland Avenue, Oakland, NE 68045.
City of Tekamah	Tekamah Auditorium, 1315 K Street, Tekamah, NE 68061.
Omaha Tribe of Nebraska	Omaha Indian Tribe, 100 Main Street, Macy, NE 68039.
Unincorporated Areas of Burt County	Burt County Courthouse, 111 North 13th Street, Tekamah, NE 68061.
Village of Craig	Village Office, 196 North Main Street, Craig, NE 68019.
Village of Decatur	Village Office, 913 South Broadway, Decatur, NE 68020.
Village of Herman	Village Office, 504 Main Street, Herman, NE 68029.
Miami County, Ohio and Incorporated Areas Docket Nos.: FEMA–B–1720 and FEMA–B–1908	
City of Piqua	City Hall, 201 West Water Street, Piqua, OH 45356.
City of Troy	City Hall, 100 South Market Street, Troy, OH 45373.
Unincorporated Areas of Miami County	Miami County Safety Building, 201 West Main Street, Troy, OH 45373.
Lane County, Oregon and Incorporated Areas Docket No.: FEMA–B–1857	
City of Dunes City	Dunes City Hall, 82877 Spruce Street, Westlake, OR 97493.
City of Florence	City Hall, 250 Highway 101, Florence, OR 97439.
Unincorporated Areas of Lane County	Lane County Customer Service Center, 3050 North Delta Highway, Eugene, OR 97408.

[FR Doc. 2020–00814 Filed 1–17–20; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0002; Internal Agency Docket No. FEMA–B–1979]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency; DHS.

ACTION: Notice; correction.

SUMMARY: On December 27, 2019, FEMA published in the **Federal Register** a proposed flood hazard determination notice that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at 84 FR 71445–71446. The table provided here represents the proposed flood hazard determinations and communities affected for Howell County, Missouri and Incorporated Areas.

DATES: Comments are to be submitted on or before April 20, 2020.

ADDRESSES: The Preliminary Flood Insurance Rate Map (FIRM), and where applicable, the Flood Insurance Study (FIS) report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1979, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) *online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed in the table below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP may only be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The communities affected by the flood hazard determinations are provided in the table below. Any request for reconsideration of the revised flood hazard determinations shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations will also be considered before the FIRM and FIS report are made final.

Correction

In the proposed flood hazard determination notice published at 84 FR 71445–71446 in the December 27, 2019, issue of the **Federal Register**, FEMA published a table titled Howell County, Missouri and Incorporated Areas. This table contained inaccurate information as to the Date of the Preliminary FIRM and FIS report for the communities affected by the proposed flood hazard determinations for Howell County, Missouri and Incorporated Areas featured in the table.

In this document, FEMA is publishing a table containing the accurate information. The information provided below should be used in lieu of that previously published.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Howell County, Missouri and Incorporated Areas Project: 16–07–1463S Revised Preliminary Date: August 30, 2019	
Unincorporated Areas of Howell County	Howell County Office Building, 35 Court Square, Room 302, West Plains, MO 65775.

[FR Doc. 2020–00809 Filed 1–17–20; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[DOI–2019–0005; DS65100000, DWSN00000.000000, DP.65106, 20XD4523WS]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Interior is issuing a public notice of its intent to modify the Department of the Interior Privacy Act system of records titled, ''HSPD–12: Physical Security Files—Interior, DOI–46''. This system of records helps the Department of the Interior manage physical security operations and visitor access to Federally-controlled facilities and information systems. The Department of the Interior is updating this system of records notice to add new proposed routine uses, modify existing routine uses to provide clarification, modify the categories of records and categories of individuals covered by the system, and provide updates to remaining sections to accurately reflect management of the system of records. This modified system will be included in the Department of the Interior's inventory of record systems.

DATES: This modified system will be effective upon publication. New or modified routine uses will be effective February 20, 2020. Submit comments on or before February 20, 2020.

ADDRESSES: You may send comments, identified by docket number [DOI–2019–0005], by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for sending comments.
- *Email: DOI_Privacy@ios.doi.gov.* Include docket number [DOI–2019–0005] in the subject line of the message.
- *U.S. mail or hand-delivery:* Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240.

Instructions: All submissions received must include the agency name and docket number [DOI–2019–0005]. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240, *DOI_Privacy@ios.doi.gov* or (202) 208–1605.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of the Interior (DOI), Office of Law Enforcement and Security maintains the HSPD–12: Physical Security Files—Interior, DOI–46 system of records. This system helps DOI manage physical security operations and visitor access to DOI-controlled facilities and implement Homeland Security Presidential Directive 12 (HSPD–12), which requires Federal agencies to use a common identification credential for both logical and physical access to Federally-controlled facilities and information systems. DOI employees, contractors, consultants, volunteers, Federal emergency response officials, Federal employees on detail or temporarily assigned to work in DOI facilities, visitors, and other individuals require access to agency facilities, systems or networks. DOI uses integrated identity management systems to issue credentials to verify individuals' identities, manage access controls, and ensure the security of DOI controlled facilities. This Department-wide system notice covers physical security program records and activities, including all DOI controlled areas where paper-based physical security logs and registers have been established, in addition to or in place of smart-card access control systems.

DOI is publishing this revised notice to describe the purpose of the system, propose new and modified routine uses, and provide updates to the categories of records, categories of individuals covered by the system and the remaining sections to accurately reflect management of the system of records in accordance with the Office of Management and Budget (OMB) Circular A–108, *Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act.* Additionally, DOI is claiming exemptions for certain records maintained in this system from some provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2), (k)(3), and (k)(5).

DOI is proposing to modify existing routine uses to provide clarity and transparency, and reflect updates consistent with standard DOI routine uses. Routine uses A, B, E, G, and I have been modified to provide additional clarification on external organizations and circumstances where disclosures are proper and necessary to facilitate physical security operations or to comply with Federal requirements. Modified routine use J and new routine use K allow DOI to share information with appropriate Federal agencies or entities when reasonably necessary to respond to a breach of personally identifiable information and to prevent, minimize, or remedy the risk of harm to individuals or the Federal Government, or assist an agency in locating individuals affected by a breach in accordance with OMB Memorandum M–17–12, *Preparing for and Responding to a Breach of Personally Identifiable Information.*

DOI is proposing to add new routine uses to facilitate sharing of information with agencies and organizations to ensure the efficient and effective management of physical security functions, promote the integrity of the records in the system, or carry out a statutory responsibility of the DOI or Federal Government. New proposed routine use C facilitates sharing of information with the Executive Office of the President to resolve issues concerning an individual's records. Routine use D allows DOI to share information with other agencies when there is an indication of a violation of law. Routine use F facilitates sharing of information related to hiring, issuance of a security clearance, or a license, contract, grant or benefit. Routine use H allows sharing of information with government agencies and organizations in response to court orders or for discovery purposes related to litigation. Routine use L facilitates sharing with the OMB in relation to legislative affairs mandated by OMB Circular A–19. Routine use M allows sharing of information with the Department of the Treasury to recover debts owed to the United States. Routine use N allows sharing with the news media and the public, when it is necessary to preserve the confidence in the integrity of DOI, demonstrate the accountability of its officers, employees, or individuals covered in the system, or where there exists a legitimate public interest in the disclosure of the information such as circumstances that support a legitimate law enforcement or public safety function, or protects the public from imminent threat of life or property.

Some Personal Identity Verification (PIV) card information in this system may also be covered under government-wide system of records notice, GSA/GOVT–7, Federal Personal Identity Verification Identity Management System (PIV IDMS), which applies to participating Federal agency employees, consultants, and volunteers who require long-term access to Federal facilities,

systems and networks, and individuals who are authorized to perform or use services in agency facilities. This system notice covers additional categories of individuals and records to include occasional and short-term visitors and guests, temporary credentials, paper-based security logs, and other information necessary to ensure the safety and security of DOI facilities, systems, occupants, and users.

In a notice of proposed rulemaking, which is published separately in the **Federal Register**, DOI is proposing to exempt records maintained in this system from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2), (k)(3) and (k)(5).

II. Privacy Act

The Privacy Act of 1974, as amended, embodies fair information practice principles in a statutory framework governing the means by which Federal agencies collect, maintain, use, and disseminate individuals' personal information. The Privacy Act applies to records about individuals that are maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act defines an individual as a United States citizen or lawful permanent resident. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DOI by complying with DOI Privacy Act regulations at 43 CFR part 2, subpart K, and following the procedures outlined in the Records Access, Contesting Record, and Notification Procedures sections of this notice.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the existence and character of each system of records that the agency maintains and the routine uses of each system. The revised INTERIOR/DOI–46, Physical Security Access Files, system of records notice is published in its entirety below. In accordance with 5 U.S.C. 552a(r), DOI has provided a report of this system of records to the Office of Management and Budget and to Congress.

III. Public Participation

You should be aware your entire comment including your personal identifying information, such as your address, phone number, email address, or any other personal identifying information in your comment, may be made publicly available at any time. While you may request to withhold your personal identifying information from public review, we cannot guarantee we will be able to do so.

SYSTEM NAME AND NUMBER:

INTERIOR/DOI–46, Physical Security Access Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records covered by this system are maintained at the following locations:

(1) U.S. Department of the Interior, Office of Law Enforcement and Security, Physical Security Office, 1849 C Street NW, Mail Stop 1324 MIB, Washington, DC 20240; and

(2) U.S. Department of the Interior, Office of the Secretary, Interior Business Center, 7301 W. Mansfield Avenue, MS D–2130, Denver, CO 80235–2300.

(3) Portions of the data covered by this system are also maintained at other Department of the Interior locations, both Federal buildings and Federally-leased space, where staffed guard stations have been established in facilities that have installed a smart-card ID system, and/or paper-based physical security logs and registers, as well as the physical security office(s) of those locations. A list of these locations (as applicable to each bureau) is maintained by each bureau's Physical Security Manager, whose address is provided under item (2) in the System Manager(s) section below.

SYSTEM MANAGER(S):

(1) Security Manager, Physical Security Office, Office of Law Enforcement and Security, Mail Stop 1324 MIB, 1849 C Street NW, Washington, DC 20240.

(2) Bureau Physical Security Managers:

(a) *Bureau of Indian Affairs:* Indian Affairs Homeland Security Coordinator, 1849 C Street NW, Mail Stop 4160 MIB, Washington, DC 20240.

(b) *Bureau of Indian Education:* Indian Affairs Homeland Security Coordinator, 1849 C Street NW, Mail Stop 4160 MIB, Washington, DC 20240.

(c) *Bureau of Land Management:* Chief Security and Intelligence, Bureau of Land Management, Office of Law Enforcement and Security, 20 M Street SE, Washington, DC 20036.

(d) *Bureau of Ocean Energy Management:* Bureau of Ocean Energy Management physical security is managed by Security Specialist, Bureau of Safety and Environmental Enforcement, 45600 Woodland Road, Mail Stop VAE–MSD, Sterling, VA 20166.

(e) *Bureau of Reclamation:* Reclamation Security Officer, Bureau of Reclamation, P.O. Box 25007, Denver, CO 80225.

(f) *Bureau of Safety and Environmental Enforcement:* Security Specialist, Bureau of Safety and Environmental Enforcement, 45600 Woodland Road, Mail Stop VAE–MSD, Sterling, VA 20166.

(g) *National Park Service:* Law Enforcement, Security and Emergency Service Manager, National Park Service, Security and Intelligence Branch, 1201 I (Eye) Street NW, 10th Floor, Washington, DC 20005.

(h) *Office of Surface Mining, Reclamation and Enforcement:* Security Officer, Office of Surface Mining, Reclamation and Enforcement, 1951 Constitution Avenue NW, Mail Stop 344 SIB, Washington, DC 20240.

(i) *Office of Inspector General:* Support Services Supervisor, Office of Inspector General, 12030 Sunrise Valley Drive, Suite 350, Mail Stop 5341, Reston, VA 20191.

(j) Office of the Secretary/Interior Business Center Security Manager, Interior Business Center, Mail Stop 1224 MIB, 1849 C Street NW, Washington, DC 20240.

(k) *Office of the Solicitor:* Director of Administrative Services, Division of Administration, Office of the Solicitor, 1849 C Street NW, Mail Stop 6556 MIB, Washington, DC 20240.

(l) *U.S. Fish and Wildlife Service:* Security and Emergency Manager, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, Falls Church, VA 22041.

(m) *U.S. Geological Survey:* Bureau Security Manager, U.S. Geological Survey, 250 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Federal Information Security Act (Pub. L. 104–106, section 5113); E-Government Act (Pub. L. 104–347, section 203); Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521); Government Paperwork Elimination Act (44 U.S.C. 3504); Homeland Security Presidential Directive 12, Policy for a Common Identification Standard for Federal Employees and Contractors, August 27, 2004; Federal Property and Administrative Act of 1949, as amended; Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108–458, Section 3001 (50 U.S.C. 3341); Executive Order 9397; Executive Order 12968; Federal Property Regulations, July 2002; and Presidential Memorandum on

Upgrading Security at Federal Facilities, June 28, 1995.

PURPOSE(S) OF THE SYSTEM:

The primary purposes of the system are to manage physical security and access to DOI-controlled facilities and information systems, verify that all persons entering DOI facilities or other Federal Government facilities are authorized, and ensure the safety and security of DOI facilities and their occupants.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals who require regular, ongoing access to Departmental facilities, including DOI employees, contractors, consultants, volunteers, Federal emergency response officials, Federal employees on detail or assigned to work at DOI facilities, students, interns, affiliates, and individuals formerly in any of these positions. The system also includes individuals authorized to perform or use services provided in DOI facilities (*e.g.,* Credit Union, Fitness Center, Library, Indian Craft Shop, Museum, Child Care Center, etc.). *Note:* These individuals are required to have HSPD–12 compliant credentials issued by a certified USAccess credentialing center if they are employed by DOI for more than 180 days.

(2) Individuals who have been issued HSPD–12 compliant credentials from other Federal agencies who require access to DOI facilities.

(3) Federal government officials, visiting dignitaries, visitors, guests, and other individuals who require infrequent access to DOI facilities, including services provided in DOI facilities (*e.g.,* Credit Union, Fitness Center, Library, Indian Craft Shop, Museum, Child Care Center, etc.).

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Records maintained on individuals requiring regular access to DOI-controlled facilities and information systems, or who are issued HSPD–12 compliant credentials by DOI and by other Federal agencies, include the following data fields: Full name; Social Security number (SSN); date of birth; signature; digital image (photograph) and video; fingerprints; hair color; eye color; height; weight; home address; work address; email address; agency affiliation (*e.g.,* employee, contractor, volunteer, etc.); telephone number; vehicle identification, license plate and state of issuance; personal identity verification (PIV) card issue and expiration dates; personal identification number (PIN); results of background investigation; PIV request form; PIV registrar approval signature; PIV card serial number; emergency responder designation; copies of ''I–9'' documents (*e.g.,* driver's license, passport, birth certificate, etc.) used to verify identification or information derived from those documents such as document title, document issuing authority, document number, or document expiration date; level of national security clearance and expiration date; computer system user name; user access and permission rights; authentication certificates; digital signature information; and date, time, and location of entry and exit.

(2) Records maintained on visitors, guests, and other individuals who require infrequent access to DOI facilities include the following data fields: Full name; signature; image, including photograph and video; SSN or other identification number such as driver's license number, ''Green Card'' number, Visa number, etc.; images of relevant ID document(s); U.S. Citizenship (yes or no/logical data field); vehicle identification and license plate; date, time, and location of entry and exit; purpose for entry; agency point of contact; company name; security access category; and access status.

(3) Records related to DOI physical security program management and operations include facility access logs; visitor logs; closed circuit television (CCTV) recordings; information pertaining to incidents, offenses, or suspected security violations; statements, affidavits, and correspondence related to potential security violations or incidents; reports of investigations, security violations or remedial actions; referrals to law enforcement organizations; investigations or records related to security details or events involving DOI officials or visiting dignitaries; and information obtained from another system or agency related to providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056. These records may include: Full name; SSN; driver's license number, ''Green Card'' number, Visa number, or other documents used to verify identification; date of birth; digital image, including photograph or video; fingerprints; hair color; eye color; height; weight; home or work address; email address; agency affiliation; telephone number; vehicle identification, license plate and state of issuance; PIV card number and dates; information related to background investigation and security clearance; computer system user name; date, time, and location of entry and exit; purpose for entry; any other information identified above for regular or infrequent access to DOI-controlled facilities and information systems; and information related to potential security violations and incidents occurring on DOI-controlled facilities.

RECORD SOURCE CATEGORIES:

Information is obtained from individuals covered by the system, supervisors, and designated approving officials, as well as records supplied by DOI's identity management system, other Federal agencies issuing HSPD–12 compliant cards, and HSPD–12 compliant cards carried by individuals seeking access to Departmental and other Federal facilities occupied by agency employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information maintained in this system may be disclosed to authorized entities outside DOI for purposes determined to be relevant and necessary as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other Federal agency conducting litigation, or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

(1) DOI or any component of DOI;

(2) Any other Federal agency appearing before the Office of Hearings and Appeals;

(3) Any DOI employee or former employee acting in his or her official capacity;

(4) Any DOI employee or former employee acting in his or her individual capacity when DOI or DOJ has agreed to represent that employee or pay for private representation of the employee; or

(5) The United States Government or any agency thereof, when DOJ determines that DOI is likely to be affected by the proceeding.

B. To a congressional office when requesting information on behalf of, and at the request of, the individual who is the subject of the record.

C. To the Executive Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf, or for a purpose

compatible with the reason for which the records are collected or maintained.

D. To any criminal, civil, or regulatory law enforcement authority (whether Federal, state, territorial, local, tribal or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

E. To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

F. To Federal, state, territorial, local, tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

G. To representatives of the National Archives and Records Administration (NARA) to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

H. To state, territorial and local governments and tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

I. To an expert, consultant, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system.

J. To appropriate agencies, entities, and persons when:

(1) DOI suspects or has confirmed that there has been a breach of the system of records;

(2) DOI has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOI (including its information systems, programs, and operations), the Federal Government, or national security; and

(3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with DOI's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

K. To another Federal agency or Federal entity, when DOI determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in:

(1) Responding to a suspected or confirmed breach; or

(2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

L. To the Office of Management and Budget (OMB) during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

M. To the Department of the Treasury to recover debts owed to the United States.

N. To the news media and the public, with the approval of the Public Affairs Officer in consultation with counsel and the Senior Agency Official for Privacy, when a matter has become public knowledge, when it is necessary to preserve the confidence in the integrity of DOI or is necessary to demonstrate the accountability of its officers, employees, or individuals covered in the system, or where there exists a legitimate public interest in the disclosure of the information, such as circumstances where providing information supports a legitimate law enforcement or public safety function, or protects the public from imminent threat of life or property, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

O. To the Federal Protective Service and appropriate Federal, state, local or foreign agencies responsible for investigating emergency response situations or investigating or prosecuting the violation of or for enforcing or implementing a statute, rule, regulation, order or license, when DOI becomes aware of a violation or potential violation of a statute, rule, regulation, order or license.

P. To another agency with a similar HSPD–12 (PIV/smart-card) system when a person with identification credentials issued by the Department desires access to that agency's facilities.

Q. To another agency with a similar HSPD–12 (PIV/smart-card) system when it controls access to facilities occupied by the agency.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper records are contained in file folders stored within filing cabinets in secured rooms. Electronic records are contained in computers, compact discs, computer tapes, removable drives, email, diskettes, and electronic databases.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by name; SSN; image; organization/office of assignment; date, time or location of entry or exit; ID security card number or date; or other personal identifier listed in the Category of Records section of this notice.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records covered by this system are retained in accordance with General Records Schedule (GRS) 5.6, Security Records, which cover records about protecting an organization's personnel, assets, and facilities. These records generally have a temporary disposition, and retention schedules vary on the type of record and needs of the agency. Records related to visitor controls files are destroyed two years after final entry or ID security card expiration date. Records related to physical security and protection of facilities, including correspondence relating to administration and operations, and some investigative files are destroyed when two years old. See specific items under GRS 5.6 for retention periods. Retention periods for security violation files relating to investigations referred to administrative or law enforcement organizations may vary depending on the subject matter, legal requirements and Departmental policy. Approved disposition methods for temporary records include shredding or pulping paper records, and erasing or degaussing electronic records in accordance with 384 Departmental Manual 1 and NARA guidelines.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The records contained in this system are safeguarded in accordance with 43 CFR 2.226 and other applicable security and privacy rules and policies. During normal hours of operation, paper records are maintained in locked file cabinets under the control of authorized personnel. Computer servers on which electronic records are stored are located in secured DOI facilities with physical, technical and administrative levels of security to prevent unauthorized access to the DOI network and information assets. Access granted to authorized

personnel and individuals at guard stations is password-protected; each person granted access to the system at guard stations must be individually authorized to use the system. A Privacy Act Warning Notice appears on the monitor screen when records containing information on individuals are first displayed. Data exchanged between the servers and the systems at the guard stations and badging office are encrypted. Backup tapes are stored in a locked and controlled room in a secure, off-site location.

Computerized records systems follow the National Institute of Standards and Technology privacy and security standards as developed to comply with the Privacy Act of 1974, 5 U.S.C. 552a; Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521; Federal Information Security Modernization Act of 2014, 44 U.S.C. 3551–3558; and the Federal Information Processing Standards 199: Standards for Security Categorization of Federal Information and Information Systems. Security controls include user identification, passwords, database permissions, encryption, firewalls, audit logs, and network system security monitoring, and software controls.

Access to records in the system is limited to authorized personnel who have a need to access the records in the performance of their official duties, and each user's access is restricted to only the functions and data necessary to perform that person's job responsibilities. System administrators and authorized users are trained and required to follow established internal security protocols and must complete all security, privacy, and records management training and sign the DOI Rules of Behavior. A Privacy Impact Assessment was completed on the PACS system to ensure that Privacy Act requirements are met and appropriate privacy controls were implemented to safeguard personally identifiable information.

RECORD ACCESS PROCEDURES:

An individual requesting records on himself or herself should send a signed, written inquiry to the applicable System Manager as identified above. The request must include the requester's bureau and office affiliation and the address of the facility to which the requester needed access to facilitate location of the applicable records. The request envelope and letter should both be clearly marked ''PRIVACY ACT REQUEST FOR ACCESS.'' A request for access must meet the requirements of 43 CFR 2.238.

CONTESTING RECORD PROCEDURES:

An individual requesting corrections or the removal of material from his or her records should send a signed, written request to the applicable System Manager as identified above. The request must include the requester's bureau and office affiliation and the address of the facility to which the requester needed access to facilitate location of the applicable records. A request for corrections or removal must meet the requirements of 43 CFR 2.246.

NOTIFICATION PROCEDURE:

An individual requesting notification of the existence of records on himself or herself should send a signed, written inquiry to the applicable System Manager as identified above. The request must include the requester's bureau and office affiliation and the address of the facility to which the requester needed access to facilitate location of the applicable records. The request envelope and letter should both be clearly marked ''PRIVACY ACT INQUIRY.'' A request for notification must meet the requirements of 43 CFR 2.235.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

This system contains investigatory records related to law enforcement and counterintelligence activities that are exempt from certain provisions of the Privacy Act, 5 U.S.C. 552a(k)(2), (k)(3), and (k)(5). Pursuant to the Privacy Act, 5 U.S.C. 552a(k)(2), (k)(3), and (k)(5), the Department of the Interior has exempted portions of this system from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (e)(4)(I), and (f). In accordance with 5 U.S.C. 553(b), (c) and (e), the Department of the Interior has promulgated rules at 43 CFR Part 2, Subpart K, and is proposing to amend these rules in a Notice of Proposed Rulemaking, which was published separately in today's **Federal Register**.

HISTORY:

72 FR 11043 (March 12, 2007).

Teri Barnett,

Departmental Privacy Officer, Department of the Interior.

[FR Doc. 2020–00355 Filed 1–17–20; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[20XL.LLWO220000.L10200000.PK0000]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Revision of Grazing Regulations for Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management's (BLM) Resources and Planning Directorate, located in Washington, DC, by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues. Scoping is the process by which the BLM solicits input on the issues, impacts, and potential alternatives and the extent to which those issues and impacts will be analyzed in the Environmental Impact Statement (EIS).

DATES: This notice initiates the public scoping process. Comments on issues may be submitted in writing until 15 days after the last public meeting. The date(s) and location(s) of scoping meetings will be announced at least 7 days in advance through local media, newspapers and the BLM website at: *https://go.usa.gov/xyMqb.* In order to be included in the Draft EIS, all comments must be received prior to 15 days after the last public meeting. The BLM will provide additional opportunities for public participation upon publication of the Draft EIS.

ADDRESSES: You may submit comments related to scoping for the BLM Grazing Regulation Revision EIS to the following weblink: *https://go.usa.gov/xyMqb.* Documents pertinent to this proposal may also be examined at this same weblink.

If you do not have web access and wish to submit a written comment, you may mail it to the Bureau of Land Management, Attn: Seth Flanigan, 3948 S Development Ave., Boise, ID 83702.

FOR FURTHER INFORMATION CONTACT: Seth Flanigan, Project Manager, telephone 208–384–3450; email: *blm_wo_grazing_email@blm.gov.* If you do not have web access, please contact Mr. Flanigan for help in obtaining copies of documents that are pertinent to this proposal. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–

877–8339 to contact Mr. Flanigan during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM is soliciting public comment as it prepares this EIS to update the Code of Federal Regulations (CFR), at 43 CFR part 4100, Grazing Administration—Exclusive of Alaska. As part of the proposed changes, the BLM may consider moving and revising some provisions contained in 43 CFR part 4100 to other regulations as part of a single rulemaking effort. The EIS will analyze the environmental effects of proposed changes to these regulations.

The BLM grazing regulations (43 CFR part 4100) govern all public lands, excluding Alaska, that have been identified as suitable for livestock grazing. These lands presently include approximately 155 million acres in the western United States. These regulations were promulgated in accordance with FLPMA (43 U.S.C. 1701 *et seq.*), the Taylor Grazing Act (TGA) (43 U.S.C. 315, 315a–315r), and the Public Rangelands Improvement Act (43 U.S.C. 1901 *et seq.*).

Since the first adoption of grazing regulations after passage of the TGA, the BLM has periodically modified, revised, and updated its regulations in response to legislative and policy changes and implementation challenges. The BLM comprehensively revised its grazing regulations in 1995 and 2006. In 2007, the U.S. District Court in Idaho permanently enjoined implementation of the 2006 amendments. The U.S. Court of Appeals for the Ninth Circuit affirmed the permanent injunction in 2011.

The BLM has managed public land livestock grazing activities in conformance with the regulations that were in effect immediately before the 2006 amendments were adopted (October 1, 2005 edition of 43 CFR part 4100), except for the conservation use permit provision previously struck down by the U.S. Court of Appeals for the Tenth Circuit in 1999. The 1995 regulations without the provision for conservation use permits have never been published in the CFR. Despite the injunction, the 2006 amended version of the grazing administration regulations still appears in the CFR. This has created significant confusion for grazing permittees and lessees, BLM staff, the public, and the courts.

On December 19, 2014, Congress amended section 402 of FLPMA (43 U.S.C. 1752), in Public Law 133–291. Amendments to section 402(c) provide that the terms and conditions of an expired permit or lease shall continue under a new permit or lease until the Secretary completes any remaining applicable environmental review and documentation. This amendment to section 402(c) is similar to provisions in previous appropriations riders.[1] Amendments to section 402(h) authorize the Secretary to categorically exclude decisions that authorize certain grazing permits and leases, and the trailing and crossing of livestock across public land, from the requirement to prepare an environmental document under NEPA. Lastly, new section 402(i) provided Congressional direction regarding the priority and timing for completion of environmental analyses.

In addition, the U.S. Government Accountability Office (GAO) released a report in July 2016 titled, ''Unauthorized Grazing: Actions Needed to Improve Tracking and Deterrence Efforts'' (GAO–16–559). The GAO recommended that the Secretary of the Interior direct the Director of the BLM to amend the regulations on unauthorized grazing use, 43 CFR subpart 4150 (2005), ''to establish a procedure for the informal resolution of violations at the local level.''

The BLM plans to initiate a rulemaking to address the Congressional amendments and the GAO's concerns, as well as ensure that the CFR reflects the applicable regulations governing the grazing program in the continental United States. In addition, the BLM is interested in amending 43 CFR part 4100 to address the following:

- Updating and modernizing the regulations, including revising definitions to provide more accurate and concise descriptions of the terms, and to align with current statutory, and regulatory authorities; rewording certain sections to improve readability and understanding; and considering ways to improve grazing permit administration, such as: Transfers of grazing preference; provisions that allow for greater flexibility for using livestock grazing to address fuel loads and protect areas with high quality habitat from wildfire; continued Resource Advisory Committee review of rangeland improvements and allotment management plans; and emergency public consultation.
- Improving permitting efficiency. This could include, for example, changing how the BLM issues decisions for crossing permits, temporary nonrenewable permits, and authorizing grazing to reduce wildfire risk, expanded or clarified use of NEPA categorical exclusion authorities, and streamlining protest and appeal processes.
- Promoting land health. Considering where and how the BLM will evaluate the Land Health Fundamentals and Standards. Explore ways to use livestock grazing to reduce wildfire risk and improve rangeland conditions.
- Public participation. The BLM seeks to ensure adequate participation of all stakeholders without unduly burdening administrative processes.

The purpose of the public-scoping process is to determine relevant issues that will influence the scope of the EIS, including alternatives, and guide the process for developing the EIS.

The BLM is also seeking the views of the public on the potential for prospective regulatory changes to affect historic properties. The information about historic and cultural resources will assist the BLM in identifying and evaluating impacts to such resources and determine the agency's obligations under Section 106 of the National Historic Preservation Act (54 U.S.C. 306108).

The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175, BLM MS 1780, and other Departmental policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed BLM Grazing Regulation Revision that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the EIS as a cooperating agency.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

[1] *E.g.,* Sec. 123, Public Law 106–113 (Nov. 29, 1999); Sec. 116, Public Law 106–291 (Oct. 11, 2000); Sec. 114, Public Law 107–67 (Nov. 12, 2001); Sec. 325, Public Law 108–108 (Nov. 10, 2003); Sec. 426, Public Law 111–8 (Mar. 11, 2009); Sec. 416, Public Law 111–88 (Oct. 30, 2009); Sec. 415, Public Law 112–74 (Dec. 23, 2011); Sec. 411, Public Law 113–76 (Jan. 17, 2014).

Authority: 40 CFR 1501.7.

June E. Shoemaker,

Acting Assistant Director for Resources and Planning.

[FR Doc. 2020–00849 Filed 1–17–20; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORL00000.L10200000.XZ0000. LXSSH1050000.20X.HAG 20–0024]

Notice of Public Meetings for the Southeast Oregon Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Southeast Oregon Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Southeast Oregon RAC will meet February 12–13, 2020, at 1 p.m. Pacific Time on Wednesday, February 12th and 8 a.m. on Thursday, February 13th; and April 22–23, 2020, at 1 p.m. Mountain Time on Wednesday, April 22nd, and 8 a.m. on Thursday, April 23rd. A public comment period will be held on the second day of each meeting (Feb. 13th and Apr. 23rd).

ADDRESSES: The February 12–13, 2020 meetings will be held at the Harney County Community Center, 478 N Broadway, Burns, Oregon; and the April 22–23, 2020 meetings will be held at the Ontario Community Library, 388 SW 2nd Ave., Ontario, Oregon.

FOR FURTHER INFORMATION CONTACT: Larisa Bogardus, Public Affairs Officer, 3100 H St., Baker City, Oregon 97814; 541–219–6863; *lbogardus@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1(800) 877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Southeast Oregon RAC is chartered and the 15-members are appointed by the Secretary of the Interior. Their diverse perspectives are represented in commodity, conservation, and general interests. The Council serves in an advisory capacity to the BLM and U.S. Forest Service officials concerning the planning and management of the public land and national forest resources located, in whole or part, within the boundaries of BLM's Vale Field Office of the Vale District, the Burns District, and the Lakeview District, and the Fremont-Winema and Malheur National Forests. All meetings are open to the public in their entirety. Information to be distributed to the RAC is requested before the start of each meeting.

Agenda items include updates regarding the Southeast Oregon and Lakeview Resource Management Plan Amendment processes; management of energy and minerals, timber, rangeland and grazing, commercial and dispersed recreation, wildland fire and fuels, and wild horses and burros; review and/or recommendations regarding proposed actions by Burns, Vale, or Lakeview BLM Districts; and any other business that may reasonably come before the RAC. A final agenda will be posted online at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/oregon-washington/southeast-oregon-rac* at least one week before the meetings. Comments can be mailed to: BLM Lakeview District; Attn. Todd Forbes; 3050 NE 3rd Street; Lakeview, OR 97630.

Before including your address, phone number, email address, or other personal identifying information in your comments, please be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee we will be able to do so.

Authority: 43 CFR 1784.4–2.

Todd Forbes,

Lakeview District Manager.

[FR Doc. 2020–00852 Filed 1–17–20; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON05000L71220000EU0000 LVTFC180290018XCOC–78815]

Notice of Realty Action: Segregation of Public Land for Proposed Sale in Rio Blanco and Garfield Counties, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) is proposing to segregate six parcels of public land, totaling 400 acres, from all forms of appropriation under the public land laws, including the mining laws. During the segregation period, the BLM will evaluate the parcels to determine if they are suitable to offer for sale.

DATES: The segregation will terminate upon issuance of a patent, publication of the segregation's termination in the **Federal Register**, or on January 21, 2022, unless extended by the BLM Colorado State Director.

Submit comments concerning the segregation and any part of this notice, by March 6, 2020. The BLM will only accept written comments.

ADDRESSES: Submit written comments to BLM White River Field Office, Field Manager, 220 East Market Street, Meeker, CO 81641. Written comments may also be submitted via email to *blm_co_wrfo_sale@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Heather Sauls, Planning and Environmental Coordinator, BLM White River Field Office, phone: 970–878–3855, email: *hsauls@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The White River Lodge nominated the parcels for the sale. Two of the parcels, which are completely surrounded by private land owned by White River Lodge, would be offered through a direct sale to the lodge. The remaining four parcels would be offered through a modified competitive sale in which bidders are limited to adjacent landowners with legal access, which includes the White River Lodge.

The following described public lands in Rio Blanco and Garfield Counties are segregated immediately upon publication of this notice:

Parcel 1

Sixth Principal Meridian, Colorado

T. 2 N., R. 94 W.,
Sec. 29, NE1/4NE1/4.

The area described contains 40 acres.

Parcel 2

Sixth Principal Meridian, Colorado

T. 3 S., R. 94 W.,
Sec. 22, SE1/4NE1/4;
Sec. 23, S1/2NW1/4 and NE1/4SW1/4.

The areas described aggregate 160 acres.

Parcel A

Sixth Principal Meridian, Colorado

T. 2 N., R. 94 W.,
Sec. 20, NW1/4NE1/4 and NE1/4NW1/4.
The area described contains 80 acres.

Parcel B

Sixth Principal Meridian, Colorado

T. 2 N., R. 94 W.,
Sec. 16, SW1/4SE1/4.
The area described contains 40 acres.

Parcel C

Sixth Principal Meridian, Colorado

T. 2 N., R. 94 W.,
Sec. 15, NE1/4SW1/4.
The area described contains 40 acres.

Parcel D

Sixth Principal Meridian, Colorado

T. 3 S., R. 94 W.,
Sec. 15, SW1/4SE1/4.
The area described contains 40 acres.

The BLM is no longer accepting land-use applications affecting the subject public lands, except applications to amend previously filed right-of-way applications or existing authorizations to increase grant terms in accordance with 43 CFR 2807.15 and 43 CFR 2886.15.

During the segregation period, the BLM will evaluate the parcels for suitability to offer for sale. If the BLM finds that the lands are suitable for sale, it will publish another Notice of Realty Action in the **Federal Register** announcing its decision to offer the land for sale.

This Notice also initiates an official 2-year notification to grazing use authorization holders that the BLM is considering disposing of the subject lands and that such authorizations may be cancelled in accordance with 43 CFR 4110.4–2(b).

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire Comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Any adverse comments will be reviewed by the BLM Colorado State Director or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action and issue a final determination. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior.

(Authority: 43 CFR 2091.2–1(b)).

Jamie E. Connell,

Colorado State Director.

[FR Doc. 2020–00850 Filed 1–17–20; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[20X.LLAZ921000.L14400000.BJ0000. LXSSA2250000.241A]

Notice of Filing of Plats of Survey; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of the following described land are scheduled to be officially filed 30 days after the date of this publication in the Bureau of Land Management (BLM), Arizona State Office, Phoenix, Arizona. The surveys announced in this notice are necessary for the management of lands administered by the agency indicated.

ADDRESSES: These plats will be available for inspection in the Arizona State Office, Bureau of Land Management, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427. Protests of the survey should be sent to the Arizona State Director at the above address.

FOR FURTHER INFORMATION CONTACT: Geoffrey A. Graham, Chief Cadastral Surveyor of Arizona; (602) 417–9558; *ggraham@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

The Gila and Salt River Meridian, Arizona

The plat, in two sheets, representing the dependent resurvey of a portion of the subdivisional lines, Township 19 North, Range 26 East, accepted January 14, 2020, for Group 1192, Arizona.

This plat was prepared at the request of the United States National Park Service.

The plat, in one sheet, representing the amended metes-and-bounds survey in the northeast quarter of section 20, Township 8 South, Range 17 East, accepted January 14, 2020, for Group 1179, Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The plat, in one sheet, representing the dependent resurvey of portions of the east and north boundaries, portions of the subdivisional lines, and the subdivision of section 2, Township 2 South, Range 6 West, accepted January 14, 2020, for Group 1197, Arizona.

This plat was prepared at the request of the Bureau of Land Management, Lower Sonoran Field Office.

A person or party who wishes to protest against any of these surveys must file a written notice of protest within 30 calendar days from the date of this publication with the Arizona State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within 30 days after the protest is filed. Before including your address, or other personal information in your protest, please be aware that your entire protest, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C. Chap. 3.

Geoffrey A. Graham,

Chief Cadastral Surveyor of Arizona.

[FR Doc. 2020–00901 Filed 1–17–20; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVW00000.L7122000.EX0000. LVTFF1906890.19X.MO#4500141833]

Notice of Intent To Prepare a Draft Environmental Impact Statement and Resource Management Plan Amendment, for the Lithium Nevada Corp., Thacker Pass Project Proposed Plan of Operations and Reclamation Plan Permit Application, Humboldt County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Humboldt

River Field Office, Winnemucca, Nevada intends to prepare an Environmental Impact Statement (EIS), and Land Use Plan Amendment to the current Resource Management Plan (RMP), to analyze the potential impacts of approving the Lithium Nevada Corp. (LNC), Thacker Pass Project Proposed Plan of Operations and Reclamation Plan Permit Application (Project) in Humboldt County, Nevada. This notice announces the beginning of the scoping process to solicit public comments and identify issues to be considered in the EIS, and serves to initiate public consultation, as required under the National Historic Preservation Act (NHPA).

DATES: This notice initiates the public scoping process for the EIS. Comments on issues to be considered in the EIS may be submitted in writing until February 20, 2020. The dates and locations of two scoping meetings, one in Orovada and the other in Winnemucca, Nevada, will be announced at least 15 days in advance through local media, newspapers and the BLM website at: *https://www.blm.gov/office/winnemucca-district-office.* In order to be included in the Draft EIS, all comments must be received prior to the close of the 30-day scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft EIS.

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

- *Website: https://bit.ly/2S7rRRt.*
- *Email: wfoweb@blm.gov,* Include Thacker Pass Project EIS Comments in the subject line.
- *Fax:* (775) 623–1503.
- *Mail:* 5100 E Winnemucca Boulevard, Winnemucca, NV 89445.

FOR FURTHER INFORMATION CONTACT: For questions about the proposed Project contact Mr. Ken Loda, telephone: (775) 623–1500, address: 5100 East Winnemucca Boulevard, Winnemucca, NV 89445. Contact Mr. Loda to have your name added to our mailing list. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The applicant, LNC, proposes to construct, operate, reclaim, and eventually close an open pit lithium mine, processing operation, and continued exploration activities (the Project) on public lands in northern Humboldt County, Nevada.

LNC has submitted two Plans of Operations (PoO), each of which includes an associated reclamation plan, to develop the Project and to provide BLM with a description of the proposed lithium mining, processing, and exploration operations. The PoOs include measures to be implemented to prevent unnecessary or undue degradation of public lands by operations authorized under the mining laws.

LNC currently has two approved PoOs, one for exploration and one for a specialty clay mine, approved within the area proposed for the new lithium mine. There are 75 acres of exploration disturbance approved under LNCs existing exploration PoO, and 140 acres of existing disturbance approved under their clay mine PoO. The operations proposed under the two new PoOs would involve a project area of about 18,000 acres, with an ultimate disturbance footprint of approximately 5,700 acres. The proposed lithium mine PoO boundary overlaps the existing PoO boundaries.

LNC proposes to develop the Project in two phases (Phase 1 and Phase 2) over the estimated 41-year mine life. Pending LNC receiving the required authorizations and permits for Phase 1 of the Project, pre-stripping would commence in early 2021 and construction in the first quarter of 2021, with mining production and ore processing estimated to commence in late 2022. LNC estimates that it would complete mining, processing and concurrent reclamation activities in 2061, after which reclamation, site closure activities, and post-closure monitoring would occur for a minimum of five years.

The Project would provide employment to approximately 300 workers during the operational phase. The proposed activities and facilities associated with the Project include development of an open pit mine, construction and operation of lithium processing and production facilities, mine facilities to support mining operations, two waste rock storage facilities, a run-of-mine stockpile, a clay tailings filter stack, water supply facilities, two power transmission lines and substations, and various ancillary facilities. Pit dewatering is not expected to be required as part of the Project until 2055, and concurrent backfill of the open pit would occur after sufficient volume has been excavated to initiate direct placement of waste rock. Continued exploration would be conducted under both PoOs. The project would produce lithium carbonate, lithium hydroxide monohydrate, lithium sulfide, lithium metal, and solid-state lithium batteries.

The Project also would include the construction of natural landforms and other design features to mitigate potential impacts to visual resources within the Project area. A Land Use Plan Amendment addressing visual resources would be included with the Project and analyzed in the EIS if visual resource issues cannot be mitigated during the exploration, construction, and operation of the Project to conform with the visual resource management class-2 designation in the current RMP, approved in 2015.

The purpose of the public scoping process is to identify relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS. The BLM has identified some preliminary issues associated with the Project: (a) Dewatering during mining and the formation of a pit lake after completion of mining activities; (b) Potential impacts to streams occupied by Lahontan cutthroat trout, a threatened species under the Endangered Species Act of 1973, as amended; (c) Potential impacts to visual resources; (d) Potential impacts to wildlife habitat; and (e) Potential impacts to cultural resources eligible under the National Register of Historic Places.

The BLM will use and coordinate the NEPA scoping process to help fulfill the public involvement process under the NHPA as provided in 42 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed project will assist the BLM in identifying and evaluating impacts to such resources in the context of both NEPA and the NHPA.

The BLM will consult with Native American tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration.

Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed project that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the EIS as a cooperating agency. Comments and materials we receive, as well as

supporting documentation we use in preparing the EIS, will be available for public inspection during normal business hours at the Winnemucca District Office (see **ADDRESSES** section, above).

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may request in your comment that your personal identifying information be withheld from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1501.7.

David Kampwerth,

Field Manager, Humboldt River Field Office.

[FR Doc. 2020–00851 Filed 1–17–20; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NER–ACAD–28995; PPNEACADSO, PPMPSPDIZ.YM0000]

Acadia National Park Advisory Commission Notice of Public Meetings

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, the National Park Service (NPS) is hereby giving notice that the Acadia National Park Advisory Commission (Commission) will meet as indicated below.

DATES: The Commission will meet: Monday, February 3, 2020; and Monday, June 1, 2020. All scheduled meetings will begin at 1:00 p.m. and will end by 4:00 p.m. (Eastern).

ADDRESSES: The February 3, 2020, and June 1, 2020, meetings will be held at the headquarters conference room, Acadia National Park, 20 McFarland Hill Drive, Bar Harbor, Maine 04609.

FOR FURTHER INFORMATION CONTACT: Michael Madell, Deputy Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, telephone (207) 288–8701 or email *michael_madell@nps.gov.*

SUPPLEMENTARY INFORMATION: The Commission was established by section 103 of Public Law 99–420, as amended, (16 U.S.C. 341 note), and in accordance with the Federal Advisory Committee Act (5 U.S.C. Appendix 1–16). The Commission advises the Secretary and the NPS on matters relating to the management and development of Acadia National Park, including but not limited to, the acquisition of lands and interests in lands (including conservation easements on islands) and the termination of rights of use and occupancy.

The meeting is open to the public. Interested persons may choose to make a public comment at the meeting during the designated time for this purpose. Depending on the number of persons wishing to comment, the length of comments may be limited. Members of the public may also choose to submit written comments by sending them to Michael Madell (see **FOR FURTHER INFORMATION CONTACT**.)

The Commission meeting locations may change based on inclement weather or exceptional circumstances. If a meeting location is changed, the Superintendent will issue a press release and use local newspapers to announce the change.

Purpose of the Meeting: The Commission meeting will consist of the following proposed agenda items:

1. Committee Reports:
   - Land Conservation
   - Park Use
   - Science and Education
   - Historic
2. Old Business
3. Superintendent's Report
4. Chairman's Report
5. Public Comments
6. Adjournment

The final meeting agenda will be posted to the commission's website at: *https://www.nps.gov/acad/getinvolved/acadia-advisory-commission.htm.*

Public Disclosure of Information: Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 5 U.S.C. Appendix 2)

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2020–00791 Filed 1–17–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#-29558; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before December 21, 2019, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by February 5, 2020.

ADDRESSES: Comments may be sent via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C St. NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before December 21, 2019. Pursuant to Section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers:

ARKANSAS

Monroe County

Williamson, Ellis and Charlotte, House, 126 West Cloverdale Dr., Brinkley, SG100004944

Washington County

Williams, John G., House #2, 140 North Sang Ave., Fayetteville, SG100004942

Clark, Joe Marsh and Maxine, House (Arkansas Designs of E. Fay Jones MPS), 1724 Rockwood Trail, Fayetteville, MP100004945

CALIFORNIA

Los Angeles County

Founder's Church of Religious Science, 3281 West Sixth St., Los Angeles, SG100004936

Marin County

St. Hilary's Mission Church, 201 Esperanza St., Tiburon, SG100004935

Mendocino County

St. Francis Mission Church, Address Restricted, Hopland vicinity, SG100004919

San Diego County

Bumann Ranch, 3666 Bumann Rd., Encinitas, SG100004937

DISTRICT OF COLUMBIA

District of Columbia

Twin Oaks Playground and Field House, 4025 14th St. NW, Washington, SG100004941

KANSAS

Greenwood County

Greenwood Cemetery and Mausoleum, 00 East Seventh St., Eureka, SG100004925

Jackson County

Delia State Bank, 501 Washington Ave., Delia, SG100004924

Leavenworth County

Delaware Cemetery, 10388 222nd St., Linwood, SG100004927

Morris County

Greenwood Cemetery, 00 West Main St., Council Grove, SG100004926

Saline County

National Bank of America, 100 South Santa Fe, Salina, SG100004923

Sedgwick County

Sutton Place, 209 East William St., Wichita, SG100004920

Henry's Department Store, 124 South Broadway St., Wichita, SG100004921

St. James Episcopal Church, 3750 East Douglas Ave., Wichita, SG100004922

Wabaunsee County

Pratt-Mertz Barn, 34107 KS 18, Manhattan, SG100004928

MONTANA

Park County

Bottler, Frederick and Josephine, House, 2725 US 89 South, Emigrant vicinity, SG100004940

NEW MEXICO

Taos County

Molino de los Duranes, 83 Camino Abajo de la Loma, Ranchos de Taos vicinity, SG100004918

NEW YORK

Cayuga County

Huntington, Ezra A., House, 11 Seminary St., Auburn, SG100004914

Chautauqua County

Empire Worsted Mills, 31 Water St., Jamestown, SG100004916

Erie County

Buffalo Public School #78 (PS 78), 345 Olympic Ave., Buffalo, SG100004917

Monroe County

DeLand, Minerva and Daniel, House, 185 North Main St., Fairport, SG100004913

New York County

National Headquarters, March on Washington for Jobs and Freedom, 170 West 130th St., New York, SG100004933

Sullivan County

Broadway Historic District, Broadway, Liberty, Bank, North, Jones, Pleasant & St. John Sts. and Landfield Ave., Monticello, SG100004915

PENNSYLVANIA

Cumberland County

Melester Barn, 1110 South Spring Garden St., South Middleton Township, SG100004931

Additional documentation has been received for the following resources:

ARKANSAS

Pulaski County

Capitol View Neighborhood Historic District (Additional Documentation), Roughly bounded by Riverview Dr., South Schiller St., West Seventh St. and Woodrow St., Little Rock, AD00000813

KANSAS

Douglas County

East Lawrence Industrial Historic District (Additional Documentation), 619 East Eighth St., 804–846 Pennsylvania St., and 716 East Ninth St., Lawrence, AD07001250

MARYLAND

Frederick County

St. Joseph's College and Mother Seton Shrine (Additional Documentation), 16825 South Seton Ave., Emmitsburg, AD76000994

OKLAHOMA

Tulsa County

Blue Dome Historic District (Additional Documentation) (Route 66 and Associated Resources in Oklahoma AD MPS), Roughly between South Kenosha & South Detroit Aves.; Frisco RR tracks & East Eighth St., Tulsa, AD11000895

Authority: Section 60.13 of 36 CFR part 60.

Dated: December 23, 2019.

Julie H. Ernstein,

Supervisory Archeologist, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2020–00830 Filed 1–17–20; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1022 (Third Review)]

Refined Brown Aluminum Oxide From China; Scheduling of an Expedited Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty order on refined brown aluminum oxide from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: December 9, 2019.

FOR FURTHER INFORMATION CONTACT: Kristina Lara (202–205–3386), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On December 9, 2019, the Commission determined that the domestic interested party group response to its notice of institution (84 FR 46047, September 3, 2019) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).[2]

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

[2] Chairman David S. Johanson voted to conduct a full review.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on January 6, 2020, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[3] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before January 21, 2020, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by January 21, 2020. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules with respect to filing were revised effective July 25, 2014. *See* 79 FR 35920 (June 25, 2014). The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*, elaborates upon the Commission's procedures with respect to filings.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined this review is extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: January 14, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–00770 Filed 1–17–20; 8:45 am]

BILLING CODE 7020–02–P

[3] The Commission has found the responses submitted by Great Lakes Minerals, LLC; Imerys Fused Minerals Niagara Falls, Inc.; U.S. Electrofused Minerals, Inc.; and Washington Mills Group, Inc. to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1012 (Third Review)]

Certain Frozen Fish Fillets From Vietnam; Notice of Commission Determination To Conduct a Full Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to the Tariff Act of 1930 to determine whether revocation of the antidumping duty order on certain frozen fish fillets from Vietnam would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date.

DATES: January 6, 2020.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202 205 3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

SUPPLEMENTARY INFORMATION: On January 6, 2020, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). The Commission found that both the domestic and respondent interested party group responses to its notice of institution (84 FR 52122, October 1, 2019) were adequate. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: January 14, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–00790 Filed 1–17–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–626 and 731–TA–1452 (Final)]

Collated Steel Staples From China; Scheduling of the Final Phase of Countervailing Duty and Anti-Dumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–626 and 731–TA–1452 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of collated steel staples from China, provided for in subheading 8305.20.00 of the Harmonized Tariff

Schedule of the United States, preliminarily determined by the Department of Commerce (''Commerce'') to be subsidized and sold at less-than-fair-value.

DATES: January 8, 2020.

FOR FURTHER INFORMATION CONTACT: Celia Feldpausch 202–205–2387, Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Scope.— For purposes of these investigations, Commerce has defined the subject merchandise as ''certain collated steel staples.'' [1]

Background.—The final phase of these investigations is being scheduled pursuant to sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), as a result of affirmative preliminary determinations by Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of collated steel staples, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on June 6, 2019, by Kyocera Senco Industrial Tools, Inc., Cincinnati, Ohio.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on May 12, 2020, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on Wednesday, May 27, 2020, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 20, 2020. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on May 22, 2020, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is May 19, 2020. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is June 3, 2020. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before June 3, 2020. On June 16, 2020, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 18, 2020, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless

[1] Certain collated steel staples subject to these investigations are made from steel wire having a nominal diameter from 0.0355 inch to 0.0830 inch, inclusive, and have a nominal leg length from 0.25 inch to 3.0 inches, inclusive, and a nominal crown width from 0.187 inch to 1.125 inch, inclusive. Certain collated steel staples may be manufactured from any type of steel, and are included in the scope of these investigations regardless of whether they are uncoated or coated, and regardless of the type or number of coatings, including but not limited to coatings to inhibit corrosion. For a full description of the scope of these investigations, including product exclusions, see Appendix I of *Certain Collated Steel Staples From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, Postponement of Final Determination and Extension of Provisional Measures,* 85 FR 882, January 8, 2020.

the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: January 15, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–00827 Filed 1–17–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–499–500 and 731–TA–1215–1216, 1221–1223 (Review)]

Oil Country Tubular Goods (OCTG) From India, Korea, Turkey, Ukraine, and Vietnam; Scheduling of Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty and countevailing duty orders on oil country tubular goods (OCTG) from India, Korea, Turkey, Ukraine, and Vietnam would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days.

DATES: January 15, 2020.

FOR FURTHER INFORMATION CONTACT: Christopher Watson ((202) 205–2684), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On September 6, 2019, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews should proceed (84 FR 50069, September 24, 2019); accordingly, full reviews are being scheduled pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's website.

Participation in the reviews and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on May 1, 2020, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on May 21, 2020, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 13, 2020. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on May 20, 2020, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is May 12, 2020. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is June 1, 2020. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before June 1, 2020. On June 26, 2020, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 30, 2020, but such final comments must not contain new factual information and must otherwise comply with section

207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

The Commission has determined that these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C.1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: January 15, 2020.

Lisa Barton,

Secretary to the Commission.

WORK SCHEDULE

[Investigation Nos. 701–TA–499–500 and 731–TA–1215–1216, 1221–1223 (review)]

OIL COUNTRY TUBULAR GOODS (OCTG) FROM INDIA, KOREA, TURKEY, UKRAINE, AND VIETNAM

Staff Assigned

Investigator	Christopher Watson ((202) 205–2684).
Commodity-Industry Analyst	Mark Brininstool ((202) 708–1395).
Economist	Lauren Gamache ((202) 205–3489).
Accountant/Auditor	Jennifer Brinckhaus ((202) 205–3188).
Attorney	TBD.
Statistician	Russell Duncan ((202) 708–4727).
Dockets Case Manager	Sheri Corley ((202) 708–4711).
Supervisory Investigator	Douglas Corkran ((202) 205–3057).
	Date
Notice of initiation	Monday, June 3, 2019.
Commerce's determination—India (CVD)	September 24.
Commerce's determination—Turkey (CVD)	October 15.
Questionnaires:	
Drafts to supervisory, statistical, and legal review	January 9, 2020.
Drafts to Parties	January 16.
Party comments	January 30.
To the Commission and OMB	February 6.
To OARS for programming and testing	February 13.
Issue	February 18.
Return	March 20.
Fieldwork	As needed.
Scheduled date for Commerce's determinations (all others)	January 29.
Prehearing report:	
Draft to Supervisory Investigator	April 17.
Draft to Senior Review	April 24.
To the Commission and Parties	May 1.
Prehearing briefs of Parties due [1]	May 12.
Prehearing conference	May 20, 9:30 a.m.
Hearing	May 21, 9:30 a.m.
Posthearing briefs of Parties due [1]	June 1.
Report to the Commission:	
Draft to Supervisory Investigator	June 4.
Draft to Senior Review	June 11.
To the Commission and Parties	June 19.
Legal issues memorandum to the Commission	June 24.
Closing of the record and final release of data to Parties	June 26.
Final comments of Parties due [1]	June 30.
Briefing and vote (suggested date)	July 8.
Determinations and views posted on EDIS	Wednesday, July 29, 2020.

[1] If briefs contain business proprietary information, a nonbusiness proprietary version is due the following business day.

[FR Doc. 2020–00861 Filed 1–17–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1229–1230 (Review)]

Monosodium Glutamate From China and Indonesia; Notice of Commission Determinations To Conduct Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to the Tariff Act of 1930 to determine whether revocation of the antidumping duty orders on monosodium glutamate from China and Indonesia would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date.

DATES: January 6, 2020.

FOR FURTHER INFORMATION CONTACT: Ahdia Bavari (202–205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

SUPPLEMENTARY INFORMATION: On January 6, 2020, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). The Commission found that the domestic interested party response to its notice of institution (84 FR 52129, October 1, 2019) was adequate.

The Commission also found that the respondent interested party group response concerning the antidumping duty order on monosodium glutamate from Indonesia was adequate and, therefore, determined to proceed with a full review of that order. The Commission found that the respondent interested party group response concerning the antidumping duty order on monosodium glutamate from China was inadequate, but determined to conduct a full review of this order in order to promote administrative efficiency in light of the determination to conduct a full review of the antidumping duty order on monosodium glutamate from Indonesia. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: January 14, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–00789 Filed 1–17–20; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Bankruptcy Rules

AGENCY: Judicial Conference of the United States Advisory Committee on Bankruptcy Rules.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Bankruptcy Rules will hold a meeting on April 2 and April 3, 2020. The meeting will be open to public observation but not participation. An agenda and supporting materials will be posted at least 7 days in advance of the meeting at: *http://www.uscourts.gov/rules-policies/records-and-archives-rules-committees/agenda-books.*

DATES: April 2–3, 2020; 9 a.m.–5 p.m.

ADDRESSES: Hilton Hotel, 600 Okeechobee Blvd., West Palm Beach, FL 33401.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Womeldorf, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–300, Washington, DC 20544, Telephone (202) 502–1820.

Authority: 28 U.S.C. 2073.

Dated: January 14, 2020.

Rebecca A. Womeldorf,

Secretary, Committee on Rules of Practice and Procedure, Judicial Conference of the United States.

[FR Doc. 2020–00782 Filed 1–17–20; 8:45 am]

BILLING CODE 2210–55–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Appellate Rules

AGENCY: Judicial Conference of the United States Advisory Committee on Appellate Rules.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Appellate Rules will hold a meeting on April 3, 2020. The meeting will be open to public observation but not participation. An agenda and supporting materials will be posted at least 7 days in advance of the meeting at: *http://www.uscourts.gov/rules-policies/records-and-archives-rules-committees/agenda-books.*

DATES: April 3, 2020; 8:30 a.m.–1 p.m.

ADDRESSES: Hilton Hotel, 600 Okeechobee Blvd., West Palm Beach, FL 33401.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Womeldorf, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–300, Washington, DC 20544, Telephone (202) 502–1820.

Authority: 28 U.S.C. 2073.

Dated: January 14, 2020.

Rebecca A. Womeldorf,

Secretary, Committee on Rules of Practice and Procedure, Judicial Conference of the United States.

[FR Doc. 2020–00781 Filed 1–17–20; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

[CPCLO Order No. 001–2020]

Privacy Act of 1974; Systems of Records

AGENCY: Office of Community Oriented Policing Services, United States Department of Justice.

ACTION: Notice of a new system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, and Office of Management and Budget (OMB) Circular No. A–108, notice is hereby given that the Office of Community Oriented Policing Services (COPS Office), a component within the United States Department of Justice (DOJ or Department), proposes to develop a new system of records notice titled COPS Management System: NexGen (CMS:NxG), JUSTICE/COPS–003. The COPS Office proposes to establish this system of records to consolidate its various business databases, applications, and web applications under one umbrella to support the grant-making and grant management processes from the pre-award phase, including posting solicitations and administering applications for COPS Office funding, to the post-award phase, including budget modifications and award monitoring activities. Previously, grant-making and grant management was handled by a legacy system covered under the DOJ–003 Correspondence Management Systems (CMS) SORN. Because certain aspects of NexGen are more consistent with a separate system of records, COPS is issuing a new SORN to make that clear.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this System of Records is effective upon publication, subject to a 30-day period in which to comment on the routine uses, described below. Please submit any comments by February 20, 2020.

ADDRESSES: The public, OMB, and Congress are invited to submit any comments by mail to the United States Department of Justice, Office of Privacy and Civil Liberties, ATTN: Privacy Analyst, 145 N St. NE, Suite 8W. 300, Washington, DC 20002; by facsimile at 202–307–0693; or by email at *privacy.compliance@usdoj.gov.* To ensure proper handling, please reference the above-listed CPCLO Order No. on your correspondence.

FOR FURTHER INFORMATION CONTACT: Mark Gowen, Information System Security Officer, COPS Office, 145 N Street NE, Washington, DC 20530; by email at *mark.a.gowen@usdoj.gov,* or by phone at (202) 305–8840.

SUPPLEMENTARY INFORMATION: The COPS Office advances the practice of community policing in America's state, local, territorial, and tribal law enforcement agencies through information and grant resources. CMS:NxG provides authorized internal users with the capability to effectively run queries on various data elements, review and score applications, select successful applicants for COPS Office funding, generate award documents for successful applicants, sign off on awards, and obligate award funds. CMS:NxG is also used by authorized internal users to update, modify, and maintain files for unsuccessful applicants, and award files for past and current award recipients.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and Congress on this new system of records.

Dated: January 6, 2020.

Peter A. Winn,

Acting Chief Privacy and Civil Liberties Officer, United States Department of Justice.

JUSTICE/COPS–003

SYSTEM NAME AND NUMBER:

COPS Management System: NexGen (CMS:NxG), JUSTICE/COPS–003.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained in two Office of Community Oriented Policing Services (COPS Office) locations: 145 N Street NE, Washington, DC 20530, and, on the date of this publication, the DOJ Federal Risk and Authorization Management Program (FedRamp) Certified Azure Government Cloud. Cloud computing service providers may change. For information about the current cloud computing service provider, please contact the COPS Office through its website, *https://www.cops.usdoj.gov.*

SYSTEM MANAGER(S) AND ADDRESSES:

Donte Turner, Acting Chief Information Officer, and Mark Gowen, Information System Security Officer, (202) 305–8840, COPS Office, 145 N Street NE, Washington, DC 20530.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

CMS:NxG is established and maintained pursuant to 5 U.S.C. 301 and 44 U.S.C. 3101. General authority for the COPS Office mission activities include the Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322), and the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109–162). Specifically, these authorities authorize the COPS Office to provide grants to states, units of local government, territories, tribal governments, public and private entities to advance community policing.

PURPOSE(S) OF THE SYSTEM:

CMS:NxG consolidates various business databases, applications, and web applications under one umbrella to streamline and expedite the grant-making and grant management processes to effectively advance the COPS Office's community policing mission.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The individuals covered by CMS:NxG are the COPS Office's unsuccessful grant applicants, and past and current award recipients. These include state, local, territorial, and tribal law enforcement agency officials, government officials, tribal officials/representatives, representatives of private and public institutions of higher education, and representatives of for-profit and nonprofit organizations.

CATEGORIES OF RECORDS IN THE SYSTEM:

CMS:NxG maintains files for unsuccessful applicants and award files for past and current award recipients of COPS Office funding, including business and contact information about grant applicants, and the outcomes of grant applications. For audit purposes, the system maintains information regarding the COPS Office programs applied for by applicants, and the final disposition of applications (funded or denied funding). CMS:NxG also maintains information from queries including, but not limited to, the number of applicants that applied for COPS Office programs each fiscal year; the number of applicants funded and denied funding for each fiscal year; the total number of awards authorized for each fiscal year; the total number of awards made by the COPS Office for each fiscal year; the number of years the same award recipients received funding from the COPS Office; and the dollar amounts of the awards and the associated duration of award obligations.

RECORD SOURCE CATEGORIES:

Individuals with the authority to sign and submit applications for COPS Office funding, on behalf of state, local, territorial, and tribal law enforcement agencies, states, units of local government, Indian tribes, for-profit and nonprofit organizations, private and public institutions of higher education, and individuals authorized to make modifications to existing COPS Office awards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), all or a portion of the records or information contained in this system of records may be disclosed as a routine use pursuant to 5 U.S.C. 552a(b)(3) under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purposes for which the information was collected:

A. To the news media and the public, including disclosures pursuant to 28 CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy. Any such disclosure under 28 CFR 50.2 would be in connection with a civil or criminal proceeding.

B. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

C. To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that there has been a breach of the system of records; (2) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOJ (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

E. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish an agency function related to this system of records.

F. To a former employee of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

G. Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

H. To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

I. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

J. To another Federal agency or Federal entity, when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in CMS:NxG are stored in electronic format in the Justice Management Division (JMD) cloud platform. Records are stored securely in accordance with applicable federal laws, regulations, Department directives, and guidance.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Authorized internal users with the required permissions may retrieve information in CMS:NxG by an individual's name, including the name of the business point-of-contact (POC), law enforcement executive, agency executive (for institutions of higher education, for-profit and nonprofit organizations), government executive, program official, and financial official of the applicant or award recipient agency/organization.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records for successful applicants are destroyed ten years after final action is taken on the award, but longer retention is authorized if required for business use in accordance with National Archives and Records Administration (NARA) General Records Schedule (GRS) 1.2, item 020, Disposition Authority DAA–GRS–2013–0008–0001. Other records (unsuccessful applications) in CMS:NxG are destroyed three years after final action is taken on the file, but longer retention is authorized if required for business use in accordance with GRS 1.2, item 021 and item 010, Disposition Authority DAA–GRS–2013–0008–0006, and DAA–GRS–2013–0008–0007, respectively.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Information in CMS:NxG is safeguarded in accordance with appropriate laws, rules, and policies, including the Department's mandated standards. Records and technical equipment are maintained in buildings with restricted access. Internal access is restricted using traditional two-factor authentication, and external access is restricted using complex passwords. Electronic records are accessed only by authorized personnel with accounts on the COPS Office computer network, and authorized external users with password access to their own account via the COPS Office Agency Portal. Additionally, direct access to certain information may be restricted depending on a user's role and responsibility within CMS:NxG.

Internet connections are protected by multiple firewalls. Security personnel conduct periodic vulnerability scans using DOJ-approved software to ensure security compliance and security logs are enabled for all computers to assist in troubleshooting and forensics analysis during incident investigations. Users of individual computers can only gain access to their own data using a valid user identification and password.

RECORD ACCESS PROCEDURES:

All requests for access to records must be in writing and should be addressed to the COPS Office, FOIA/PA, 145 N Street NE, Washington, DC 20530 or by email to *cops.foia@usdoj.gov.* The envelope and letter should be clearly marked ''Privacy Act Access Request.'' The request must describe the records sought in sufficient detail to enable

Department personnel to locate them with a reasonable amount of effort. The request must include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury.

Although no specific form is required, you may obtain forms for this purpose from the FOIA/Privacy Act Mail Referral Unit, United States Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530, or on the Department of Justice website at *https://www.justice.gov/oip/oip-request.html.*

More information regarding the Department's procedures for accessing records in accordance with the Privacy Act can be found at 28 CFR part 16 Subpart D, ''Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974.''

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend records maintained in this system of records must direct their requests to the address indicated in the ''RECORD ACCESS PROCEDURES'' paragraph, above. All requests to contest or amend records must be in writing and the envelope and letter should be clearly marked ''Privacy Act Amendment Request.'' All requests must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record.

More information regarding the Department's procedures for amending or contesting records in accordance with the Privacy Act can be found at 28 CFR 16.46, ''Requests for Amendment or Correction of Records.''

NOTIFICATION PROCEDURES:

Individuals may be notified if a record in this system of records pertains to them when the individuals request information utilizing the same procedures as those identified in the ''RECORD ACCESS PROCEDURES'' paragraph, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2020–00786 Filed 1–17–20; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Peace Corps Volunteer Authorization for Examination and/or Treatment

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP)-sponsored information collection request (ICR) proposal titled, ''Peace Corps Volunteer Authorization for Examination and/or Treatment,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before February 20, 2020.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201907-1240-002* (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks PRA authority for the Peace Corps Volunteer Authorization for Examination and/or Treatment information collection. The Sam Farr and Nick Castle Peace Corps Reform Act of 2018 (Farr-Castle), modified various aspects of the Peace Corps, including changes to the provision of health care to volunteers. Entitlement to disability compensation payments does not commence until the day after the date of termination of service as a volunteer. Farr-Castle directs the Secretary of the Department of Labor to authorize the Director of the Peace Corps to furnish medical benefits to a volunteer, injured during the volunteer's period of service for a period of 120 days following the termination of such service, set forth in 5 U.S.C. 8142(c)(3)). In view of the provisions required by this bill, OWCP and the Peace Corps have collaborated to initiate a new form CA–15, Peace Corps Volunteer Authorization for Examination and/or Treatment. The form will authorize medical treatment for recently terminated Peace Corps volunteers who require medical treatment for injuries/exposure sustained in the performance of their volunteer service. Issuance of this form will solely be at the discretion of the Peace Corps and will bridge a gap between the occurrences of an initial injury, disease exposure ensuring that the recently terminated volunteers receive prompt medical care, immediately, for a period of 120 days following separation from service. Peace Corps Volunteers and the Federal Employees' Compensation Act authorize this information collection. *See* 5 U.S.C. 8142 and 5 U.S.C. 8101.

This proposed information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB, under the PRA, approves it and displays a currently valid OMB control number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on August 7, 2019 (84 FR 38671).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty-(30) days of publication of this notice in the **Federal**

Register. In order to help ensure appropriate consideration, comments should mention OMB ICR Reference Number 201907–1240–002. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–OWCP.

Title of Collection: Peace Corps Volunteer Authorization for Examination and/or Treatment.

Affected Public: Individuals or households.

Total Estimated Number of Respondents: 252.

Total Estimated Number of Responses: 252.

Total Estimated Annual Time Burden: 63 hours.

Total Estimated Annual Other Costs Burden: $146.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: January 14, 2020.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2020–00848 Filed 1–17–20; 8:45 am]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Ventilation Plan and Main Fan Maintenance Record

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Mining Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, ''Ventilation Plan and Main Fan Maintenance Record'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before February 20, 2020.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201910-1219-002* (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–MSHA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Ventilation Plan and Main Fan Maintenance Record information collection. Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines. Underground mines usually present harsh and hostile working environments. The ventilation system is the most vital life support system in underground mining and a properly operating ventilation system is essential for maintaining a safe and healthful working environment. A well planned mine ventilation system is necessary to assure a fresh air supply to miners at all working places, to control the amounts of harmful airborne contaminants in the mine atmosphere, and to dilute possible accumulation of explosive gases. Lack of adequate ventilation in underground mines has resulted in fatalities from asphyxiation and/or explosions due to a buildup of explosive gases. Inadequate ventilation can be a primary factor for deaths caused by disease of the lungs (*e.g.,* silicosis). In addition, poor working conditions from lack of adequate ventilation contribute to accidents resulting from heat stress, limited visibility, or impaired judgment from contaminants. The mine operator is required to prepare a written plan of the mine ventilation system. The plan is required to be updated at least annually. Upon written request of the District Manager, the plan or revisions must be submitted to MSHA for review and comment. The main ventilation fans for an underground mine must be maintained according to the manufacturers' recommendations or a written periodic schedule. Upon request of an Authorized Representative of the Secretary of Labor, this fan maintenance schedule must be made available for review. The records assure compliance with the standard and may serve as a warning mechanism for possible ventilation problems before they occur.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1219–0016.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on January 31, 2020. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing

requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on September 20, 2019 (84 FR 49559).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty-(30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1219–0016. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–MSHA.

Title of Collection: Ventilation Plan and Main Fan Maintenance Record.

OMB Control Number: 1219–0016.

Affected Public: Private Sector: Businesses or other for-profits.

Total Estimated Number of Respondents: 197.

Total Estimated Number of Responses: 206.

Total Estimated Annual Time Burden: 4,762 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: January 14, 2020.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2020–00847 Filed 1–17–20; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Information Collection Activities; Comment Request

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed new collection of the ''QCEW Business Supplement.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before March 23, 2020.

ADDRESSES: Send comments to Carol Rowan, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Carol Rowan, BLS Clearance Officer, at 202–691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau of Labor Statistics (BLS) intends to implement a new collection for a QCEW Business Supplement (QBS). Through the QBS, the BLS will be able to capture information on the US economy in a more efficient and timely manner than is currently possible. The QBS will allow BLS to quickly collect information so that stakeholders and data users can understand the impact of specific events on the US economy as they occur, improving the relevancy of the data.

The BLS will use the Annual Refiling Survey (ARS) as a platform for conducting the QBS. Each year, the BLS Quarterly Census of Employment and Wages (QCEW) Program conducts the ARS by reaching out to approximately 1.2 million establishments requesting verification of their main business activity, and their mailing and physical location addresses. The fully web-based ARS allows for an accelerated timeframe for collection and provides a low-cost platform for conducting the quick, short surveys of the QBS. The QBSs accompanying the ARS will have little data collection overhead, leveraging the respondent contact process undertaken as part of the production ARS. QBS Respondents already logged into the ARS secure website would be directed to a QBS and asked to answer a limited number of additional survey questions after completing the ARS.

II. Current Action

Office of Management and Budget clearance is being sought for the QCEW Business Supplement (QBS).

The QBS, based on the ARS data collection platform, will allow BLS to leverage the multitude of information already known about the sample units to allow for targeted sampling. It also will permit BLS to target only the units meeting the specific set of characteristics desired allowing BLS to delve into specific areas of economic interest without burdening establishments which do not meet the specific targeted features.

The QBS is designed to encourage a fast response and minimize respondent burden on the public by limiting the number of questions on each survey and by asking questions that respondents should be able to answer without research or referring to records. In this manner, BLS can provide information that is needed quickly and is not collected elsewhere.

The QBS is designed to incorporate new questionnaires as the need for data arises, as frequently as twice a year. The BLS plans to conduct multiple small surveys under the QBS clearance. The initial survey will focus on the ways employers contract for services with other employers, or individuals. For example, employers may use the services of other companies or individuals to maintain their computers or networks, manufacture their products, for customer outreach activities, or facilities maintenance rather than their own employees.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Title of Collection: QCEW Business Supplement.

OMB Number: 1220–NEW.

Type of Review: New Collection.

Agency: Bureau of Labor Statistics.

Affected Public: Businesses or other for-profit institutions, not-for-profit institutions, and farms.

Total Respondents: 45,000.

Frequency: One time.

Total Responses: 45,000.

Average Time per Response: Five minutes.

Estimated Total Burden Hours: 3,750 hours.

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

Signed at Washington, DC, January 14, 2020.

Mark Staniorski,

Division Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2020–00842 Filed 1–17–20; 8:45 am]

BILLING CODE 4510–24–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 19–CRB–0014–AU (Slacker, Inc.)]

Notice of Intent to Audit

AGENCY: Copyright Royalty Board (CRB), Library of Congress.

ACTION: Public notice.

SUMMARY: The Copyright Royalty Judges announce receipt of a notice of intent to audit the 2016, 2017, and 2018 statements of account submitted by licensee Slacker, Inc. concerning the royalty payments it made pursuant to two statutory licenses.

ADDRESSES: Docket: For access to the docket to read background documents, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at *https://app.crb.gov/* and search for docket number 19–CRB–0014–AU (Slacker, Inc.).

FOR FURTHER INFORMATION CONTACT: Anita Blaine, Program Specialist, by telephone at (202) 707–7658 or by email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: The Copyright Act, title 17 of the United States Code, grants to sound recordings copyright owners the exclusive right to publicly perform sound recordings by means of certain digital audio transmissions, subject to limitations. Specifically, the performance right is limited by the statutory license in section 114, which allows nonexempt noninteractive digital subscription services, eligible nonsubscription services, pre-existing subscription services, and preexisting satellite digital audio radio services to perform publicly sound recordings by means of digital audio transmissions. 17 U.S.C. 114(f). In addition, a statutory license in section 112 allows a service to make necessary ephemeral reproductions to facilitate the digital transmission of the sound recording. 17 U.S.C. 112(e).

Licensees may operate under these licenses provided they pay the royalty fees and comply with the terms set by the Copyright Royalty Judges. The rates and terms for the section 112 and 114 licenses are set forth in 37 CFR parts 380 and 382 through 384.

As part of the terms for these licenses, the Judges designated SoundExchange, Inc., as the Collective, *i.e.,* the organization charged with collecting royalty payments and statements of account submitted by eligible licensees and with distributing royalties to the copyright owners and performers entitled to receive them under the section 112 and 114 licenses. *See, e.g.,* 37 CFR 380.2(a).

As the Collective, SoundExchange may, only once a year, conduct an audit of a licensee for any or all of the prior three calendar years in order to verify royalty payments. SoundExchange must first file with the Judges a notice of intent to audit a licensee and deliver the notice to the licensee. *See, e.g.,* 37 CFR 380.6(b)–(c).

On December 20, 2019, SoundExchange filed with the Judges a notice of intent to audit commercial webcaster Slacker, Inc., for the years 2016, 2017, and 2018. The Judges must publish notice in the **Federal Register** within 30 days of receipt of a notice announcing the Collective's intent to conduct an audit. *See* 37 CFR 380.6(c). Today's notice fulfills this requirement with respect to SoundExchange's notice of intent to audit filed December 20, 2019.

Dated: January 15, 2020.

Jesse M. Feder,

Chief Copyright Royalty Judge.

[FR Doc. 2020–00857 Filed 1–17–20; 8:45 am]

BILLING CODE 1410–72–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 19–CRB–0016–AU (Spanish Broadcasting System, Inc.)]

Notice of Intent To Audit

AGENCY: Copyright Royalty Board (CRB), Library of Congress.

ACTION: Public notice.

SUMMARY: The Copyright Royalty Judges announce receipt of a notice of intent to audit the 2016, 2017, and 2018 statements of account submitted by the Spanish Broadcasting System, Inc. concerning the royalty payments it made pursuant to two statutory licenses.

ADDRESSES: *Docket:* For access to the docket to read background documents, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at *https://app.crb.gov/* and search for docket number 19–CRB–0016–AU (Spanish Broadcasting System, Inc.).

FOR FURTHER INFORMATION CONTACT: Anita Blaine, Program Specialist, by telephone at (202) 707–7658 or by email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: The Copyright Act, title 17 of the United States Code, grants to sound recordings copyright owners the exclusive right to publicly perform sound recordings by means of certain digital audio transmissions, subject to limitations. Specifically, the performance right is limited by the statutory license in section 114, which allows nonexempt noninteractive digital subscription services, eligible nonsubscription services, pre-existing subscription services, and preexisting satellite digital audio radio services to perform publicly sound recordings by means of digital audio transmissions. 17 U.S.C. 114(f). In

addition, a statutory license in section 112 allows a service to make necessary ephemeral reproductions to facilitate the digital transmission of the sound recording. 17 U.S.C. 112(e).

Licensees may operate under these licenses provided they pay the royalty fees and comply with the terms set by the Copyright Royalty Judges. The rates and terms for the section 112 and 114 licenses are set forth in 37 CFR parts 380 and 382 through 384.

As part of the terms for these licenses, the Judges designated SoundExchange, Inc., as the Collective, *i.e.,* the organization charged with collecting royalty payments and statements of account submitted by eligible licensees and with distributing royalties to the copyright owners and performers entitled to receive them under the section 112 and 114 licenses. *See, e.g.,* 37 CFR 380.2(a).

As the Collective, SoundExchange may, only once a year, conduct an audit of a licensee for any or all of the prior three calendar years in order to verify royalty payments. SoundExchange must first file with the Judges a notice of intent to audit a licensee and deliver the notice to the licensee. *See, e.g.,* 37 CFR 380.6(b)–(c).

On December 20, 2019, SoundExchange filed with the Judges a notice of intent to audit commercial webcaster Spanish Broadcasting System, Inc., for the years 2016, 2017, and 2018. The Judges must publish notice in the **Federal Register** within 30 days of receipt of a notice announcing the Collective's intent to conduct an audit. *See* 37 CFR 380.6(c). Today's notice fulfills this requirement with respect to SoundExchange's notice of intent to audit filed December 20, 2019.

Dated: January 15, 2020.

Jesse M. Feder,

Chief Copyright Royalty Judge.

[FR Doc. 2020–00854 Filed 1–17–20; 8:45 am]

BILLING CODE 1410–72–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 19–CRB–0015–AU (Deseret Management Corporation)]

Notice of Intent To Audit

AGENCY: Copyright Royalty Board (CRB), Library of Congress.

ACTION: Public notice.

SUMMARY: The Copyright Royalty Judges announce receipt of a notice of intent to audit the 2016, 2017, and 2018 statements of account submitted by licensee Deseret Management Corporation, Inc. concerning the royalty payments it made pursuant to two statutory licenses.

ADDRESSES: *Docket:* For access to the docket to read background documents, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at *https://app.crb.gov/* and search for docket number 19–CRB–0015–AU (Deseret Management Corporation).

FOR FURTHER INFORMATION CONTACT: Anita Blaine, Program Specialist, by telephone at (202) 707–7658 or by email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: The Copyright Act, title 17 of the United States Code, grants to sound recordings copyright owners the exclusive right to publicly perform sound recordings by means of certain digital audio transmissions, subject to limitations. Specifically, the performance right is limited by the statutory license in section 114, which allows nonexempt noninteractive digital subscription services, eligible nonsubscription services, pre-existing subscription services, and preexisting satellite digital audio radio services to perform publicly sound recordings by means of digital audio transmissions. 17 U.S.C. 114(f). In addition, a statutory license in section 112 allows a service to make necessary ephemeral reproductions to facilitate the digital transmission of the sound recording. 17 U.S.C. 112(e).

Licensees may operate under these licenses provided they pay the royalty fees and comply with the terms set by the Copyright Royalty Judges. The rates and terms for the section 112 and 114 licenses are set forth in 37 CFR parts 380 and 382 through 384.

As part of the terms for these licenses, the Judges designated SoundExchange, Inc., as the Collective, *i.e.,* the organization charged with collecting royalty payments and statements of account submitted by eligible licensees and with distributing royalties to the copyright owners and performers entitled to receive them under the section 112 and 114 licenses. *See, e.g.,* 37 CFR 380.2(a).

As the Collective, SoundExchange may, only once a year, conduct an audit of a licensee for any or all of the prior three calendar years in order to verify royalty payments. SoundExchange must first file with the Judges a notice of intent to audit a licensee and deliver the notice to the licensee. *See, e.g.,* 37 CFR 380.6(b)–(c).

On December 20, 2019, SoundExchange filed with the Judges a notice of intent to audit commercial webcaster Deseret Management Corporation, Inc., for the years 2016, 2017, and 2018. The Judges must publish notice in the **Federal Register** within 30 days of receipt of a notice announcing the Collective's intent to conduct an audit. *See* 37 CFR 380.6(c). Today's notice fulfills this requirement with respect to SoundExchange's notice of intent to audit filed December 20, 2019.

Dated: January 15, 2020.

Jesse M. Feder,

Chief Copyright Royalty Judge.

[FR Doc. 2020–00856 Filed 1–17–20; 8:45 am]

BILLING CODE 1410–72–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Procurement Administrative Lead Time (PALT)

AGENCY: Office of Federal Procurement Policy (OFPP), Office of Management and Budget (OMB).

ACTION: Notice and request for public comments.

SUMMARY: The Office of Federal Procurement Policy (OFPP) is requesting public comment on a proposed definition of the term ''Procurement Administrative Lead Time'' (PALT) and a plan for measuring and publicly reporting government-wide data on PALT for contracts and orders above the simplified acquisition threshold (SAT). This action is being undertaken in accordance with section 878 of the National Defense Authorization Act (NDAA) for FY 2019.

DATES: Interested parties should submit written comments to the address shown below within 30 days of this notice.

ADDRESSES: Please submit comments only and cite ''Procurement Administrative Lead Time'' in all correspondence. Comments may be submitted by any of the following methods:

- Online at *http://www.regulations.gov,*
- *Facsimile:* 202–395–5105.
- *Mail:* Curtina Smith, Office of Federal Procurement Policy, 725 17th St. NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtina Smith, *csmith@omb.eop.gov,* 202–395–3301.

SUPPLEMENTARY INFORMATION: Section 878 of the NDAA for 2019, Public Law 115–232, requires the Administrator of OFPP to develop and make available for public comment a definition of the term PALT. Section 878 further requires that

the Administrator develop a plan for measuring and publicly reporting data on PALT for Federal Government contracts and orders above the SAT.

OFPP is proposing to define PALT as ''the time between the date on which an initial solicitation for a contract or order is issued by a Federal department or agency and the date of the award of the contract or order.'' Section 878 includes this language as a suggested definition. Furthermore, this definition was adopted by the Department of Defense (DoD) pursuant section 886 of the NDAA for FY 18 and DoD implementing instructions. See ''Reporting 'Solicitation Date' in the Federal Procurement Data System'' June 14, 2018, available at *https://www.acq.osd.mil/dpap/policy/policyvault/USA001458-18-DPAP.pdf.*

In instances where draft solicitations are issued generally for the purpose of seeking input from interested parties to assist the Government in finalizing its solicitation, the issuance date for the ''initial solicitation'' for purposes of the PALT would be the date on which the final solicitation seeking offers, bids, or proposals is issued by the Government. In cases where no solicitation is required, 'the date on which an initial solicitation is issued' would be guided by the following instructions, which promote consistent implementation across both civilian and DoD agencies:

- For awards resulting from unsolicited proposals, 'the date on which an initial solicitation is issued' is the date on which the Government notifies the offeror of proposal acceptance.
- For orders placed against indefinite-delivery contracts where pricing is based on pre-priced line items included in the indefinite-delivery contract and no elements of the order's delivery or performance require negotiation, 'the date on which an initial solicitation is issued' is the date of the award of the order.
- For the award of a contract under a Broad Agency Announcement (BAA), 'the date on which an initial solicitation is issued' is the date when a final combined synopsis/solicitation is issued except:
  - For two-step BAAs, including white paper submissions for review, selection, and subsequent request for full proposals, 'the date on which an initial solicitation is issued' is the date when the Government signs the proposal request.
  - Under BAAs with calls, 'the date on which an initial solicitation is issued' is the date when the individual call is issued.
  - For open BAAs, when white papers and/or proposals are accepted for review over an extended period (typically open for a year or longer), the 'the date on which an initial solicitation is issued' is either the date when the Government signs a proposal request (white papers) or the date on which the proposal is submitted, whichever is earlier.

To support measuring and public reporting of PALT, OFPP proposes leveraging publicly available data in the Federal Procurement Data System—Next Generation (FPDS–NG), *i.e.,* the authoritative source for Federal Government procurement award data. The General Services Administration's Integrated Acquisition Environment has included in its June 2019 enhancement of FPDS–NG a change to add the ''solicitation date'' data field as a mandatory reporting requirement for all contracts or orders valued above the SAT. Now that data are centrally collected in FPDS–NG, agencies and the public will be able to use these data to obtain PALT information for any contract or order issued by the Federal Government that is valued above the SAT. In addition, FPDS–NG data can be used to evaluate PALT for specific types of acquisitions and to determine how timelines are impacted by the use of specific authorities, such as FAR Subpart 6.302–2, Unusual and Compelling Urgency, as well as other authorities that permit limited competition or noncompetitive awards. The public is invited to submit comments on both the proposed definition and plan for measuring PALT.

Establishing a common definition of PALT and a plan for measuring and publicly reporting PALT data are important steps in helping the Federal Government to understand and better address causes of procurement delays. PALT can help to drive continual process improvement and the pursuit of more innovative procurement practices, especially when the data are used in combination with other inputs for evaluating the overall effectiveness of the acquisition process in delivering value to the taxpayer, such as cost and the quality of the contractor's performance. PALT can also create incentives to drive greater efficiencies in the requirements development process, which has long been recognized as one of the most significant sources of delay in the acquisition lifecycle. For example, increased emphasis on PALT should encourage agencies to take greater advantage of facilitated requirements development workshops, where a trained facilitator leads a multi-functional integrated project team in the development of a mission critical acquisition requirement in days. Use of this practice has largely been limited to DoD but its promise makes it worthy of broader consideration across the Federal Government.

It is expected that as technology improves and the ability to capture better and more comprehensive procurement and requirements data becomes easier, there will be opportunity to collect and track additional data points and timeframes beyond those covered by the proposed definition. For example, the ability to capture data routinely on various aspects of requirements development could significantly enhance the insight derived from measuring PALT. Agencies that may already collect and track additional data points and timeframes outside of the proposed definition, such as from the time a complete requisition package is received by the procurement office, will be encouraged to maintain their broader efforts, as they are able, to assist in the management, support, and evaluation of agency procurement operations.

Michael E. Wooten,

Administrator for Federal Procurement Policy.

[FR Doc. 2020–00783 Filed 1–17–20; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[FDMS Docket No. NARA–20–0001; Agency No. NARA–2020–015]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on *regulations.gov* for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: NARA must receive comments by March 6, 2020.

ADDRESSES: You may submit comments by either of the following methods. You

must cite the control number, which appears on the records schedule in parentheses after the name of the agency that submitted the schedule.

• *Federal eRulemaking Portal: http://www.regulations.gov.*

• *Mail:* Records Appraisal and Agency Assistance (ACR); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Records Management Operations by email at *request.schedule@nara.gov,* by mail at the address above, or by phone at 301–837–1799.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule. We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as ''other'' documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact *request.schedule@nara.gov* for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we will post on *regulations.gov* a ''Consolidated Reply'' summarizing the comments, responding to them, and noting any changes we have made to the proposed records schedule. We will then send the schedule for final approval by the Archivist of the United States. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at *https://www.archives.gov/records-mgmt/rcs,* after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

Schedules Pending

1. Department of Homeland Security, Immigration and Customs Enforcement, Congressional Records (DAA–0567–2015–0011).

2. Department of Homeland Security, Immigration and Customs Enforcement, Office of Professional Responsibility Records (DAA–0567–2015–0012).

3. Department of Homeland Security, Immigration and Customs Enforcement, Intelligence Records (DAA–0567–2016–0003).

4. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Records of the General Counsel (DAA–0571–2018–0006).

5. Department of the Treasury, Internal Revenue Service, Public Inspection Files of Offers in Compromise (DAA–0058–2019–0004).

6. Central Intelligence Agency, Directorate of Digital Innovation, Records of the Publications Review Board (DAA–0263–2016–0003).

7. Federal Maritime Commission, Office of the Secretary, Commission Records (DAA–0358–2017–0007).

8. National Archives and Records Administration, Agency-wide, Research Room Reference Service Files (DAA–0064–2019–0009).

9. Peace Corps, Agency-wide, Unclaimed Volunteer Vital Records for Peace Corps Passport Applications (DAA–0490–2020–0001).

10. Securities and Exchange Commission, Division of Economic and Risk Analysis, Division of Economic and Risk Analysis Records (DAA–0266–2018–0008).

11. Surface Transportation Board, Agency-wide, Card File Dockets (DAA–0134–2016–0001).

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2020–00777 Filed 1–17–20; 8:45 am]

BILLING CODE 7515–01–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 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.

DATES: Comments should be received on or before February 20, 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: 3133–0103.

Type of Review: Extension of a currently approved collection.

Title: Recordkeeping and Disclosure Requirements Associated with Regulations B, E, M, and CC.

Abstract: This information collection request provides for the application of three CFPB rules and one FRB rule. NCUA has enforcement responsibility for these rules for federal credit unions. These rules are: Regulation B (''Equal Credit Opportunity Act,'' 12 CFR part 1002); Regulation E (''Electronic Fund Transfers,'' 12 CFR part 1005); Regulation M (''Consumer Leasing,'' 12 CFR part 1013); and Regulation CC (''Availability of Funds and Collection of Checks,'' 12 CFR part 229).

The third party disclosure and recordkeeping requirements in this collection are required by statute and regulation. The regulations prescribe certain aspects of the credit application and notification process, making certain disclosures, uniform methods for computing the costs of credit, disclosing credit terms and cost, resolving errors on certain types of credit accounts, and timing requirements and disclosures relating to the availability of deposited funds.

Affected Public: Private Sector: Not-for-profit institutions; Individuals or households.

Estimated Total Annual Burden Hours: 3,239,916.

OMB Number: 3133–0163.

Type of Review: Extension of a currently approved collection.

Title: Privacy of Consumer Financial Information, Regulation P, 12 CFR part 1016.

Abstract: Regulation P (12 CFR part 1016) requires credit unions to disclose its privacy policies to customers as well as offer customers a reasonable opportunity to opt out-in whole or in part-of those policies to further restrict the release of their personal financial information to nonaffiliated third parties. Credit unions are required to provide an initial privacy notice to customers that is clear and conspicuous, an annual notice of the privacy policies and practices of the institution, a revised notice to customers if triggered by specific changes to the existing policy, and a notice of the right of the customer to opt out of the institution's information sharing practices. Consumers who choose to exercise their opt-out right document this choice by returning an opt-out form or other permissible method.

Affected Public: Private Sector: Not-for-profit institutions; Individuals or households.

Estimated Total Annual Burden Hours: 426,248.

OMB Number: 3133–0187.

Type of Review: Extension of a currently approved collection.

Title: Reverse Mortgage Products—Guidance for Managing Reputation Risks.

Abstract: The Reverse Mortgage Guidance sets forth standards intended to ensure that financial institutions effectively assess and manage the compliance and reputation risks associated with reverse mortgage products. The information collection will allow NCUA to evaluate the adequacy of a federally-insured credit union's internal policies and procedures as they relate to reverse mortgage products.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 176.

OMB Number: 3133–0204.

Type of Review: Revision of a currently approved collection.

Title: NCUA Profile.

Form: NCUA Form 4501A.

Abstract: Sections 106 and 202 of the Federal Credit Union Act require federally insured credit unions (FICU) to make financial reports to the NCUA. Section 741.6 prescribes the method in which federally insured credit unions must submit this information to NCUA. NCUA Form 4501A, Credit Union Profile, is used to obtain non-financial data relevant to regulation and supervision such as the names of senior management and volunteer officials, and are reported through NCUA's online portal, CUOnline.

The financial and statistical information is essential to NCUA in carrying out its responsibility for supervising federal credit unions. The information also enables NCUA to monitor all federally insured credit unions with National Credit Union Share Insurance Fund (NCUSIF) insured share accounts.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 42,248.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on January 15, 2020.

Dated: January 15, 2020.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2020–00871 Filed 1–17–20; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act: Notice of Agency Meeting

TIME AND DATE: 10:00 a.m., Thursday, January 23, 2020.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street (All visitors must use Diagonal Road Entrance), Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. 2020 Annual Performance Plan.
2. Board Briefing, Civil Money Penalty Statutory Inflation Adjustment.
3. NCUA's Rules and Regulations, Credit Union Combination Transactions.
4. NCUA's Rules and Regulations, Subordinated Debt.
5. Federal Credit Union Loan Interest Rate Ceiling.

Recess: 11:30 a.m.

TIME AND DATE: 11:45 a.m., Thursday, January 23, 2020.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Supervisory Action. Closed pursuant to Exemptions (8), (9)(i)(B), and (9)(ii).
2. Personnel Action. Closed pursuant to Exemptions (2), and (6).
3. Personnel Action. Closed pursuant to Exemptions (2), and (6).

CONTACT PERSON FOR MORE INFORMATION: Gerard Poliquin, Secretary of the Board, Telephone: 703–518–6304.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2020–01010 Filed 1–16–20; 4:15 pm]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Astronomy and Astrophysics Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Astronomy and Astrophysics Advisory Committee (#13883) (Teleconference).

Date and Time: February 26, 2020; 12:00 p.m.–4:00 p.m.

Place: National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, Room C9080 (Teleconference).

Type of Meeting: Open. *http://www.nsf.gov/mps/ast/aaac.jsp.* Attendance information for the meeting will be forthcoming on the website.

Contact Person: Dr. Christopher Davis, Program Director, Division of Astronomical Sciences, Suite W 9136, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: 703–292–4910.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy (DOE) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the agencies.

Agenda: To provide updates on Agency activities and to discuss the Committee's draft annual report due 15 March 2020.

Dated: January 15, 2020.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2020–00866 Filed 1–17–20; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2017–0151]

Information Collection: Domestic Licensing of Production and Utilization Facilities; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Revision of existing information collection; request for comment; correction.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is correcting a notice that was published in the **Federal Register** on January 13, 2020 soliciting public comment on the revision of an existing collection of information. This action is necessary to correct the Docket ID listed in the body of the notice.

DATES: The correction takes effect on January 21, 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–2017–0151. 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 individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T6–A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@NRC.GOV.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** (FR) on January 13, 2020 (85 FR 1825), in FR Doc 2020–00284, on page 1826, column 1, lines 1 and 39, correct the Docket ID ''NRC–2018–0215'' to read ''NRC–2017–0151.''

Dated at Rockville, Maryland, this 14th day of January, 2020.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2020–00797 Filed 1–17–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of January 20, 27, February 3, 10, 17, 24, 2020.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Week of January 20, 2020

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/.*

Week of February 10, 2020—Tentative

There are no meetings scheduled for the week of February 10, 2020.

Week of February 17, 2020—Tentative

There are no meetings scheduled for the week of February 17, 2020.

Week of February 24, 2020—Tentative

Tuesday, February 25, 2020

9:00 a.m. Overview of Accident Tolerant Fuel Activities (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 15th day of January 2020.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2020–00906 Filed 1–16–20; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272, 50–311, and 50–354; NRC–2020–0023]

PSEG Nuclear LLC; Salem Nuclear Generating Station, Unit Nos. 1 and 2; Hope Creek Generating Station

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to licenses held by PSEG Nuclear LLC (PSEG, the licensee) for the operation of Salem Nuclear Generating Station, Unit Nos. 1 and 2 (Salem), and Hope Creek Generating Station (Hope Creek). The proposed license amendments would revise certain emergency response organization (ERO) positions for these facilities with the minimum staff ERO guidance specified in the ''Alternative Guidance for Licensee Emergency Response Organizations.'' The NRC is issuing an environmental assessment (EA) and finding of no significant impact (FONSI) associated with the proposed license amendments.

DATES: The EA and FONSI referenced in this document are available on January 21, 2020.

ADDRESSES: Please refer to Docket ID NRC–2020–0023 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0023. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: James Kim, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–4125; email: *James.Kim@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of amendments to Renewed Facility Operating License Nos. NPF–57, DPR–70, and DPR–75 for Hope Creek and Salem, respectively, located in Salem County, New Jersey.

In accordance with section 51.21 of title 10 of the *Code of Federal Regulations* (10 CFR), the NRC prepared the following EA that analyzes the environmental impacts of the proposed licensing action. Based on the results of this EA, and in accordance with 10 CFR 51.31(a), the NRC has determined not to prepare an environmental impact statement for the proposed licensing action and is issuing a FONSI.

II. Environmental Assessment

Description of the Proposed Action

The proposed action would revise certain ERO positions for these facilities with the minimum staff ERO guidance specified in the ''Alternative Guidance for Licensee Emergency Response Organizations.'' The on-shift and minimum ERO staffing requirements listed in the emergency plan would be revised. The proposed revisions include eliminating ERO positions and changing position descriptions. Specifically, the proposed revision would remove chemistry personnel from the on-shift ERO at each facility and revise employee duty descriptions.

The proposed action is in response to the licensee's application dated July 8, 2019, as supplemented by letter dated November 4, 2019.

Need for the Proposed Action

Nuclear power plant owners, Federal agencies, and State and local officials work together to create a system for emergency preparedness and response that will serve the public in the unlikely event of an emergency. An effective emergency preparedness program decreases the likelihood of an initiating event at a nuclear power reactor proceeding to a severe accident. Emergency preparedness does not affect the probability of the initiating event, but a high level of emergency preparedness increases the probability of accident mitigation if the initiating event proceeds beyond the need for initial operator actions.

Each licensee is required to establish an emergency plan to be implemented in the event of an accident, in accordance with 10 CFR 50.47 and appendix E to 10 CFR part 50. The emergency plan covers preparation for evacuation, sheltering, and other actions to protect individuals near plants in the event of an accident.

The NRC, as well as other Federal and State regulatory agencies, reviews the emergency plans to ensure that they provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

Separate from this EA, the NRC staff is reviewing a safety assessment of PSEG's proposed changes to the emergency plans for Hope Creek and Salem. This safety review will be documented in a safety evaluation. The safety evaluation of the proposed changes to the emergency plan will determine whether there continues to be reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at Hope Creek and Salem, in accordance with the standards of 10 CFR 50.47(b) and the requirements in appendix E to 10 CFR part 50.

The proposed action would align the emergency plans for Hope Creek and Salem with the NRC's guidance for EROs provided in the ''Alternative Guidance for Licensee Emergency Response Organizations.'' This

alternative guidance is also included in NUREG–0654/FEMA–REP–1, Revision 2, ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants, Final Report.'' This change would provide PSEG with greater flexibility in staffing ERO positions. This change would reflect changes in NRC regulations and guidance, as well as advances in technologies and best practices that have occurred since NUREG–0654/FEMA–REP–1, Revision 1, was published in 1980.

Environmental Impacts of the Proposed Action

The NRC staff has completed its evaluation of the environmental impacts of the proposed action.

The proposed action consists mainly of changes related to the staffing levels and positions specified in the emergency plans for Hope Creek and Salem. The on-shift and minimum ERO staffing requirements listed in the emergency plan would be revised. The revisions remove the chemistry personnel from the on-shift ERO.

Regarding potential nonradiological environmental impacts, the proposed action would have no direct impacts on land use or water resources, including terrestrial and aquatic biota, as it involves no new construction, ground disturbing activities, or modification of plant operational systems. There would be no changes to the quality or quantity of nonradiological effluents, and no changes to the plant's National Pollutant Discharge Elimination System permit would be needed. Changes in staffing levels and duty locations could result in minor changes to vehicular traffic and associated air pollutant emissions, but no significant changes in ambient air quality would be expected from the proposed changes. In addition, there would be no noticeable effect on socioeconomic and environmental justice conditions in the region and no potential to affect historical properties as the change in minor vehicle traffic is confined in the protected area. Therefore, there would be no significant nonradiological environmental impacts associated with the proposed action.

Regarding potential radiological environmental impacts, if the NRC staff's safety review of the proposed changes to the licensee's emergency plan determines that it continues to meet the standards of 10 CFR 50.47(b) and the requirements in appendix E to 10 CFR part 50, then the proposed action would not increase the probability or consequences of radiological accidents. Additionally, the proposed changes would have no direct radiological environmental impacts. There would be no change to the types or amounts of radioactive effluents that may be released and, therefore, there would be no change in occupational or public radiation exposure. Moreover, no changes would be made to plant buildings or the site property. Therefore, there would be no significant radiological environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered the denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the license amendment request would result in no change in current environmental impacts. Accordingly, the environmental impacts of the proposed action and the no-action alternative would be similar.

Alternative Use of Resources

There are no unresolved conflicts concerning alternative uses of available resources under the proposed action.

Agencies and Persons Consulted

No additional agencies or persons were consulted regarding the environmental impact of the proposed action. However, in accordance with 10 CFR 50.91(b), the licensee provided copies of its application to the State of New Jersey, and the NRC staff will consult with the State prior to issuance of the amendment.

III. Finding of No Significant Impact

The licensee has requested license amendments pursuant to 10 CFR 50.54(q) to revise the ERO positions identified in the emergency plans for Hope Creek and Salem by eliminating ERO positions and changing position descriptions. Specifically, the proposed revision would remove chemistry personnel from the on-shift ERO at each facility and revise employee duty descriptions. The license amendments would allow PSEG to make changes to the Hope Creek and Salem emergency plans related to staffing levels and positions specified in the emergency plan.

The NRC is considering issuing the requested amendments. The proposed action would not have a significant adverse effect on the probability of an accident occurring and would not have any significant radiological or nonradiological impacts. It would also not result in any changes to the types or amounts of radioactive effluents that may be released and, therefore, there would be no change in occupational or public radiation exposure. The proposed changes would only result in minor changes in staffing levels and a small change in air pollutant emissions associated with vehicular traffic.

In accordance with 10 CFR 51.21, the NRC prepared an EA for the proposed action. This FONSI incorporates by reference the EA in Section II of this document. Based on the results of the EA, the NRC concludes that the proposed action would not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined there is no need to prepare an environmental impact statement for the proposed action.

A previous NRC document that discusses the environmental impacts of operating Hope Creek and Salem in accordance with their renewed facility operating licenses is NUREG–1437, Supplement 45, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Hope Creek Generating Station and Salem Nuclear Generating Station, Units 1 and 2, Final Report,'' dated March 2011.

This FONSI and other related environmental documents may be examined and/or copied, for a fee, at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Publicly-available records are also accessible online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by email to *pdr.resource@nrc.gov*.

IV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS Accession No.
PSEG, ''License Amendment Request for Approval of Changes to Emergency Plan Staffing Requirements,'' dated July 8, 2019	ML19189A316
PSEG, ''Response to Request for Additional Information, Re: License Amendment Request for Approval of Changes to Emergency Plan Staffing Requirements,'' dated November 4, 2019	ML19308A595
NRC letter to the Nuclear Energy Institute, ''Alternative Guidance for Licensee Emergency Response Organizations,'' dated June 12, 2018	ML18022A352
NUREG-0654/FEMA-REP-1, Revision 2, ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants, Final Report,'' dated December 2019	ML19347D139
NUREG-1437, Supplement 45, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants.'' Regarding Hope Creek Generating Station and Salem Nuclear Generating station, Units 1 and 2,'' Final Report, dated March 2011	ML11089A021

Dated at Rockville, Maryland, this 15th day of January 2020.

For the Nuclear Regulatory Commission.

James S. Kim,

Project Manager, Plant Licensing Branch I, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–00821 Filed 1–17–20; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87964; File No. SR–MIAX–2020–01]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

January 14, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 3, 2020, Miami International Securities Exchange LLC (''MIAX Options'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'').

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the list of MIAX Select Symbols[3] contained in the Priority Customer Rebate Program (the ''Program'')[4] of the Exchange's Fee Schedule to delete the Select Symbols ''CELG,'' ''HTZ'' and ''WY'' from the Select Symbols list.

The Exchange initially created the list of MIAX Select Symbols on March 1, 2014,[5] and has added and removed option classes from that list since that time.[6] Select Symbols are rebated slightly higher in certain Program tiers than non-Select Symbols. The Exchange notes that historically, Select Symbols generally include a subset of classes of options that are included in the Penny Pilot Program, an industry-wide pilot program that provides for the quoting and trading of certain option classes in penny increments (the ''Penny Pilot Program''). The Penny Pilot Program allows the quoting and trading of certain option classes in minimum increments of $0.01 for all series in such option classes with a price of less than $3.00; and in minimum increments of $0.05 for all series in such option classes with a price of $3.00 or higher. The Penny Pilot Program was initiated at the then existing option exchanges in January 2007[7] and currently includes more than 300 of the most active option classes.

The Exchanges notes that current Select Symbol ''CELG'' will no longer be included in the Penny Pilot Program industry-wide beginning January 3, 2020 and Select Symbols ''HTZ'' and ''WY'' are no longer in the Penny Pilot Program. Accordingly, for business and competitive reasons, the Exchange proposes to amend the Fee Schedule to delete the symbols ''CELG,'' ''HTZ'' and ''WY'' from the list of MIAX Select Symbols contained in the Program as those Select Symbols are no longer in the Penny Pilot Program.

[3] The term ''MIAX Select Symbols'' means options overlying AAL, AAPL, AIG, AMAT, AMD, AMZN, BA, BABA, BB, BIDU, BP, C, CAT, CELG, CLF, CVX, DAL, EBAY, EEM, FB, FCX, GE, GILD, GLD, GM, GOOGL, GPRO, HAL, HTZ, INTC, IWM, JCP, JNJ, JPM, KMI, KO, MO, MRK, NFLX, NOK, ORCL, PBR, PFE, PG, QCOM, QQQ, RIG, S, SPY, T, TSLA, USO, VALE, WBA, WFC, WMB, WY, X, XHB, XLE, XLF, XLP, XOM and XOP.

[4] *See* section 1(a)(iii) of the Fee Schedule for a complete description of the Program.

[5] *See* Securities Exchange Act Release No. 71700 (March 12, 2014), 79 FR 15188 (March 18, 2014) (SR–MIAX–2014–13).

[6] *See* Securities Exchange Act Release Nos. 87790 (December 18, 2019), 84 FR 71037 (December 26, 2019) (SR–MIAX–2019–49); 85314 (March 14, 2019), 84 FR 10359 (March 20, 2019) (SR–MIAX–2019–07; 81998 (November 2, 2017), 82 FR 51897 (November 8, 2017) (SR–MIAX–2017–45); 81019 (June 26, 2017), 82 FR 29962 (June 30, 2017) (SR–MIAX–2017–29); 79301 (November 14, 2016), 81 FR 81854 (November 18, 2016) (SR–MIAX–2016–42); 74291 (February 18, 2015), 80 FR 9841 (February 24, 2015) (SR–MIAX–2015–09); 74288 (February 18, 2015), 80 FR 9837 (February 24, 2015) (SR–MIAX–2015–08); 73328 (October 9, 2014), 79 FR 62230 (October 16, 2014) (SR–MIAX–2014–50); 72567 (July 8, 2014), 79 FR 40818 (July 14, 2014) (SR–MIAX–2014–34); 72356 (June 10, 2014), 79 FR 34384 (June 16, 2014) (SR–MIAX–2014–26); 71700 (March 12, 2014), 79 FR 15188 (March 18, 2014) (SR–MIAX–2014–13).

[7] *See* Securities Exchange Act Release Nos. 55154 (January 23, 2007), 72 FR 4743 (February 1, 2007) (SR–CBOE–2006–92); 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (SR–ISE–2006–62); 54886 (December 6, 2006), 71 FR 74979 (December 13, 2006) (SR–Phlx–2006–74); 54590 (October 12, 2006), 71 FR 61525 (October 18, 2006) (SR–NYSEArca–2006–73); and 54741 (November 9, 2006), 71 FR 67176 (November 20, 2006) (SR–Amex–2006–106). *See also* Exchange Rule 510, Interpretation and Policy .01.

2. Statutory Basis

The Exchange believes that its proposal to amend the Fee Schedule is consistent with Section 6(b) of the Act [8] in general, and furthers the objectives of Section 6(b)(4) of the Act,[9] in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using its facilities, and 6(b)(5) of the Act,[10] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

In particular, the proposal to delete the symbols ''CELG,'' ''HTZ'' and ''WY'' from the list of MIAX Select Symbols contained in the Program is consistent with Section 6(b)(4) of the Act because the proposed changes will allow for continued benefit to investors by providing them an updated list of MIAX Select Symbols contained in the Program on the Fee Schedule.

The Exchange believes that the proposal to amend an option class that qualifies for the credit for transactions in MIAX Select Symbols is fair, equitable and not unreasonably discriminatory. The Exchange believes that the Program itself is reasonably designed because it incentivizes providers of Priority Customer [11] order flow to send that Priority Customer order flow to the Exchange in order to receive a credit in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. The Program, which provides increased incentives in certain tiers in high volume select symbols, is also reasonably designed to increase the competitiveness of the Exchange with other options exchanges that also offer increased incentives to higher volume symbols.

The Exchange also believes that its proposal is consistent with Section 6(b)(5) of the Act because it will apply equally to all Priority Customer orders in MIAX Select Symbols in the Program. All similarly situated Priority Customer orders in MIAX Select Symbols are subject to the same rebate schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change should enable the Exchange to continue to attract and compete for order flow with other exchanges. Notwithstanding the removal of the symbols CELG, HTZ and WY from the Select Symbols list, the Exchange's rebates remain highly competitive with those of other exchanges, and therefore should enable the Exchange to continue to attract and compete for order flow with other exchanges which offer comparable rebates for particular symbols. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and to attract order flow.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[12] and Rule 19b–4(f)(2) [13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2020–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2020–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2020–01, and should be submitted on or before February 11, 2020.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(1) and (b)(5).

[11] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Exchange Rule 100.

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–00802 Filed 1–17–20; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87960; File No. SR–CboeBYX–2020–001]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

January 14, 2020.

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 January 2, 2020, Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend its fee schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/byx/*), 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule to amend the rate for liquidity adding orders that yield fee code ''MM''.[3] Additionally, the Exchange proposes to remove Non-Displayed Liquidity Incentives and replace them with Step-Up Tiers.

The Exchange first notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 13 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information,[4] no single registered equities exchange has more than 16% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow.

The Exchange in particular operates a ''Taker-Maker'' model whereby it pays credits to Members that remove liquidity and assesses fees to those that add liquidity. The Exchange's Fee Schedule sets forth the standard rebates and rates applied per share for orders that remove and provide liquidity, respectively. Particularly, for securities at or above $1.00, the Exchange provides a standard rebate of $0.0005 per share for orders that remove liquidity and assesses a fee of $0.0019 per share for orders that add liquidity. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

[3] ''MM'' is appended to non-displayed orders that add liquidity using Mid-Point Peg.

[4] *See* Cboe Global Markets, U.S. Equities Market Volume Summary (December 26, 2019), available at *https://markets.cboe.com/us/equities/market_statistics/.*

Proposed Change To Replace Non-Displayed Liquidity Incentives With Step-Up Tiers

In response to the competitive environment, the Exchange offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides incremental incentives for Members to strive for higher or different tier levels by offering increasingly higher discounts or enhanced benefits for satisfying increasingly more stringent criteria or different criteria. For example, pursuant to footnote 2 of the Fee Schedule, the Exchange currently offers a Mid-Point Peg Tier that provides Members with a reduced fee of $0.0005 for liquidity adding orders that yield fee code ''MM'', which generally has a fee of $0.0010. To qualify for the Mid-Point Peg Tier, a Member must have an ADAV [5] of greater than or equal to 0.30% of the TCV.[6] Also pursuant to footnote 2 of the Fee Schedule, the Exchange offers a Non-Displayed Volume Tier that provides Members with a reduced fee of $0.0004 for liquidity adding orders that yield fee code ''HA'',[7] which generally has a fee of $0.00240, or ''MM'', which as noted above generally has a fee of $0.0010. To qualify for the Non-Displayed Volume Tier, a Member must have an ADAV of greater than or equal to 0.075% of the TCV as Non-Displayed Orders that yield fee codes ''HA'', ''HI'',[8] or ''MM''. The aforementioned Non-Displayed Liquidity Incentives are designed to encourage Members that provide non-displayed liquidity adding orders on the Exchange to increase their order flow, thereby contributing to a deeper and more liquid market to the benefit of all market participants.

The Exchange now proposes to remove the existing tiers related to Non-Displayed Liquidity Incentives on the Exchange, and to instead offer ''Step-Up Tiers''. Specifically, the Exchange proposes to remove the Mid-Point Peg

[5] ADAV means average daily volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

[6] TCV means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[7] ''HA'' is appended to non-displayed orders that add liquidity.

[8] ''HI'' is appended to non-displayed orders that receive price improvement and add liquidity.

Tier and Non-Displayed Volume Tier described above. In place of the existing Non-Displayed Liquidity Incentives, the Exchange proposes to offer Step-Up Tiers that will provide Members an opportunity to receive a discounted rate from the standard fee assessment for displayed liquidity adding orders that yield fee codes ''B'',[9] ''V'',[10] or ''Y''.[11] The Exchange proposes criteria under Tier 1 of the Step-Up Tiers that would offer a reduced fee of $0.0016 for liquidity adding orders that yield fee code ''B'', ''V'', or ''Y'', which generally have a fee of $0.0019. To qualify for proposed Tier 1, the Member must have a ''Step-Up Add TCV'' from December 2019 of greater than or equal to 0.05%. The Exchange proposes to add a definition of ''Step-Up Add TCV'' to the Fee Schedule which would mean ADAV as a percentage of TCV in the relevant baseline month subtracted from current ADAV as a percentage of TCV. The Exchange notes that this definition is consistent with the definitions in the Fees Schedules of the Exchange's affiliated exchanges.[12]

The proposed Tier 1 under the Step-Up Tiers is designed to provide Members that submit displayed liquidity on the Exchange a further incentive to contribute to a deeper, more liquid market, in turn, providing additional execution opportunities at transparent prices as a result of such increased, displayed liquidity. Further, while the Exchange proposes to eliminate the Non-Displayed Liquidity Incentives, as discussed in further detail below, the Exchange also proposes to reduce the current fee assessed to non-displayed liquidity adding orders yielding fee code ''MM''. Therefore, the Exchange will offer similarly reduced fees to orders yielding fee code ''MM'' under the proposed amendment as currently offered to such orders under the Non-Displayed Liquidity Incentives. The Exchange believes that this benefits all Members by enhancing overall market quality and contributing towards a robust and well-balanced market ecosystem. The Exchange notes the proposed tier is available to all Members and is competitively achievable for all Members that submit displayed order flow, in that, all firms that submit the requisite displayed order flow could compete to meet the tier.

Proposed Change to Fee Code ''MM''

As stated above, the Exchange currently charges fees for liquidity adding orders that yield fee code ''MM'' of $0.0010 in securities priced at or above $1.00. Orders yielding fee code ''MM'' in securities priced below $1.00 are not assessed a fee. The Exchange now proposes to reduce the current fee of $0.0010 per share to $0.0005 per share for orders yielding fee code ''MM'' in securities priced at or above $1.00. Orders yield fee code ''MM'' in securities priced below $1.00 would continue to be free. As the proposed fee for orders yielding fee code ''MM'' is lower than the current fee for such orders, the Exchange believes the proposed amendment will encourage Members to increase their liquidity on the Exchange. Further, as ''MM'' orders would no longer be able to receive reduced fees under the Non-Displayed Liquidity Incentives, the proposed fee change to the ''MM'' fee code would offer another means for such orders to receive a similar fee reduction that would require no minimum ADAV. Therefore, ''MM'' orders would be eligible to receive a reduced fee of $0.0005 on a less stringent basis.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[13] in general, and furthers the objectives of Section 6(b)(4),[14] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members.

The Exchange operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members.

In particular, the Exchange believes the proposed amendment to replace the Non-Displayed Liquidity Incentives with Step-Up Tiers is reasonable because it provides an additional opportunity for Members to receive a discounted fee by means of liquidity-adding displayed orders. The Exchange notes that relative volume-based incentives and discounts have been widely adopted by other exchanges,[15] and are reasonable, equitable and non-discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value of an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Additionally, as noted above, the Exchange operates in a highly competitive market. The Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several taker-maker exchanges. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds. These competing pricing schedules, moreover, are presently comparable to those that the Exchange provides, including the pricing of comparable tiers.[16]

Moreover, the Exchange believes the proposed Step-Up Tier is a reasonable means to encourage Members to increase their overall displayed order flow to the Exchange based on increasing their daily total added volume (ADAV) above a percentage of the total volume (TCV). Particularly, the Exchange believes that adopting a Step-Up Tier based on a Member's displayed adding orders will encourage displayed liquidity providing Members to provide for a deeper, more liquid market, and, as a result, increased execution opportunities at improved price levels and, thus, overall order flow. The Exchange believes that these increases

[9] ''B'' is appended to displayed orders that add liquidity to BYX (Tape B).

[10] ''V'' is appended to displayed orders that add liquidity to BYX (Tape A).

[11] ''Y'' is appended to displayed order that add liquidity to BYX (Tape C).

[12] *See* Cboe BZX U.S. Equities Exchange Fee Schedule, Definitions; Cboe EDGX U.S. Equities Exchange Fee Schedule, Definitions.

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(4).

[15] *See, e.g.,* Cboe BZX Equities Exchange Fee Schedule, Footnote 2, Step-Up Tiers, Tier 1, which offers an enhanced rebate for certain volume-adding orders; *see also* NYSE Arca Equities, Fees and Charges, Step Up Tiers.

[16] *See e.g.,* NYSE Arca Equities, Fees and Charges, Step Up Tiers which offers rebates between $0.0022–$0.0034 per share if the corresponding required criteria per tier is met. NYSE Arca Equities' Step Up Tiers similarly require Members to increase their relative liquidity each month over a predetermined baseline.

will benefit all Members by contributing towards a robust and well-balanced market ecosystem. Increased overall order flow benefits all investors by deepening the Exchange's liquidity pool, providing greater execution incentives and opportunities, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The proposed discount (*i.e.,* fee reduction) per share amount also does not represent a significant departure from the rebates currently offered, or required criteria, under the Exchange's existing tiers. For example, the fee assessed under the existing Mid-Point Peg Tier, for which, as stated, a Member must have a daily volume add (ADAV) of 0.30% or greater than the TCV, is $0.0005 per share. In other words, under this tier, Members receive a $0.0005 ''discount'' from the standard $0.0010 assessed fee for orders yielding fee code ''MM''. Orders yielding fee code ''B'', ''V'', and ''Y'' generally have a fee of $0.00190, and therefore the proposed discount offered under Tier 1 (*i.e.,* $0.0016) is comparable to the discount currently offered under the Mid-Point Peg Tier.

The Exchange believes that the proposal represents an equitable allocation of fees and is not unfairly discriminatory because all Members are eligible for the proposed Step-Up Tiers, and would have the opportunity to meet the Tier 1 criteria and receive the proposed fee reduction if such criteria is met. The proposed tier is designed as an incentive to any and all Members interested in meeting the tier criteria to submit additional displayed order flow to achieve the proposed discount. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would definitely result in any Members qualifying for this tier. While the Exchange has no way of predicting with certainty how the proposed tier will impact Member activity, the Exchange anticipates that at up to ten Members will be able to compete for and reach the proposed tier. The Exchange anticipates that these will include multiple Member types, including liquidity providers and broker-dealers, each providing distinct types of order flow to the Exchange to the benefit of all market participants. For example, broker-dealer customer order flow provides more trading opportunities, which attracts Market Makers. Increased Market Maker activity facilitates tighter spreads, which potentially increases order flow from other market participants. The Exchange also notes that the proposed tier will not adversely impact any Member's pricing or their ability to qualify for other rebate tiers. Rather, should a Member not meet the proposed criteria, the Member will merely not receive a reduced fee. Furthermore, the proposed fee would uniformly apply to all Members that meet the required criteria under proposed Step-Up Tiers.

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 intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional displayed order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [17]

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies to all Members equally in that all Members are eligible for the proposed tier, have a reasonable opportunity to meet the tier's criteria and will all receive the proposed fee rate if such criteria is met. Additionally the proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the modified tier criteria would incentivize market participants to direct displayed liquidity and, as a result, executable order flow and improved price transparency, to the Exchange. Greater overall order flow and pricing transparency benefits all market participants on the Exchange by providing more trading opportunities, enhancing market quality, and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem, which benefits all market participants.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges and off-exchange venues and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 16% of the market share.[18] Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, 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.'' [19] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . .''.[20] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or

[17] Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

[18] *See supra* note 5 [sic].

[19] See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[20] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

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) [21] of the Act and subparagraph (f)(2) of Rule 19b–4 [22] 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) [23] 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 No. SR–CboeBYX–2020–001 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 No. SR–CboeBYX–2020–001. 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 No. SR–CboeBYX–2020–001, and should be submitted on or before February 11, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–00804 Filed 1–17–20; 8:45 am]

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[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(2).

[23] 15 U.S.C. 78s(b)(2)(B).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87957; File No. SR–NYSE–2020–02]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List To Eliminate the Alternative $10,000 Monthly Fee Cap for Executions at the Open

January 14, 2020.

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 January 2, 2020, New York Stock Exchange LLC (''NYSE'' 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 its Price List to (1) eliminate the alternative $10,000 monthly fee cap for executions at the open; (2) eliminate the separate fee for verbal executions by Floor brokers at the close and clarify that Floor broker executions swept into the close include verbal interest; (3) adopt an alternate way to qualify for the Tier 4 Adding Credit in Tape A securities; (4) eliminate the NYSE Crossing Session II fee cap; and (5) revise the requirements for the credits available to Supplemental Liquidity Providers (''SLPs'') under SLP Provide Tier 1 for adding liquidity to the Exchange in Tapes B and C securities. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to (1) eliminate the alternative $10,000 monthly fee cap for executions at the open; (2) eliminate the separate fee for verbal executions by Floor brokers at the close and clarify that Floor broker executions swept into the close include verbal interest; (3) adopt

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

an alternate way to qualify for the Tier 4 Adding Credit in Tape A securities; (4) eliminate the NYSE Crossing Session II (''NYSE CSII'') fee cap; and (5) revise the requirements for the credits available to SLPs under SLP Provide Tier 1 for adding liquidity to the Exchange in Tapes B and C securities.

The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders by offering further incentives for member organizations to send additional displayed liquidity to the Exchange.

The Exchange proposes to implement the fee changes effective January 2, 2020.

Competitive Environment

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. 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.'' [4]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [5] Indeed, equity trading is currently dispersed across 13 exchanges,[6] 31 alternative trading systems,[7] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 18% market share (whether including or excluding auction volume).[8] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, for the month of November 2019, the Exchange's market share of intraday trading (*i.e.,* excluding auctions) in Tapes A, B and C securities combined was only 9.4%.[9]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to non-marketable order flow that would provide displayed liquidity on an Exchange, member organizations can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide liquidity on an exchange.

To respond to this competitive environment, the Exchange has established incentives for its member organizations to send orders for execution at the open and close and to utilize the Exchange's after-hours crossing session.[10] In addition, the Exchange has established incentives for its member organizations who submit orders that provide and remove liquidity on the Exchange, including cross-tape incentives for member organizations and SLPs based on submission of orders that provide displayed and non-displayed liquidity in Tapes B and C securities. The proposed fee change is designed to eliminate certain incentives that have not encouraged member organizations to increase their activity on the Exchange and to revise certain other incentives in order to attract additional order flow to the Exchange, as described below.

Proposed Rule Change

Executions at the Open

For securities priced $1.00 or more, the Exchange currently charges fees of $0.0010 per share for executions at open, and $0.0003 per share for Floor broker executions at the open, subject to $30,000 cap per month per member organization, provided the member organization executes an average daily trading volume (''ADV'') that adds liquidity to the Exchange during the billing month (''Adding ADV''),[11] excluding liquidity added by a Designated Market Maker (''DMM''), of at least five million shares, unless the lower $10,000 cap per month per member organization applies. The lower fee cap applies to member organizations that execute an ADV that takes liquidity from the NYSE during the billing month (''Taking ADV''), excluding liquidity taken by a DMM, of at least 1.20% of NYSE consolidated average daily volume (''CADV'') and an ADV of orders for execution at the open (''Open ADV'') of at least 8 million shares.

The Exchange proposes to eliminate the alternative $10,000 cap. As proposed, the fees of $0.0010 per share for executions at open, and $0.0003 per share for Floor broker executions at the open, would remain subject to the $30,000 cap per month per member organization. The requirements for qualifying for the $30,000 cap would remain unchanged.

The Exchange is eliminating the lower alternative cap because it has not encouraged member organizations to increase their activity in order to qualify for the lower fee cap as significantly as the Exchange had anticipated. The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues. There is currently only 1 member organization that qualifies for the alternative fee cap.

Verbal Interest at the Close

Currently, the Exchange charges a fee of $0.0010 per share for verbal executions by Floor brokers at the close.

The Exchange does not currently charge member organizations for the first 750,000 ADV of the aggregate of executions at the close for d-Quote, Floor broker executions swept into the close, excluding verbal interest, and executions at the close, excluding market at-the-close (''MOC'') Orders, limit at-the-close (''LOC'') Orders and Closing Offset (''CO'') Orders. After the first 750,000 ADV of the aggregate of executions at the close by a member organization, d-Quotes are charged fees differentiated by time of entry (or last modification).[12] All other orders from

[4] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7–10–04) (Final Rule) (''Regulation NMS'').

[5] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Transaction Fee Pilot for NMS Stocks Final Rule) (''Transaction Fee Pilot'').

[6] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[7] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[8] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[9] *See id.*

[10] CSII runs on the Exchange from 4:00 p.m. to 6:30 p.m. Eastern Time and handles member organization crosses of baskets of securities of aggregate-priced buy and sell orders. *See* NYSE Rules 900–907.

[11] Footnote 2 to the Price List defines ADV as ''average daily volume'' and ''Adding ADV'' as ADV that adds liquidity to the Exchange during the billing month. The Exchange is not proposing to change these definitions.

[12] d-Quotes last modified by the member organization earlier than 25 minutes before the scheduled close of trading are eligible for a $ 0.0003 per share fee. d-Quotes last modified from 25 minutes up to but not including 3 minutes before the scheduled close of trading are eligible for a $0.0007 per share fee. d-Quotes last modified in the last 3 minutes before the scheduled close of trading for firms in MOC/LOC Tiers 1 and 2 are eligible for a $0.0008 per share fee; all other firms are eligible for $0.0010 per share. As set forth in footnote 10

Continued

continuous trading swept into the close are charged $0.0007.

The Exchange proposes to eliminate the separate $0.0010 charge per share for verbal executions and clarify that verbal interest at the close would be counted for purposes of Floor Broker executions swept into the close that are subject to a charge of $0.0007 per share for shares executed in excess of an ADV of 750,000 shares. To effectuate this change, the Exchange would replace ''excluding'' with ''including'' before ''verbal interest.''

The purpose of this proposed change is to incentivize member organizations to send additional orders to the Exchange for execution at the close by lowering the fee for verbal interest at the close. As proposed, verbal interest swept into close would not be charged for the first 750,000 ADV of the aggregate of executions at the close by a member organization, and would be charged at the lower rate of $0.0007 per share for shares executed in excess of an ADV of 750,000 shares.

Tier 4 Adding Credit

Under current Tier 4, a member organization that adds liquidity to the Exchange in securities with a share price of $1.00 or more would be entitled to a per share credit of $0.0015 if the member organization (i) has Adding ADV in MPL orders that is at least 4 million shares ADV, excluding any liquidity added by a DMM, and (ii) executes MOC and LOC orders of at least 0.10% of NYSE CADV.

The Exchange proposes to add an alternative way for member organizations to qualify for the Tier 4 Adding Credit. As proposed, member organizations that do not meet the current requirements and have

(i) An Adding ADV that is at least 0.175% of NYSE CADV,

(ii) ADV of the member organization's total close activity (MOC/LOC and other executions at the close) on the NYSE of at least 0.05% of NYSE CADV, and

(iii) an Adding ADV 25,000 shares in Orders designated as ''retail'' (*i.e.,* orders that satisfy the Retail Modifier requirements of Rule 13) that add liquidity to the NYSE would qualify for the current per share credit of $0.0015.

For example, in a month where NYSE CADV is 3.5 billion shares, Member Organization A has and Adding ADV of 7 million shares, a total close ADV of 3.5 million shares, and an Adding ADV of 30,000 shares in retail orders that add liquidity to the Exchange. Member Organization A would have previously received a credit of $0.0012 per share for adding liquidity as it falls short of the requirements for Adding Tiers 1, 2, 3, and 4. The proposed change would qualify Member Organization A for a $0.0015 credit because Member Organization A has an Adding ADV of 0.20% of NYSE CADV, a total close ADV that is 0.10% of NYSE CADV, and an Adding ADV in retail orders of 30,000 shares, all of which meet the proposed requirements.

The purpose of the proposed change is to increase the incentive for order flow providers to send liquidity-providing orders to the Exchange. As described above, member organizations with liquidity-providing orders have a choice of where to send those orders. The Exchange believes that offering an alternate way for member organizations to qualify for a tiered credit, more member organizations will be able to choose to route their liquidity-providing orders to the Exchange to qualify for the credit. There are no member firms that currently qualifies for both the current and proposed requirements for Tier 4. The Exchange cannot predict with certainty how many member organizations would avail themselves of this opportunity, but believes that at least 7 member organizations could qualify for the tier. Additional liquidity-providing orders benefits all market participants because it provides greater execution opportunities on the Exchange.

CSII Fee Cap

Currently, the Exchange charges a fee of $0.0004 per share (both sides) for executions in NYSE CSII.[13] Fees for executions in CSII are capped at $200,000 per month per member organization unless an alternative, lower cap of $15,000 per month per member organization applies for member organizations that execute a Taking ADV, excluding liquidity taken by a DMM, of at least 1.20% of NYSE CADV and Open ADV of at least 8 million shares.

The Exchange proposes to eliminate the alternative lower $15,000 cap. The $0.0004 per share fee for executions in NYSE CSII would remain unchanged, and would be subject to a $200,000 cap per month per member organization.

The Exchange is eliminating the lower alternative cap because it has not encouraged member organizations to increase their activity in order to qualify for the lower fee cap as significantly as the Exchange had anticipated. The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues in the after-hours market. There is currently only 1 member organization that qualifies for the alternative fee cap.

SLP Provide Tier 1

Under current SLP Provide Tier 1, SLPs that add displayed liquidity to the Exchange in securities with a per share price at or above $1.00 and that:

- Add liquidity for all assigned Tape B securities of a CADV of at least 0.10% for Tape B or for all assigned Tape C Securities of a CADV of at least 0.075% for Tape C, and
- meet the 10% average or more quoting requirement in 400 or more assigned securities in Tapes B and C combined pursuant to Rule 107B are eligible for a $0.0033 per share credit per tape in an assigned Tape B or C security where the SLP meets the additional requirement of adding liquidity for all assigned securities of at least 0.30% of Tape B and Tape C CADV combined.

The Exchange proposes to lower the Tape B and C CADV requirement to 0.25% of Tape B and Tape C CADV combined. The other requirements to qualify for the SLP Provide Tier 1 credit would remain unchanged.

The proposed fee change is designed to attract additional order flow to the Exchange by making it easier to qualify for the higher SLP Provide Tier 1 Credit based on adding liquidity to the Exchange in Tape B and C Securities. There are currently 2 SLPs that qualify for the $0.0033 SLP Provide Tier 1 per share credit based on their current trading profile on the Exchange, but the Exchange believes that at least 3 more SLPs could qualify for the tier if they so choose. However, without having a view of SLP's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any SLP directing orders to the Exchange in order to qualify for this tier.

The proposed changes are not otherwise intended to address other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Sections

to the Price List, the phrase ''last modified'' means the later of the order's entry time or the final modification or cancellation time for any d-Quote order with the same broker badge, entering firm mnemonic, symbol, and side.

[13] *See* note 10, *supra.*

[14] 15 U.S.C. 78f(b).

6(b)(4) and (5) of the Act,[15] in particular, 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 Reasonable

As discussed above, the Exchange operates in a highly fragmented and competitive market. 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.'' [16]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to non-marketable orders which provide liquidity on an Exchange, member organizations can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

Given this competitive environment, the proposal represents a reasonable attempt to attract additional order flow to the Exchange. As noted, the Exchange's market share of intraday trading (*i.e.,* excluding auctions) for the month of November 2019, in Tapes A, B and C securities was only 9.4%.[17]

Tier 4 Adding Credit

Specifically, the Exchange believes that proposing an alternative way for member organizations to qualify for the Tier 4 Adding Credit is reasonable because it would incentivize member organizations to send additional liquidity-providing orders to the Exchange in Tape A securities, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. As noted above, the Exchange operates in a highly competitive environment, particularly for attracting non-marketable order flow that provides liquidity on an exchange. The Exchange believes that requiring member organizations to alternatively have an Adding ADV that is at least 0.175% of NYSE CADV, an ADV of the member organization's total close activity (MOC/LOC and other executions at the close) on the NYSE of at least 0.05% of NYSE CADV, and an Adding ADV 25,000 shares in Orders designated as ''retail'' (*i.e.,* orders that satisfy the Retail Modifier requirements of Rule 13) that add liquidity to the NYSE in order to qualify for the Tier 4 Adding Credit is reasonable because it would encourage additional displayed liquidity on the Exchange and because market participants benefit from the greater amounts of displayed liquidity present on the Exchange.

Without having a view of a member organization's activity on other markets and off-exchange venues, the Exchange believes the proposed revised Tier 4 Adding Credit would provide an incentive for member organizations to send liquidity-providing orders to the Exchange. As described above, member organizations with liquidity-providing orders have a choice of where to send those orders. The Exchange believes that offering an alternate way for member organizations to qualify for a tiered credit, more member organizations will be able to choose to route their liquidity-providing orders to the Exchange to qualify for the credit. As previously noted, no member organizations are qualifying for the Tier 4 Adding Credit. Based on the profile of liquidity-providing member organizations generally, the Exchange believes additional member organizations could qualify for the Tier 4 Adding Credit if they choose to direct order flow to, and increase quoting on, the Exchange. Additional liquidity-providing orders benefits all market participants because it provides greater execution opportunities on the Exchange.

SLP Provide Tier 1

Similarly, the Exchange believes lowering the Tape B and C CADV requirement to 0.25% of Tape B and Tape C CADV combined in order for member organizations that are SLPs to qualify for the current $0.0033 credit per share per tape is reasonable because it would provide further incentives for such member organizations to provide additional liquidity to a public exchange in Tape B and C securities to reach the proposed Adding ADV requirement of 0.30%, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. All member organizations would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities. The Exchange believes the proposal would provide an incentive for member organizations that are SLPs to route additional liquidity-providing orders to the Exchange in Tape B and C securities. As noted above, the Exchange operates in a highly competitive environment, particularly for attracting non-marketable order flow that provides liquidity on an exchange.

Without having a view of a member organization's activity on other markets and off-exchange venues, the Exchange believes the proposed additional requirement to qualify for the SLP credit would provide an incentive for member organizations who are SLPs to submit additional adding liquidity to the Exchange in Tape B and C securities. As previously noted, a number of SLPs are qualifying for the SLP Provide Tier 1 credit. Based on the profile of liquidity-providing SLPs generally, the Exchange believes additional SLPs could qualify for the displayed and non-displayed SLP Provide Tier 1credits if they choose to direct order flow to, and increase quoting on, the Exchange.

Elimination of Obsolete Pricing

The Exchange believes that eliminating the alternative $10,000 cap for executions at the open for member organizations, and the alternative $15,000 cap for executions in NYSE CSII are reasonable because member organizations have not increased their activity significantly as the Exchange anticipated they would in order to qualify for the respective cap.

Verbal Interest at the Close

The Exchange believes that eliminating the separate $0.0010 charge per share for verbal executions and clarifying that verbal interest at the close would be counted for purposes of Floor Broker executions swept into the close that are subject to a charge of $0.0007 per share for shares executed in excess of an ADV of 750,000 shares is reasonable as it conforms the treatment of verbal executions swept into the close with that afforded to all other orders from member organizations (except Designated Market Makers and Supplemental Liquidity Providers) swept into the close. The Exchange

[15] 15 U.S.C. 78f(b)(4) & (5).

[16] *See* Regulation NMS, 70 FR at 37499.

[17] *See* note 9 *supra.*

believes it is reasonable to reduce the fee for verbal executions. The Exchange's Closing Auction is a recognized industry reference point,[18] and member organizations receive a substantial benefit from the Exchange in obtaining high levels of executions at the Exchange's closing price on a daily basis.

The Proposal is an Equitable Allocation of Fees

The Exchange believes the proposal equitably allocates its fees among its market participants. The Exchange believes its proposal equitably allocates its fees among its market participants by fostering liquidity provision and stability in the marketplace.

Tier 4 Adding Credit

The Exchange believes its proposal to offer an alternative way for member organizations to qualify for the Tier 4 Adding Credit equitably allocates its fees among its market participants.

The Exchange is not proposing to adjust the amount of the Tier 4 Adding Credit, which will remain at the current level for all market participants. Rather, by providing an alternative way for member organizations to qualify for the Tier 4 Adding Credit, the proposal would continue to encourage member organizations to send orders that provide liquidity to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants, and promoting price discovery and transparency. The proposal would also enhance order execution opportunities for member organizations from the substantial amounts of liquidity present on the Exchange. All member organizations would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities.

The Exchange believes that offering an alternate way for member organizations to qualify for a tiered credit, more member organizations will be able to choose to route their liquidity-providing orders to the Exchange to qualify for the credit. As previously noted, a number of member organizations are qualifying for the Tier 4 Adding Credit. Based on the profile of liquidity-providing member organizations generally, the Exchange believes additional member organizations could qualify for the Tier 4 Adding Credit if they choose to direct order flow to, and increase quoting on, the Exchange. Additional liquidity-providing orders benefits all market participants because it provides greater execution opportunities on the Exchange.

SLP Provide Tier 1

The Exchange believes that lowering the Tape B and C CADV requirement in order to qualify for the SLP Provide Tier 1 credit equitably allocates its fees among its market participants.

The Exchange is not proposing to adjust the amount of the SLP Provide Tier 1 credit, which will remain at the current level for all market participants. For the reasons discussed above, the Exchange believes that the proposed change to the SLP Provide Tier 1 requirements would encourage the SLPs to add liquidity to the market in Tape B and C securities, thereby providing customers with a higher quality venue for price discovery, liquidity, competitive quotes and price improvement. The proposed change will thereby encourage the submission of additional liquidity to a national securities exchange, thus promoting price discovery and transparency and enhancing order execution opportunities for member organizations from the substantial amounts of liquidity present on the Exchange. All member organizations would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities. As the Exchange previously noted that, a number of the current SLP firms are qualifying for the SLP Provide Tier 1credit based on adding displayed liquidity and adding non-displayed liquidity. Based on the profile of liquidity-providing SLPs generally, the Exchange believes that additional SLPs could qualify for the displayed and non-displayed SLP Provide Tier 1credits if they choose to direct order flow to, and increase quoting on, the Exchange.

Elimination of Obsolete Pricing

The Exchange believes that eliminating the alternative $10,000 cap for executions at the open and the alternative $15,000 cap for executions in NYSE CSII constitutes an equitable allocation of fees because it would encourage the execution of additional liquidity on a public exchange, thereby promoting price discovery and transparency. Further, the Exchange believes that eliminating these caps is equitable because it would apply equally to all member organizations that submit orders to the NYSE open and that participate in CSII, and that all such member organizations would continue to be subject to the same fee structure and access to the Exchange's market would continue to be offered on fair and nondiscriminatory terms.

Verbal Interest at the Close

The Exchange believes that eliminating the separate $0.0010 charge per share for verbal executions and clarifying that verbal interest at the close would be counted for purposes of Floor Broker executions swept into the close in excess of an ADV of 750,000 shares equitably allocates its fees among its market participants.

The Exchange believes the proposed change is equitable because it would continue to encourage member organizations to send orders to the close, thereby contributing to robust levels of liquidity, which benefits all market participants. The proposal would encourage the submission of additional liquidity to a national securities exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations from the substantial amounts of liquidity that are present on the Exchange during the close. Moreover, the Exchange believes that the proposal is also equitable because it would apply equally to all similarly situated member organizations.

The Proposal is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, member organizations are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

Tier 4 Adding Credit

The Exchange believes its proposal to offer an alternative way for member organizations to qualify for the Tier 4 Adding Credit is not unfairly discriminatory because the proposal would be provided on an equal basis to all member organizations that add liquidity by meeting the new proposed alternative requirements, who would all be eligible for the same credit on an equal basis. Accordingly, no member organization already operating on the Exchange would be disadvantaged by this allocation of fees. Further, as noted, the Exchange believes the proposal would provide an incentive for member organizations to continue to send orders that provide liquidity to the Exchange, to the benefit of all market participants.

[18] For example, the pricing and valuation of certain indices, funds, and derivative products require primary market prints.

SLP Provide Tier 1

The Exchange believes that lowering the Tape B and C CADV requirement in order to qualify for the SLP Provide Tier 1 credit is not unfairly discriminatory because the lower requirement to achieve the fee would be applied to all similarly situated member organizations, who would all be eligible for the same credit based on the revised requirement on an equal basis. The proposal to lower the Tape B and C CADV requirement neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because the lower threshold would be applied to all similarly situated member organizations and other market participants, who would all be eligible for the same credit on an equal basis. Accordingly, no member organization already operating on the Exchange would be disadvantaged by this allocation of fees.

Elimination of Obsolete Pricing

The proposal to eliminate obsolete caps for executions at the open and in NYSE CSII are not unfairly discriminatory because the proposal neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because elimination of the caps would apply to all similarly situated member organizations and other market participants, who would all be eligible for the same credits on an equal basis. Accordingly, no member organization already operating on the Exchange would be disadvantaged by the proposed allocation of fees.

Verbal Interest at the Close

The proposal to eliminate the separate $0.0010 charge per share for verbal executions and clarify that verbal interest at the close would be counted for purposes of Floor Broker executions swept into the close that are subject to a charge of $0.0007 per share for shares executed in excess of an ADV of 750,000 shares is not unfairly discriminatory because it will apply uniformly to all Floor brokers, who are the only market participants that can enter verbal interest at the close. Accordingly, no member organization already operating on the Exchange would be disadvantaged by the proposed allocation of fees.

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 foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[19] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for member organizations. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [20]

Intramarket Competition. The proposed changes are designed to attract additional order flow to the Exchange. The Exchange believes that the proposed changes would continue to incentivize market participants to direct displayed order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages member organizations to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants on the Exchange. The current credits would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted, the Exchange's market share of intraday trading (*i.e.,* excluding auctions) for the month of November 2019, in Tapes A, B and C securities combined was only 9.4%.[21] In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution. The Exchange also believes that the proposed change is designed to provide the public and investors with a Price List that is clear and consistent, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [22] of the Act and subparagraph (f)(2) of Rule 19b–4 [23] 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) [24] 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.

[19] 15 U.S.C. 78f(b)(8).

[20] Regulation NMS, 70 FR at 37498–99.

[21] *See* note 9 *supra.*

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(2).

[24] 15 U.S.C. 78s(b)(2)(B).

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–NYSE–2020–02 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–NYSE–2020–02. 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–NYSE–2020–02 and should be submitted on or before February 11, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–00801 Filed 1–17–20; 8:45 am]

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[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87958; File No. SR–ICC–2020–001]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Relating to the ICC Clearing Rules

January 14, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4,[2] notice is hereby given that on January 9, 2020, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''SEC'' or the ''Commission'') the proposed rule change, security-based swap submission, or advance notice as described in Items I, II and III below, which Items have been prepared by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change, security-based swap submission, or advance notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

The principal purpose of the proposed rule change is to revise its Clearing Rules (the ''Rules'')[3] to consider the possibility of ICC receiving proceeds from default insurance.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms used but not defined herein have the meanings specified in the Rules.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

(a) Purpose

ICC proposes amendments to Chapters 1 and 8 of the ICC Rules as they relate to default insurance that is intended to cover specified losses resulting from a Clearing Participant (''CP'') default. The proposed amendments consider the possibility of ICC receiving proceeds from default insurance, which would be applied as part of the resources available to ICC in the event of a CP default. Such default insurance would provide additional default resources to cover losses from CP defaults, prior to the need to use guaranty fund resources from non-defaulting CPs. ICC believes that such revisions will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. ICC proposes to make such changes effective following Commission approval of the proposed rule change. The proposed revisions are described in detail as follows.

ICC proposes to update ICC Rule 102 to reference ''Insurance Proceeds'' which would be defined in Rule 802(b)(i)(A)(4).

ICC proposes to amend ICC Rule 802(a), which addresses the application of General Guaranty Fund contributions of a defaulting CP, to incorporate a reference to any insurer, surety or guarantor of the obligations of the defaulting CP to reflect that certain recoveries from a defaulting CP may be owed to the insurance provider. ICC does not propose any changes to the order of priority set forth in ICC Rule 802(a).

ICC proposes changes to ICC Rule 802(b) to integrate default insurance into the default waterfall. ICC proposes to amend the default waterfall in Rule 802(b)(i) to include the proceeds of default insurance (if any) as a default resource, to be applied after the application of ICC's own guaranty fund contributions of $50 million and prior to the application of guaranty fund contributions of non-defaulting CPs. Under proposed ICC Rule 802(b)(i)(A)(4), ICC defines Insurance Proceeds and clarifies that ICC has no obligation to obtain or maintain default insurance. ICC proposes to re-number the following clauses accordingly. Further, amended ICC Rule 802(b)(iii) provides that ICC may use the contributions of non-defaulting CPs to the guaranty fund (and assessments on

such CPs) prior to the receipt of proceeds owed under the default insurance, provided that those CPs are reimbursed from the insurance proceeds when received.

ICC proposes changes to ICC Rule 802(c) to reflect that certain recoveries from or in respect of a defaulting CP may be owed to the insurance provider.

ICC proposes conforming changes to ICC Rule 808 that address Reduced Gains Distribution in order to permit Reduced Gains Distribution to occur prior to the end of the waiting period under the default insurance policy. Amended ICC Rule 808(b) clarifies that a claim under a default insurance policy will not preclude ICC from applying Reduced Gains Distribution after a CP default. Amended ICC Rule 808(m) provides that proceeds from a default insurance policy will be available as a potential resource to pay CPs that have been subject to Reduced Gains Distribution.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act [4] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to the extent applicable, derivative agreements, contracts and transactions; to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible; and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(F),[5] because ICC believes that the proposed rule change will promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions, and contribute to the safeguarding of securities and funds associated with security-based swap transactions in ICC's custody or control, or for which ICC is responsible. The proposed changes amend the default waterfall in ICC Rule 802(b)(i)(A) to include the proceeds of default insurance, if any, as a default resource, to be applied after the application of ICC's own guaranty fund contributions and prior to the application of guaranty fund contributions of non-defaulting CPs. Placing the proceeds from any default insurance that ICC may receive before the guaranty fund resources of non-defaulting CPs in the default waterfall is generally favorable to non-defaulting CPs and enhances ICC's procedures that are designed to protect and ensure the safety of CP funds and assets. The default insurance provides additional default resources, after the exhaustion of the defaulting CP's margin and guaranty fund contributions and ICC's own guaranty fund contributions. In ICC's view, the proposed changes to the ICC Rules enhance ICC's ability to manage the risk of defaults by providing additional default resources to cover losses from CP defaults, prior to the need to use guaranty fund resources from non-defaulting CPs, thereby promoting the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions and the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible. As such, the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions and to contribute to the safeguarding of securities and funds associated with security-based swap transactions in ICC's custody or control, or for which ICC is responsible within the meaning of Section 17A(b)(3)(F) of the Act.[6]

In addition, the proposed rule change is consistent with the relevant requirements of Rule 17Ad–22.[7] Rule 17Ad–22(b)(3) [8] requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the two CP families to which it has the largest exposures in extreme but plausible market conditions. ICC believes that the proposed revisions enhance its default waterfall and default management procedures. As described above, the proposed amendments contemplate the possibility of ICC receiving proceeds from default insurance, which would provide additional default resources to cover losses from CP defaults, prior to the need to use guaranty fund resources from non-defaulting CPs. Conforming changes are also proposed to ICC Rule 808 to permit Reduced Gains Distribution to occur prior to the end of the waiting period under the default insurance policy and to provide that proceeds from a default insurance policy will be available as a potential resource to pay CPs that have been subject to Reduced Gains Distribution. Such amendments consider the possibility of ICC receiving proceeds from default insurance, which, in ICC's view, represents a tool that strengthens ICC's ability to manage its financial resources and withstand the pressures of defaults, consistent with the requirements of Rule 17Ad–22(b)(3).[9]

Rule 17Ad–22(d)(11) [10] requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to make key aspects of the clearing agency's default procedures publicly available and establish default procedures that ensure that the clearing agency can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default. ICC's default management rules and procedures contained in the ICC Rules, the Initial Default Auction Procedures, and the Secondary Auction Procedures are publically available on ICC's website. The proposed changes to the ICC Rules integrate default insurance into the default waterfall, providing additional default resources to cover losses from CP defaults, prior to the need to use guaranty fund resources from non-defaulting CPs. Amended ICC Rule 802(b)(iii) provides that ICC may use the contributions of non-defaulting CPs to the guaranty fund (and assessments on such CPs) prior to the receipt of proceeds owed under the default insurance, provided that those CPs are reimbursed from the insurance proceeds when received. Given that it can be relatively time consuming to make and process an insurance claim, this provision ensures that the existence of default insurance does not interfere with ICC's default management and allows ICC to continue its default management process without having to wait for the payment of insurance proceeds. Moreover, the proposed changes to ICC Rule 808 permit Reduced Gains Distribution to occur prior to the end of the waiting period under the default insurance policy. The proposed amendments thus ensure that ICC can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default, consistent with the requirements of Rule 17Ad–22(d)(11).[11]

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] *Id.*

[6] *Id.*

[7] 17 CFR 240.17Ad–22.

[8] 17 CFR 240.17Ad–22(b)(3).

[9] *Id.*

[10] 17 CFR 240.17Ad–22(d)(11).

[11] *Id.*

(B) Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition. The proposed changes to the ICC Rules will apply uniformly across all market participants. Therefore, ICC does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove 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, security-based swap submission, or advance notice is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICC–2020–001 on the subject line.

Paper Comments

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–ICC–2020–001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, security-based swap submission, or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission, or advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at *https://www.theice.com/clear-credit/regulation.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2020–001 and should be submitted on or before February 11, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–00806 Filed 1–17–20; 8:45 am]

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[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87959; File No. SR–CBOE–2019–035]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Regarding Off-Floor Position Transfers

January 14, 2020.

On July 3, 2019, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rule relating to off-floor position transfers. The proposed rule change was published for comment in the **Federal Register** on July 23, 2019.[3] On August 6, 2019, the Exchange filed Amendment No. 1 to the proposed rule change.[4] On September 4, 2019, the Commission extended the time period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the propose rule change, to October 21, 2019.[5] On October 7, 2019, the Exchange filed Amendment No. 2 to the proposed rule change.[6] The Commission received two

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86400 (July 17, 2019), 84 FR 35438 (''Notice'').

[4] In Amendment No. 1, the Exchange deleted from the proposed rule change the proposal to permit off-floor risk-weighted asset (''RWA'') transfers. The exchange subsequently refiled the RWA transfer proposal as a separate proposed rule change filing in SR–CBOE–2019–044. *See* Securities Exchange Release No. 87107 (September 25, 2019), 84 FR 52149 (October 1, 2019) (order approving proposed rule change to adopt Cboe Rule 6.49B regarding off-floor RWA transfers). When the Exchange filed Amendment No. 1 to CBOE–2019–035, it also submitted the text of the amendment as a comment letter to the filing, which the Commission made publicly available at *https://www.sec.gov/comments/sr-cboe-2019-035/srcboe2019035-5917170-189047.pdf.*

[5] *See* Securities Exchange Act Release No. 86861 (September 4, 2019), 84 FR 47627 (September 10, 2019).

[6] In Amendment No. 2, the Exchange updated cross-references to Cboe rules throughout the proposed rule change to reflect separate amendments it made to its rulebook in connection with the Exchange's technology migration, which it subsequently completed on October 7, 2019. When the Exchange filed Amendment No. 2 to CBOE–2019–035, it also submitted the text of the amendment as a comment letter to the filing, which the Commission made publicly available at *https://www.sec.gov/comments/sr-cboe-2019-035/srcboe2019035-6258833-192955.pdf.* The Commission

comment letters on the proposal.[7] On October 21, 2019, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule changes (''OIP'').[8] The Commission received two additional comments in response to the Notice and OIP, including a response from the Exchange.[9]

Section 19(b)(2) of the Act [10] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on July 23, 2019.[11] January 19, 2020 is 180 days from that date, and March 19, 2020 is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, the issues raised in the comment letters that have been submitted in connection therewith, and the Exchange's response to comments. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[12] designates March 19, 2020 as the date by which the Commission should either approve or disapprove the proposed rule change (File No. SR–CBOE–2019–035).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–00803 Filed 1–17–20; 8:45 am]

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notes that in addition to the cross-references updated in Amendment No. 2, the Exchange relocated Rule 6.49A to Rule 6.7 in its post-migration rulebook and made conforming changes to its proposed rule change to reflect that new rule number.

[7] *See* Letter to Vanessa Countryman, Secretary, Commission, dated September 24, 2019, from John Kinahan, Chief Executive Officer, Group One Trading, L.P., *available at https://www.sec.gov/comments/sr-cboe-2019-035/srcboe2019035-6193332-192497.pdf* (''Group One Letter'') and Letter to Brent J. Fields, Secretary, Commission, dated August 19, 2019, from Gerald D. O'Connell, Compliance Coordinator, Susquehanna International Group, LLP, *available at https://www.sec.gov/comments/sr-cboe-2019-035/srcboe2019035-5985436-190350.pdf* (''SIG August 2019 Letter'').

[8] *See* Securities Exchange Act Release No. 87374, 84 FR 57542 (October 25, 2019) (''OIP'').

[9] *See* Letter to Vanessa Countryman, Secretary, Commission, dated November 15, 2019, from Laura G. Dickman, Vice President, Associate General Counsel, Cboe Exchange, Inc., *available at https://www.sec.gov/comments/sr-cboe-2019-035/srcboe2019035-6434377-198588.pdf* (''Cboe Response Letter'') and Letter to Vanessa Countryman, Secretary, Commission, dated December 12, 2019, from Gerald D. O'Connell, Compliance Coordinator, Susquehanna International Group, LLP, *available at https://www.sec.gov/comments/sr-cboe-2019-035/srcboe2019035-6535880-200548.pdf* (''SIG December 2019 Letter'').

[10] 15 U.S.C. 78s(b)(2).

[11] *See* Notice, *supra* note 3.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33746; 812–14949]

First Eagle BDC, LLC, et al.

January 14, 2020.

AGENCY: Securities and Exchange Commission (''Commission'')

ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions that otherwise would be prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1.

SUMMARY OF APPLICATION: Applicants request an order to permit certain business development companies and closed-end management investment companies to co-invest in portfolio companies with each other and with affiliated investment funds and accounts.

APPLICANTS: First Eagle BDC, LLC (''FE BDC''), First Eagle BDC Adviser, LLC (''FE BDC Adviser''), First Eagle Private Credit, LLC (''FE Private Credit''), First Eagle Private Credit Advisors, LLC (''FE Private Credit Advisors''), First Eagle Investment Management, LLC (''First Eagle''), and the following funds (referred to collectively as the ''Existing Affiliated Funds''): First Eagle Direct Lending Fund I, LP First Eagle Direct Lending Fund I (EE), LP; First Eagle Direct Lending Fund I (Parallel), LP; First Eagle DL Fund I Aggregator LLC; NewStar Arlington Senior Loan Program LLC; First Eagle Berkeley Fund CLO LLC; First Eagle Clarendon Fund CLO LLC; NewStar Commercial Loan Funding 2016–1 LLC; NewStar Commercial Loan Funding 2017–1 LLC; First Eagle Commercial Loan Originator I LLC; NewStar Exeter Fund CLO LLC; NewStar Fairfield Fund CLO Ltd.; First Eagle Warehouse Funding I LLC; and First Eagle Dartmouth Holding LLC.

FILING DATES: The application was filed on May 28, 2019 and amended on October 17, 2019.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 10, 2020, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. Applicants: David O'Connor, First Eagle Investment Management, LLC, 1345 Avenue of the Americas, New York, NY 10105, and Thomas Friedmann and Stephen Bier, Dechert LLP, One International Place, 40th Floor, 100 Oliver Street, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Kyle R. Ahlgren, Senior Counsel, at 202–551–6857, or Holly L. Hunter-Ceci, Assistant Chief Counsel, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Introduction

1. The applicants request an order of the Commission under sections 17(d) and 57(i) of the Act and rule 17d–1 thereunder (the ''Order'') to permit, subject to the terms and conditions set forth in the application (the ''Conditions''), a Regulated Fund [1] (or

[1] ''Regulated Funds'' means (a) FE BDC (the ''Existing Regulated Fund''), (b) the Future Regulated Funds (defined below) and (c) the BDC Downstream Funds (defined below).

Continued

''Future Regulated Fund'' means a closed-end management investment company (a) that is registered under the Act or has elected to be regulated as a BDC and (b) whose investment adviser or sub-adviser is an Adviser (defined below).

''BDC Downstream Fund'' means with respect to any Regulated Fund that is a BDC, an entity (a) that the BDC directly or indirectly controls, (b) that is not controlled by any person other than the BDC (except a person that indirectly controls the entity solely because it controls the BDC), (c) that would be an investment company but for Section 3(c)(1) or 3(c)(7) of the Act, (d) whose investment adviser is an Adviser and (e) that is not a Wholly Owned Investment Sub (defined below).

''Adviser'' means any Existing Adviser (defined below) and any Future Adviser (defined below); *provided* that an Adviser serving as a sub-adviser to an Affiliated Fund (defined below) is included in this term only if such Adviser controls the entity. The term Adviser does not include any primary investment adviser to an Affiliated Fund or a Regulated Fund whose sub-adviser is an Adviser, except that such primary investment adviser is deemed to be an Adviser for purposes of Conditions 2(c)(iv), 13 and 14 only. The primary investment adviser to an Affiliated Fund or a Regulated Fund whose sub-adviser is an Adviser will not source any Potential Co-Investment Transactions (defined below) under the requested Order.

''Wholly Owned Investment Sub'' means any entity (i) that is wholly owned by an Existing Regulated Fund or a Future Regulated Fund (with such Regulated Fund at all times holding, beneficially and of record, 100% of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments and issue debt on behalf or in lieu of such Regulated Fund; (iii) with respect to which such Regulated Fund's Board has the sole authority to make all determinations with respect to the entity's participation under the Conditions to this Application; and (iv) that either (a) would be an investment company but for Section 3(c)(1) or 3(c)(7) of the Act or (b) relies on Rule 3a–7 under the Act .

''Existing Adviser'' means First Eagle, FE Private Credit, and FE Private Credit Advisors.

''Future Adviser'' means any future investment adviser that (i) controls, is controlled by or is under common control with First Eagle, (ii)(a) is registered as an investment adviser under the Advisers Act or (b) is a relying adviser of an investment adviser that is registered under the Advisers Act and that controls, is controlled by or is under common control with First Eagle, and (iii) is not a Regulated Fund or a subsidiary of a Regulated Fund.

''Affiliated Fund'' means (a) any Existing Affiliated Fund and (b) any entity (i) whose investment adviser or sub-adviser is an Adviser, (ii) that either (x) would be an investment company but for Section 3(c)(1) or 3(c)(7) of the Act or (y) relies on Rule 3a–7 under the Act, and (iii) that is not a BDC Downstream Fund (together with each such entity's direct and indirect wholly owned subsidiaries); *provided* that an entity sub-advised by an Adviser is included in this term only if such Adviser serving as sub-adviser controls the entity.

''Potential Co-Investment Transaction'' means any investment opportunity in which a Regulated Fund (or its Wholly Owned Investment Sub) could not participate together with one or more Affiliated Funds, one or more FE Proprietary Accounts (defined below), and/or one or more other Regulated Funds (or its Wholly Owned Investment Sub) without obtaining and relying on the Order.

''FE Proprietary Accounts'' means (a) FE Private Credit, (b) FE Private Credit Advisors and (c) any entity that (i) is a wholly- or majority-owned subsidiary of First Eagle, (ii) is advised by an Adviser and (iii) from time to time, may hold various financial assets in a principal capacity. For the avoidance of doubt, neither the Regulated Funds nor the Affiliated Funds shall be deemed to be FE Proprietary Accounts.

any Wholly Owned Investment Sub of such Regulated Fund), on the one hand, and one or more other Regulated Funds (or any Wholly Owned Investment Sub of such Regulated Fund), one or more Affiliated Funds and/or one ore more FE Proprietary Accounts, on the other hand, to participate in the same investment opportunities where such participation would otherwise be prohibited under section 17(d) or 57(a)(4) and the rules under the Act.[2]

Applicants

2. FE BDC is a Delaware limited liability company and structured as an externally managed, non-diversified closed-end management investment company that will elect to be regulated as a business development company (''BDC'') under the Act.[3] FE BDC will be managed by a Board[4] that will be comprised of five directors, three of whom will be Independent Directors of FE BDC.[5]

3. FE BDC Adviser is a Delaware limited liability company and is registered with the Commission as an investment adviser under the Advisers Act. FE BDC Adviser will serve as the investment adviser to FE BDC. Subject to the general supervision of the FE BDC Board, FE BDC Adviser will be responsible for the overall management of FE BDC's activities and for the supervision and ongoing monitoring of FE Private Credit, but FE Private Credit will be responsible for the day-to-day management of FE BDC's investment portfolio.

4. FE Private Credit is a Delaware limited liability company registered with the Commission as an investment adviser under the Advisers Act. FE Private Credit serves as the investment adviser to certain Existing Affiliated Funds and will serve as the sub-adviser to FE BDC. FE Private Credit will be responsible for originating certain prospective investments, conducting research and due diligence investigations on potential investments, analyzing investment opportunities, negotiating and structuring investments and monitoring the investments and portfolio companies of FE BDC and certain Existing Affiliated Funds that it manages on an ongoing basis.

5. First Eagle is a Delaware limited liability company registered with the Commission as an adviser under the Advisers Act. First Eagle is the parent company of each of FE BDC Adviser, FE Private Credit, and FE Private Credit Advisors and is a subsidiary of First Eagle Holdings, Inc., a holding company.

6. The Existing Affiliated Funds are the investment funds identified in Schedule A to the application. Applicants represent that each Existing Affiliated Fund is a separate and distinct legal entity and would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act. FE Private Credit manages each of the Existing Affiliated Funds with the exception of First Eagle Warehouse Funding I LLC and First Eagle Dartmouth Holding LLC, which are managed by First Eagle DL Fund I Aggregator LLC.

7. Applicants state that a Regulated Fund may, from time to time, form one or more Wholly Owned Investment Subs. Such a subsidiary may be prohibited from investing in a Co-Investment Transaction with a Regulated Fund (other than its parent) or any Affiliated Fund or FE Proprietary Account because it would be a company controlled by its parent Regulated Fund for purposes of section 57(a)(4) and rule 17d–1. Applicants request that each Wholly Owned Investment Sub's participation in any such transaction be treated, for purposes of the Order, as though the parent Regulated Fund were participating directly.

[2] A ''Co-Investment Transaction'' is any transaction in which a Regulated Fund (or its Wholly Owned Investment Sub) participates together with one or more Affiliated Funds, one or more FE Proprietary Accounts, and/or one or more other Regulated Funds (or its Wholly Owned Investment Sub) in reliance on the requested Order. All existing entities that currently intend to rely on the Order have been named as applicants and any existing or future entities that may rely on the Order in the future will comply with the terms and Conditions set forth in the application.

[3] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in section 55(a)(1) through 55(a)(3) and makes available significant managerial assistance with respect to the issuers of such securities.

[4] ''Board'' means (a) with respect to a Regulated Fund other than a BDC Downstream Fund, the board of directors (or the equivalent) of the Regulated Fund and (b) with respect to a BDC Downstream Fund, the Independent Party (defined below) of the BDC Downstream Fund.

''Independent Party'' means, with respect to a BDC Downstream Fund, (a) if the BDC Downstream Fund has a board of directors (or the equivalent), the board or (b) if the BDC Downstream Fund does not have a board of directors (or the equivalent), a transaction committee or advisory committee of the BDC Downstream Fund.

[5] ''Independent Director'' means a member of the Board of any relevant entity who is not an ''interested person'' as defined in Section 2(a)(19) of the Act. No Independent Director of a Regulated Fund (including any non-interested member of an Independent Party) will have a financial interest in any Co-Investment Transaction, other than indirectly through share ownership in one of the Regulated Funds.

Applicants' Representations

A. Allocation Process

8. Applicants represent that each Existing Adviser has established, and each Future Adviser will establish, rigorous processes for allocating initial investment opportunities, opportunities for subsequent investments in an issuer and dispositions of securities holdings reasonably designed to treat all clients fairly and equitably. Further, applicants represent that these processes will be extended and modified in a manner reasonably designed to ensure that the additional transactions permitted under the Order will both (i) be fair and equitable to the Regulated Funds and the Affiliated Funds and (ii) comply with the Conditions.

9. Specifically, applicants state that each Existing Adviser is, and each Future Adviser will be, organized and managed such that the individual portfolio managers, as well as the teams and committees of portfolio managers, analysts and senior management (''Investment Teams'' and ''Investment Committees''), responsible for evaluating investment opportunities and making investment decisions on behalf of clients are promptly notified of the opportunities. If the Order is granted, the Advisers will establish, maintain and implement policies and procedures reasonably designed to ensure that, when such opportunities arise, the Advisers to the relevant Regulated Funds are promptly notified and receive the same information about the opportunity as any other Advisers considering the opportunity for their clients or as any FE Proprietary Accounts considering the opportunity for themselves. In particular, consistent with Condition 1, if a Potential Co-Investment Transaction falls within the then-current Objectives and Strategies [6] and any Board-Established Criteria [7] of a Regulated Fund, the policies and procedures will require that the relevant portfolio managers, Investment Teams and/or Investment Committees responsible for that Regulated Fund receive sufficient information to allow the Regulated Fund's Adviser to make its independent determination and recommendations under the Conditions.

10. The Adviser to each applicable Regulated Fund will then make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances.[8] If the Adviser to a Regulated Fund deems the Regulated Fund's participation in such Potential Co-Investment Transaction to be appropriate, then it will formulate a recommendation regarding the proposed order amount for the Regulated Fund.

11. Applicants state that, for each Regulated Fund and Affiliated Fund whose Adviser recommends participating in a Potential Co-Investment Transaction, the Adviser will formulate a proposed order amount. Prior to the External Submission (as defined below), each proposed order amount may be reviewed and adjusted, in accordance with the Advisers' written allocation policies and procedures, by a credit opportunity allocation committee to be established by the Advisers on which senior management and at least one legal/compliance person participate. The order of a Regulated Fund or Affiliated Fund resulting from this process is referred to as its ''Internal Order''. The Internal Order will be submitted for approval by the Required Majority [9] of any participating Regulated Funds in accordance with the Conditions.

12. If the aggregate Internal Orders for a Potential Co-Investment Transaction do not exceed the size of the investment opportunity immediately prior to the submission of the orders to the underwriter, broker, dealer or issuer, as applicable (the ''External Submission''), then each Internal Order will be fulfilled as placed. If, on the other hand, the aggregate Internal Orders for a Potential Co-Investment Transaction exceed the size of the investment opportunity immediately prior to the External Submission, then the allocation of the opportunity will be made pro rata on the basis of the size of the Internal Orders.[10] If, subsequent to such External Submission, the size of the opportunity is increased or decreased, or if the terms of such opportunity, or the facts and circumstances applicable to the Regulated Funds' or the Affiliated Funds' consideration of the opportunity, change, the participants will be permitted to submit revised Internal Orders in accordance with written allocation policies and procedures that

[6] ''Objectives and Strategies'' means (i) with respect to any Regulated Fund other than a BDC Downstream Fund, its investment objectives and strategies, as described in its most current filings with the Commission under the Securities Act of 1933 (the ''Securities Act''), the Securities Exchange Act of 1934, as amended, and the Act, and its most current report to stockholders, and (ii) with respect to any BDC Downstream Fund, those investment objectives and strategies described in its disclosure documents (including private placement memoranda and reports to equity holders) and organizational documents (including operating agreements).

[7] ''Board-Established Criteria'' means criteria that the Board of a Regulated Fund may establish from time to time to describe the characteristics of Potential Co-Investment Transactions regarding which the Adviser to the Regulated Fund should be notified under Condition 1. The Board-Established Criteria will be consistent with the Regulated Fund's Objectives and Strategies. If no Board-Established Criteria are in effect, then the Regulated Fund's Adviser will be notified of all Potential Co-Investment Transactions that fall within the Regulated Fund's then-current Objectives and Strategies. Board-Established Criteria will be objective and testable, meaning that they will be based on observable information, such as industry/sector of the issuer, minimum EBITDA of the issuer, asset class of the investment opportunity or required commitment size, and not on characteristics that involve a discretionary assessment. The Adviser to the Regulated Fund may from time to time recommend criteria for the Board's consideration, but Board-Established Criteria will only become effective if approved by a majority of the Independent Directors. The Independent Directors of a Regulated Fund may at any time rescind, suspend or qualify their approval of any Board-Established Criteria, though applicants anticipate that, under normal circumstances, the Board would not modify these criteria more often than quarterly.

[8] With respect to FE Proprietary Accounts other than FE Private Credit and FE Private Credit Advisors, Applicants acknowledge that such FE Proprietary Accounts are not funds advised by Advisers because they are advised by Advisers pursuant to investment management agreements. The Applicants do not believe that the participation of the FE Proprietary Accounts in Co-Investment Transactions would raise any regulatory or mechanical concerns different from those discussed with respect to the Affiliated Funds. With respect to Potential Co-Investment Transactions within a Regulated Fund's Objectives and Strategies and Board-Established Criteria that are considered by a FE Proprietary Account, such Potential Co-Investment Transactions will be referred to the Advisers of the Regulated Funds by the Adviser of the FE Proprietary Account to ensure that Condition 1(a) will be satisfied.

[9] ''Required Majority'' means a required majority, as defined in section 57(o) of the Act. In the case of a Regulated Fund that is a registered closed-end fund, the Board members that make up the Required Majority will be determined as if the Regulated Fund were a BDC subject to section 57(o). In the case of a Regulated Fund that is a registered closed-end fund, the Board members that make up the Required Majority will be determined as if the Regulated Fund were a BDC subject to Section 57(o). In the case of a BDC Downstream Fund with a board of directors (or the equivalent), the members that make up the Required Majority will be determined as if the BDC Downstream Fund were a BDC subject to Section 57(o). In the case of a BDC Downstream Fund with a transaction committee or advisory committee, the committee members that make up the Required Majority will be determined as if the BDC Downstream Fund were a BDC subject to Section 57(o) and as if the committee members were directors of the fund.

[10] The Advisers will maintain records of all proposed order amounts, Internal Orders and External Submissions in conjunction with Potential Co-Investment Transactions. Each applicable Adviser will provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with the Conditions.

''Eligible Directors'' means, with respect to a Regulated Fund and a Potential Co-Investment Transaction, the members of the Regulated Fund's Board eligible to vote on that Potential Co-Investment Transaction under section 57(o) of the Act (treating any registered investment company or series thereof as a BDC for this purpose).

the Advisers will establish, implement and maintain; *provided* that, if the size of the opportunity is decreased such that the aggregate of the original Internal Orders would exceed the amount of the remaining investment opportunity, then upon submitting any revised order amount to the Board of a Regulated Fund for approval, the Adviser to the Regulated Fund will also notify the Board promptly of the amount that the Regulated Fund would receive if the remaining investment opportunity were allocated pro rata on the basis of the size of the original Internal Orders. The Board of the Regulated Fund will then either approve or disapprove of the investment opportunity in accordance with Condition 2, 6, 7, 8 or 9, as applicable.

B. Follow-On Investments

13. Applicants state that from time to time the Regulated Funds, Affiliated Funds and FE Proprietary Accounts may have opportunities to make Follow-On Investments [11] in an issuer in which a Regulated Fund and one or more other Regulated Funds, one or more Affiliated Funds and/or one or more FE Proprietary Accounts previously have invested.

14. Applicants propose that Follow-On Investments would be divided into two categories depending on whether the Regulated Funds and Affiliated funds (and potentially FE Proprietary Accounts) holding investments in the issuer previously participated in a Co-Investment Transaction with respect to the issuer and continue to hold any securities acquired in a Co-Investment Transaction for that issuer, including any Pre-Boarding Investments.[12] If such Regulated Funds and Affiliated Funds (and potentially FE Proprietary Accounts) had previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Follow-On Investment would be subject to the process governed by Condition 8 (such Follow-On Investments are referred to as ''Standard Review Follow-Ons''). If such Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Follow-On Investment would be subject to the ''onboarding process'' governed by Condition 9 (such Follow-On Investments are referred to as ''Enhanced Review Follow-Ons''). All Enhanced Review Follow-Ons require the approval of the Required Majority. For a given issuer, the participating Regulated Funds and Affiliated Funds would need to comply with the requirements of Enhanced-Review Follow-Ons only for the first Co-Investment Transaction. Subsequent Co-Investment Transactions with respect to the issuer would be governed by the requirements applicable to Standard Review Follow-Ons.

15. A Regulated Fund would be permitted to invest in Standard Review Follow-Ons either with the approval of the Required Majority under Condition 8(c) or without Board approval under Condition 8(b) if it is (i) a Pro Rata Follow-On Investment [13] or (ii) a Non-Negotiated Follow-On Investment.[14] Applicants believe that these Pro Rata and Non-Negotiated Follow-On Investments do not present a significant opportunity for overreaching on the part of any Adviser and thus do not warrant the time or the attention of the Board. Pro Rata Follow-On Investments and Non-Negotiated Follow-On Investments remain subject to the Board's periodic review in accordance with Condition 10.

C. Dispositions

16. Applicants propose that Dispositions [15] would be divided into two categories. If the Regulated Funds and Affiliated Funds (and potentially FE Proprietary Accounts) holding investments in the issuer have previously participated in a Co-Investment Transaction with respect to the issuer and continue to hold any securities acquired in a Co-Investment Transaction for such issuer, then the terms and approval of the Disposition would be subject to the process described in Condition 6 (such Disposition, a ''Standard Review Disposition''). If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Disposition would be subject to the ''onboarding process'' described in Condition 7 (such Disposition, an ''Enhanced Review Disposition''). Subsequent Dispositions with respect to the same issuer would be governed by Condition 6 under the Standard Review Dispositions.[16]

17. A Regulated Fund may participate in a Standard Review Disposition either with the approval of the Required Majority under Condition 6(d) or without Board approval under Condition 6(c) if (i) the Disposition is a Pro Rata Disposition [17] or (ii) the

[11] ''Follow-On Investment'' means an additional investment in the same issuer, including, but not limited to, through the exercise of warrants, conversion privileges or other rights to purchase securities of the issuer.

[12] ''Pre-Boarding Investments'' are investments in an issuer held by a Regulated Fund as well as one or more Affiliated Funds, one or more FE Proprietary Accounts and/or one or more other Regulated Funds that: (i) Were acquired prior to participating in any Co-Investment Transaction: (ii) Were acquired in transactions in which the only term negotiated by or on behalf of such funds was price; and (iii) were acquired either: (x) In reliance on one of the JT No-Action Letters (defined below); or (y) in transactions occurring at least 90 days apart and without coordination between the Regulated Fund and any Affiliated Fund or other Regulated Fund.

''JT No-Action Letters'' means SMC Capital, Inc., SEC Staff Letter (Sep. 5, 1995) and Massachusetts Mutual Life Insurance Company, SEC Staff Letter (Jun. 7, 2000).

[13] A ''Pro Rata Follow-On Investment'' is a Follow-On Investment (i) in which the participation of each Regulated Fund, each Affiliated Fund and each FE Proprietary Account is proportionate to its outstanding investments in the issuer or security, as appropriate, immediately preceding the Follow-On Investment, and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in the pro rata Follow-On Investments as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Follow-On Investments, in which case all subsequent Follow-On Investments will be submitted to the Regulated Fund's Eligible Directors in accordance with Condition 8(c).

[14] A ''Non-Negotiated Follow-On Investment'' is a Follow-On Investment in which a Regulated Fund participates together with one or more Affiliated Funds, one or more FE Proprietary Accounts and/or one or more other Regulated Funds (i) in which the only term negotiated by or on behalf of the funds is price and (ii) with respect to which, if the transaction were considered on its own, the funds would be entitled to rely on one of the JT No-Action Letters.

[15] ''Disposition'' means the sale, exchange or other disposition of an interest in a security of an issuer.

[16] However, with respect to an issuer, if a Regulated Fund's first Co-Investment Transaction is an Enhanced Review Disposition, and the Regulated Fund does not dispose of its entire position in the Enhanced Review Disposition, then before such Regulated Fund may complete its first Standard Review Follow-On in such issuer, the Eligible Directors must review the proposed Follow-On Investment not only on a stand-alone basis but also in relation to the total economic exposure in such issuer (*i.e.,* in combination with the portion of the Pre-Boarding Investment not disposed of in the Enhanced Review Disposition), and the other terms of the investments. This additional review is required because such findings were not required in connection with the prior Enhanced Review Disposition, but they would have been required had the first Co-Investment Transaction been an Enhanced Review Follow-On.

[17] A ''Pro Rata Disposition'' is a Disposition (i) in which the participation of each Regulated Fund, each Affiliated Fund and each FE Proprietary Account is proportionate to its outstanding investment in the security subject to Disposition immediately preceding the Disposition; and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in pro rata Dispositions as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, their approval of Pro Rata Dispositions, in which case all subsequent Dispositions will be submitted to the Regulated Fund's Eligible Directors.

securities are Tradable Securities [18] and the Disposition meets the other requirements of Condition 6(c)(ii). Pro Rata Dispositions and Dispositions of a Tradable Security remain subject to the Board's periodic review in accordance with Condition 10.

D. Delayed Settlement

18. Applicants represent that under the terms and Conditions of the application, all Regulated Funds and Affiliated Funds participating in a Co-Investment Transaction will invest at the same time, for the same price and with the same terms, conditions, class, registration rights and any other rights, so that none of them receives terms more favorable than any other. However, the settlement date for an Affiliated Fund in a Co-Investment Transaction may occur up to ten business days after the settlement date for the Regulated Fund, and vice versa. Nevertheless, in all cases, (i) the date on which the commitment of the Affiliated Funds and Regulated Funds is made will be the same even where the settlement date is not and (ii) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other.

E. Holders

19. Under Condition 15, if an Adviser, its principals, or any person controlling, controlled by, or under common control with the Adviser or its principals, and the Affiliated Funds (collectively, the ''Holders'') own in the aggregate more than 25 percent of the outstanding voting shares of a Regulated Fund (the ''Shares''), then the Holders will vote such Shares as directed by an independent third party when voting on matters specified in the Condition. Applicants believe that this Condition will ensure that the Independent Directors will act independently in evaluating Co-Investment Transactions, because the ability of the Adviser or its principals to influence the Independent Directors by a suggestion, explicit or implied, that the Independent Directors can be removed if desired by the Holders will be limited significantly. The Independent Directors shall evaluate and approve any independent party, taking into account its qualifications, reputation for independence, cost to the shareholders, and other factors that they deem relevant.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit participation by a registered investment company and an affiliated person in any ''joint enterprise or other joint arrangement or profit-sharing plan,'' as defined in the rule, without prior approval by the Commission by order upon application. Section 17(d) of the Act and rule 17d–1 under the Act are applicable to Regulated Funds that are registered closed-end investment companies.

2. Similarly, with regard to BDCs, section 57(a)(4) of the Act generally prohibits certain persons specified in section 57(b) from participating in joint transactions with the BDC or a company controlled by the BDC in contravention of rules as prescribed by the Commission. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to transactions subject to section 57(a)(4). Because the Commission has not adopted any rules under section 57(a)(4), rule 17d–1 also applies to joint transactions with Regulated Funds that are BDCs.

3. Co-Investment Transactions are prohibited by either or both of rule 17d–1 and section 57(a)(4) without a prior exemptive order of the Commission to the extent that the Affiliated Funds, FE Proprietary Accounts and the Regulated Funds participating in such transactions fall within the category of persons described by rule 17d–1 and/or section 57(b), as modified by rule 57b-1 thereunder, as applicable, vis-à-vis each participating Regulated Fund. Each of the participating Affiliated Funds, FE Proprietary Accounts and Regulated Funds may be deemed to be affiliated persons vis-à-vis a Regulated Fund within the meaning of section 2(a)(3) by reason of common control because (i) First Eagle will control FE BDC and FE Private Credit and any other Adviser will be controlling, controlled by or under common control with First Eagle, (ii) the BDC Downstream Funds [19] and Wholly Owned Investment Subs will be controlled by the Regulated Funds; and (iii) the FE Proprietary Accounts are or will be controlling, controlled by or under common control with First Eagle. Thus, the Advisers, BDC Downstream Funds, Wholly Owned Investment Subs and FE Proprietary Accounts may be deemed to be related to a Regulated Fund in a manner described by section 57(b) and/or related to other Regulated Funds in a manner described by rule 17d–1; and therefore the prohibitions of rule 17d–1 and section 57(a)(4) would apply respectively to prohibit the Affiliated Funds from participating in Co-Investment Transactions with the Regulated Funds. Each Regulated Fund would also be related to each other Regulated Fund in a manner described by 57(b) or rule 17d–1, as applicable, and thus prohibited from participating in Co-Investment Transactions with each other.

4. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

5. Applicants state that in the absence of the requested relief, in many circumstances the Regulated Funds would be limited in their ability to participate in attractive and appropriate investment opportunities. Applicants state that, as required by rule 17d–1(b), the Conditions ensure that the terms on which Co-Investment Transactions may be made will be consistent with the participation of the Regulated Funds being on a basis that it is neither different from nor less advantageous than other participants, thus protecting the equity holders of any participant from being disadvantaged. Applicants further state that the Conditions ensure that all Co-Investment Transactions are reasonable and fair to the Regulated Funds and their shareholders and do not involve overreaching by any person concerned, including the Advisers. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions in accordance with the Conditions will be consistent

[18] ''Tradable Security'' means a security that meets the following criteria at the time of Disposition: (i) It trades on a national securities exchange or designated offshore securities market as defined in rule 902(b) under the Securities Act; (ii) it is not subject to restrictive agreements with the issuer or other security holders; and (iii) it trades with sufficient volume and liquidity (findings as to which are documented by the Advisers to any Regulated Funds holding investments in the issuer and retained for the life of the Regulated Fund) to allow each Regulated Fund to dispose of its entire position remaining after the proposed Disposition within a short period of time not exceeding 30 days at approximately the value (as defined by section 2(a)(41) of the Act) at which the Regulated Fund has valued the investment.

[19] ''BDC Downstream Fund'' means, with respect to any Regulated Fund that is a BDC, an entity (a) that the BDC directly or indirectly controls, (b) that is not controlled by any person other than the BDC (except a person that indirectly controls the entity solely because it controls the BDC), (c) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act, (d) whose investment adviser is an Adviser and (d) that is not a Wholly Owned Investment Sub.

with the provisions, policies, and purposes of the Act and would be done in a manner that is not different from, or less advantageous than, that of other participants.

Applicants' Conditions

Applicants agree that the Order will be subject to the following Conditions:

1. *Identification and Referral of Potential Co-Investment Transactions.*

(a) The Advisers will establish, maintain and implement policies and procedures reasonably designed to ensure that each Adviser is promptly notified, for each Regulated Fund the Adviser manages, of all Potential Co-Investment Transactions that (i) an Adviser considers for any other Regulated Fund or Affiliated Fund and (ii) fall within the Regulated Fund's then-current Objectives and Strategies and Board-Established Criteria.

(b) When an Adviser to a Regulated Fund is notified of a Potential Co-Investment Transaction under Condition 1(a), the Adviser will make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. *Board Approvals of Co-Investment Transactions.*

(a) If the Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, it will then determine an appropriate level of investment for the Regulated Fund.

(b) If the aggregate amount recommended by the Advisers to be invested in the Potential Co-Investment Transaction by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application. Each Adviser to a participating Regulated Fund will promptly notify and provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with these Conditions.

(c) After making the determinations required in Condition 1(b) above, each Adviser to a participating Regulated Fund will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund, each participating Affiliated Fund, and each participating FE Proprietary Account) to the Eligible Directors of its participating Regulated Fund(s) for their consideration. A Regulated Fund will enter into a Co-Investment Transaction with one or more other Regulated Funds, Affiliated Fund or FE Proprietary Accounts only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) The terms of the transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its equity holders and do not involve overreaching in respect of the Regulated Fund or its equity holders on the part of any person concerned;

(ii) the transaction is consistent with:

(A) The interests of the Regulated Fund's equity holders; and

(B) the Regulated Fund's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Fund(s), Affiliated Fund(s) or FE Proprietary Account(s) would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from, or less advantageous than, that of any other Regulated Fund(s), Affiliated Fund(s) or FE Proprietary Account(s) participating in the transaction; provided that the Required Majority shall not be prohibited from reaching the conclusions required by this Condition 2(c)(iii) if:

(A) The settlement date for another Regulated Fund or an Affiliated Fund in a Co-Investment Transaction is later than the settlement date for the Regulated Fund by no more than ten business days or earlier than the settlement date for the Regulated Fund by no more than ten business days, in either case, so long as: (x) The date on which the commitments of the Affiliated Funds and Regulated Funds are made is the same; and (y) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other; or

(B) any other Regulated Fund or Affiliated Fund, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors, the right to have a board observer or any similar right to participate in the governance or management of the portfolio company so long as: (x) The Eligible Directors will have the right to ratify the selection of such director or board observer, if any; (y) the Adviser agrees to, and does, provide periodic reports to the Regulated Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and (z) any fees or other compensation that any other Regulated Fund or Affiliated Fund or any affiliated person of any other Regulated Fund or Affiliated Fund receives in connection with the right of one or more Regulated Funds or Affiliated Funds to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among any participating Affiliated Funds and FE Proprietary Accounts (who may, in turn, share their portion with their affiliated persons) and any participating Regulated Fund(s) in accordance with the amount of each such party's investment; and

(iv) the proposed investment by the Regulated Fund will not involve compensation, remuneration or a direct or indirect [20] financial benefit to the Advisers, any other Regulated Funds, the Affiliated Funds, the FE Proprietary Accounts or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by Condition 14, (B) to the extent permitted by section 17(e) or 57(k), as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in Condition 2(c)(iii)(B)(z).

3. *Right to Decline.* Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. *General Limitation.* Except for Follow-On Investments made in accordance with Conditions 8 and 9 below,[21] a Regulated Fund will not invest in reliance on the Order in any issuer in which a Related Party has an investment.[22]

[20] For example, procuring the Regulated Fund's investment in a Potential Co-Investment Transaction to permit an affiliate to complete or obtain better terms in a separate transaction would constitute an indirect financial benefit.

[21] This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

[22] ''Related Party'' means (i) any Close Affiliate and (ii) in respect of matters as to which any Adviser has knowledge, any Remote Affiliate.

''Close Affiliate'' means the Advisers, the other Regulated Funds, the Affiliated Funds and any other person described in section 57(b) (after giving

5. *Same Terms and Conditions.* A Regulated Fund will not participate in any Potential Co-Investment Transaction unless (i) the terms, conditions, price, class of securities to be purchased, date on which the commitment is entered into and registration rights (if any) will be the same for each participating Regulated Fund, Affiliated Fund and FE Proprietary Account and (ii) the earliest settlement date and the latest settlement date of any participating Regulated Fund or Affiliated Fund will occur as close in time as practicable and in no event more than ten business days apart. The grant to one or more Regulated Funds or Affiliated Funds, but not the respective Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this Condition 5, if Condition 2(c)(iii)(B) is met.

6. *Standard Review Dispositions.*

(a) *General.* If any Regulated Fund, Affiliated Fund or FE Proprietary Account elects to sell, exchange or otherwise dispose of an interest in a security and one or more Regulated Funds, Affiliated Funds and FE Proprietary Accounts have previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to such Regulated Fund, Affiliated Fund or FE Proprietary Account, as applicable, will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time; and

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition.

(b) *Same Terms and Conditions.* Each Regulated Fund will have the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Affiliated Funds, FE Proprietary Accounts and any other Regulated Funds.

(c) *No Board Approval Required.* A Regulated Fund may participate in such a Disposition without obtaining prior approval of the Required Majority if:

(i) (A) The participation of each Regulated Fund, Affiliated Fund and FE Proprietary Account in such Disposition is proportionate to its then-current holding of the security (or securities) of the issuer that is (or are) the subject of the Disposition; [23] (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such Dispositions on a pro rata basis (as described in greater detail in the Application); and (C) the Board of the Regulated Fund is provided on a quarterly basis with a list of all Dispositions made in accordance with this Condition; or

(ii) each security is a Tradable Security and (A) the Disposition is not to the issuer or any affiliated person of the issuer; and (B) the security is sold for cash in a transaction in which the only term negotiated by or on behalf of the participating Regulated Funds, Affiliated Funds and FE Proprietary Accounts is price.

(d) *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

7. *Enhanced Review Dispositions.*

(a) *General.* If any Regulated Fund, Affiliated Fund or FE Proprietary Account elects to sell, exchange or otherwise dispose of a Pre-Boarding Investment in a Potential Co-Investment Transaction and the Regulated Funds, Affiliated Funds and FE Proprietary Accounts have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to such Regulated Fund, Affiliated Fund or FE Proprietary Account, as applicable, will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time;

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition; and

(iii) the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds, Affiliated Funds and FE Proprietary Accounts, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b) *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that:

(i) The Disposition complies with Condition 2(c)(i), (ii), (iii)(A), and (iv).

(ii) the making and holding of the Pre-Boarding Investments were not prohibited by section 57 or rule 17d–1, as applicable, and records the basis for the finding in the Board minutes.

(c) *Additional Requirements.* The Disposition may only be completed in reliance on the Order if:

(i) *Same Terms and Conditions.* Each Regulated Fund has the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and Conditions as those applicable to the Affiliated Funds, the FE Proprietary Accounts and any other Regulated Funds;

(ii) *Original Investments.* All of the Affiliated Funds', Regulated Funds' and FE Proprietary Accounts' investments in the issuer are Pre-Boarding Investments;

(iii) *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by section 57 (as modified by rule 57b-1) or rule 17d–1, as applicable;

(iv) *Multiple Classes of Securities.* All Regulated Funds, Affiliated Funds and FE Proprietary Accounts that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds, Affiliated Funds and FE Proprietary Accounts hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's, Affiliated Fund's or FE Proprietary Accounts' holding of a different class of securities (including for this purpose a security with a different maturity date)

effect to rule 57b–1) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) except for limited partners included solely by reason of the reference in section 57(b) to section 2(a)(3)(D).

''Remote Affiliate'' means any person described in section 57(e) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) and any limited partner holding 5% or more of the relevant limited partner interests that would be a Close Affiliate but for the exclusion in that definition.

[23] In the case of any Disposition, proportionality will be measured by each participating Regulated Fund's, Affiliated Fund's and FE Proprietary Accounts' outstanding investment in the security in question immediately preceding the Disposition.

is immaterial[24] in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(v) *No control.* The Affiliated Funds, the FE Proprietary Accounts, the other Regulated Funds and their affiliated persons (within the meaning of section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of section 2(a)(9) of the Act).

8. *Standard Review Follow-Ons.*

(a) *General.* If any Regulated Fund, Affiliated Fund or FE Proprietary Account desires to make a Follow-On Investment in an issuer and the Regulated Funds, Affiliated Funds and FE Proprietary Accounts holding investments in the issuer previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to each such Regulated Fund, Affiliated Fund or FE Proprietary Account, as applicable, will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time; and

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund.

(b) *No Board Approval Required.* A Regulated Fund may participate in the Follow-On Investment without obtaining prior approval of the Required Majority if:

(i) (A) The proposed participation of each Regulated Fund, each Affiliated Fund and each FE Proprietary Account in such investment is proportionate to its outstanding investments in the issuer or the security at issue, as appropriate,[25] immediately preceding the Follow-On Investment; and (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application); or

(ii) it is a Non-Negotiated Follow-On Investment.

(c) *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority makes the determinations set forth in Condition 2(c). If the only previous Co-Investment Transaction with respect to the issuer was an Enhanced Review Disposition the Eligible Directors must complete this review of the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms of the investment.

(d) *Allocation.* If, with respect to any such Follow-On Investment:

(i) The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds', the Affiliated Funds' and the FE Proprietary Account's outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds and FE Proprietary Accounts, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application.

(e) *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

9. *Enhanced Review Follow-Ons.*

(a) *General.* If any Regulated Fund, Affiliated Fund or FE Proprietary Account desires to make a Follow-On Investment in an issuer that is a Potential Co-Investment Transaction and the Regulated Funds, Affiliated Funds and FE Proprietary Accounts holding investments in the issuer have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to each such Regulated Fund, Affiliated Fund or FE Proprietary Account, as applicable, will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time;

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund; and

(iii) the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds, Affiliated Funds, and FE Proprietary Accounts including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b) *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority reviews the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms and makes the determinations set forth in Condition 2(c). In addition, the Follow-On Investment may only be completed in reliance on the Order if the Required Majority of each participating Regulated Fund determines that the making and holding of the Pre-Boarding Investments were not prohibited by section 57 (as modified by rule 57b–1) or rule 17d–1, as applicable. The basis for the Board's findings will be recorded in its minutes.

(c) *Additional Requirements.* The Follow-On Investment may only be completed in reliance on the Order if:

(i) *Original Investments.* All of the Affiliated Funds', Regulated Funds' and FE Proprietary Accounts' investments in the issuer are Pre-Boarding Investments;

(ii) *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were

[24] In determining whether a holding is ''immaterial'' for purposes of the Order, the Required Majority will consider whether the nature and extent of the interest in the transaction or arrangement is sufficiently small that a reasonable person would not believe that the interest affected the determination of whether to enter into the transaction or arrangement or the terms of the transaction or arrangement.

[25] To the extent that a Follow-On Investment opportunity is in a security or arises in respect of a security held by the participating Regulated Funds, Affiliated Funds and FE Proprietary Accounts proportionality will be measured by each participating Regulated Fund's, Affiliated Fund's and FE Proprietary Account's outstanding investment in the security in question immediately preceding the Follow-On Investment using the most recent available valuation thereof. To the extent that a Follow-On Investment opportunity relates to an opportunity to invest in a security that is not in respect of any security held by any of the participating Regulated Funds, Affiliated Funds or FE Proprietary Accounts, proportionality will be measured by each participating Regulated Fund's, Affiliated Fund's and FE Proprietary Account's outstanding investment in the issuer immediately preceding the Follow-On Investment using the most recent available valuation thereof.

not prohibited by section 57 (as modified by rule 57b–1) or rule 17d–1, as applicable;

(iii) *Multiple Classes of Securities.* All Regulated Funds, Affiliated Funds and FE Proprietary Accounts that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds, Affiliated Funds and FE Proprietary Accounts hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's, Affiliated Fund's or FE Proprietary Accounts' holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(iv) *No control.* The Affiliated Funds, the FE Proprietary Accounts, the other Regulated Funds and their affiliated persons (within the meaning of section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of section 2(a)(9) of the Act).

(d) *Allocation.* If, with respect to any such Follow-On Investment:

(i) The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds', the Affiliated Funds', and FE Proprietary Accounts' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds and FE Proprietary Accounts, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application.

(e) *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

10. *Board Reporting, Compliance and Annual Re-Approval.*

(a) Each Adviser to a Regulated Fund will present to the Board of each Regulated Fund, on a quarterly basis, and at such other times as the Board may request, (i) a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or any of the Affiliated Funds or FE Proprietary Accounts during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies and Board-Established Criteria that were not made available to the Regulated Fund, and an explanation of why such investment opportunities were not made available to the Regulated Fund; (ii) a record of all Follow-On Investments in and Dispositions of investments in any issuer in which the Regulated Fund holds any investments by any Affiliated Fund or other Regulated Fund during the prior quarter; and (iii) all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Funds, Affiliated Funds or FE Proprietary Accounts that the Regulated Fund considered but declined to participate in, so that the Independent Directors, may determine whether all Potential Co-Investment Transactions and Co-Investment Transactions during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the Conditions.

(b) All information presented to the Regulated Fund's Board pursuant to this Condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

(c) Each Regulated Fund's chief compliance officer, as defined in rule 38a–1(a)(4), will prepare an annual report for its Board each year that evaluates (and documents the basis of that evaluation) the Regulated Fund's compliance with the terms and Conditions of the application and the procedures established to achieve such compliance. In the case of a BDC Downstream Fund that does not have a chief compliance officer, the chief compliance officer of the BDC that controls the BDC Downstream Fund will prepare the report for the relevant Independent Party.

(d) The Independent Directors (including the non-interested members of each Independent Party) will consider at least annually (a) whether continued participation in new and existing Co-Investment Transactions is in the Regulated Fund's best interests and (b) the continued appropriateness of any Board-Established Criteria.

11. *Record Keeping.* Each Regulated Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these Conditions were approved by the Required Majority under section 57(f).

12. *Director Independence.* No Independent Director (including the non-interested members of any Independent Party) of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise be an ''affiliated person'' (as defined in the Act) of any Affiliated Fund or FE Proprietary Account.

13. *Expenses.* The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Advisers under their respective advisory agreements with the Regulated Funds and the Affiliated Funds, be shared by the Regulated Funds and the participating Affiliated Funds and FE Proprietary Accounts in proportion to the relative amounts of the securities held or being acquired or disposed of, as the case may be.

14. *Transaction Fees.*[26] Any transaction fee (including break-up, structuring, monitoring or commitment fees but excluding brokerage or underwriting compensation permitted by section 17(e) or 57(k)) received in connection with any Co-Investment Transaction will be distributed to the participants on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by the Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1), and the account will earn a competitive rate of interest that will also be divided pro rata among the participants. None of the Advisers, the Affiliated Funds, the FE Proprietary Accounts, the other Regulated Funds or any affiliated person of the Affiliated Funds, the FE Proprietary Accounts or

[26] Applicants are not requesting and the Commission is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

the Regulated Funds will receive any additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction other than (i) in the case of the Regulated Funds, the Affiliated Funds and the FE Proprietary Accounts, the pro rata transaction fees described above and fees or other compensation described in Condition 2(c)(iii)(B)(z), (ii) brokerage or underwriting compensation permitted by section 17(e) or 57(k) or (iii) in the case of the Advisers, investment advisory compensation paid in accordance with investment advisory agreements between the applicable Regulated Fund(s) or Affiliated Fund(s) and its Adviser.

15. *Independence.* If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund, then the Holders will vote such Shares as directed by an independent third party when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable State law affecting the Board's composition, size or manner of election.

16. *FE Proprietary Accounts.* The FE Proprietary Accounts will not be permitted to invest in a Potential Co-Investment Transaction except to the extent that the aggregate Internal Orders for a Potential Co-Investment Transaction, as described in section III.A.1.b of the application, are less than the total investment opportunity.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–00805 Filed 1–17–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87963; File No. SR–NYSEArca–2019–51]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, Regarding Investments of the Janus Henderson Mortgage-Backed Securities ETF

January 14, 2020.

I. Introduction

On July 9, 2019, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change regarding investments of the Janus Henderson Mortgage-Backed Securities ETF (''Fund''), shares of which are currently listed and traded on the Exchange under NYSE Arca Rule 8.600–E (''Managed Fund Shares''). The proposed rule change was published for comment in the **Federal Register** on July 25, 2019.[3]

On September 3, 2019, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On October 23, 2019, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.[7] On November 13, 2019, the Exchange filed Amendment No. 1 to the proposed rule change. On December 9, 2019, the Exchange filed Amendment No. 2 to the proposed rule change.[8] The Commission has received no comment letters on the proposal. The Commission is publishing this notice to solicit comments on Amendment No. 2 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

II. The Exchange's Description of the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes certain changes regarding investments of the Janus Henderson Mortgage-Backed Securities ETF (''Fund''), shares (''Shares'') of which are currently listed and traded on the Exchange under NYSE Arca Rule 8.600–E, which governs the listing and trading of Managed Fund Shares [9] on the Exchange. Shares of the Fund commenced listing and trading on the Exchange on September 12, 2018 under the generic listing standards under Commentary .01 to NYSE Arca Rule 8.600–E.

The Fund is a series of Janus Detroit Street Trust (''Trust'').[10] Janus Capital Management LLC is the Fund's investment adviser (''Adviser''). State Street Bank and Trust Company is the custodian and transfer agent (''Transfer Agent'') for the Fund. ALPS Distributors, Inc. is the distributor (''Distributor'') for the Fund's Shares.

Commentary .06 to Rule 8.600–E provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86417 (July 19, 2019), 84 FR 35910.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 86855, 84 FR 47337 (September 9, 2019).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No.87385, 84 FR 57921 (October 29, 2019).

[8] In Amendment No. 2, which amended and replaced the proposed rule change, as modified by Amendment No. 1, in its entirety, the Exchange (i) clarified the principal and non-principal investments of the Fund; (ii) clarified the Fund's compliance and non-compliance with specific provisions of NYSE Arca Rule 8.600–E; (iii) stated where to find price and quotation information for certain holdings of the Fund; (iv) made additional representations regarding surveillance of trading with respect to options on futures and municipal obligations, which are permitted investments of the Fund; and (v) made conforming, non-substantive and technical changes. Amendment No. 2 is available at: *https://www.sec.gov/comments/sr-nysearca-2019-51/srnysearca201951-6523187-200391.pdf.*

[9] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Rule 5.2–E(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[10] The Trust is registered under the 1940 Act. On February 28, 2019, the Trust filed with the Commission a registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) and the 1940 Act relating to the Fund (File Nos. 333–207814 and 811–23112) (the ''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 31540 (March 30, 2015) (''Exemptive Order'').

information concerning the composition and/or changes to such investment company portfolio.[11] In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and has implemented and will maintain a fire wall with respect to such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Adviser becomes registered as a broker-dealer or newly affiliated with one or more broker-dealers, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Janus Henderson Mortgage-Backed Securities ETF

Principal Investments

According to the Registration Statement, the Fund's investment objective is to seek a high level of total return consisting of income and capital appreciation.

Under normal market conditions,[12] the Fund will invest at least 80% of its net assets in a portfolio of ''Mortgage-Related Fixed Income Instruments'' (as described below) of varying maturities, and in exchange-traded funds (''ETFs'')[13] that invest principally in mortgage-backed securities. The Mortgage-Related Fixed Income Instruments[14] in which the Fund may invest are the following:[15] Agency and non-agency residential mortgage-backed securities (''RMBS''), agency and non-agency commercial mortgage-backed securities (''CMBS''), agency and non-agency collateralized mortgage obligations, including stripped mortgage-backed securities[16] (''CMOs''), and asset-backed securities (''ABS'').[17]

For purposes of this filing, non-agency RMBS, non-agency CMBS, non-agency CMOs, and ABS are referred to collectively as ''Private ABS/MBS.''

The Fund will typically enter into ''to be announced'' or ''TBA'' commitments and utilize mortgage dollar rolls when purchasing mortgage-backed securities.

The Fund may enter into short sales of any securities in which the Fund may invest.

Other Investments

While the Fund, under normal market conditions, will invest at least 80% of its net assets in the securities and other financial instruments described under ''Principal Investments'' above, the Fund may invest its remaining assets in the securities and financial instruments described below.

The Fund may hold cash and cash equivalents.[18]

The Fund may hold the following fixed income securities (''Other Fixed Income Securities''):

- U.S. government securities (other than cash equivalents);
- industrial development bonds;
- inflation-indexed bonds, including municipal inflation-indexed bonds and corporate inflation-indexed bonds;
- municipal obligations, including municipal lease obligations, pre-refunded municipal bonds, municipal warrants, municipal obligations with credit enhancements, residual interest bonds, custodial receipts, and Build America Bonds;
- variable and floating rate obligations (including inverse floaters and floaters);
- subordinated or junior debt;
- corporate bonds, debentures, and notes;
- zero coupon, step coupon and pay-in-kind securities;
- agency and non-agency collateralized loan obligations (''CLOs'');[19]
- strip bonds;
- when-issued and/or delayed-delivery securities (other than mortgage TBAs);
- tender option bonds;
- bank obligations, including standby commitments, and bank capital securities; and
- trade claims.

The Fund may hold the following U.S. exchange-listed derivative instruments: Futures, options (including options on futures), and swaps on commodities, currencies, U.S. and non-U.S. equity securities, fixed income securities as defined in Commentary .01(b) to Rule 8.600–E, interest rates, U.S. Treasuries, or a basket or index of any of the foregoing. Such listed derivatives will comply with the criteria in Commentary .01(d) of NYSE Arca Rule 8.600–E.

[11] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[12] The term ''normal market conditions'' is defined in NYSE Arca Rule 8.600–E(c)(5).

[13] For purposes of this filing, ''ETFs'' are Investment Company Units (as described in NYSE Arca Rule 5.2–E(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Rule 8.100–E); and Managed Fund Shares (as described in NYSE Arca Rule 8.600–E). All ETFs will be listed and traded in the U.S. on a national securities exchange.

[14] The Mortgage-Related Fixed Income Instruments in which the Fund invests may be structured as pass-through securities.

[15] Under normal market conditions, the Fund will invest principally in Mortgage-Related Fixed Income Instruments issued by the U.S. government and its agencies and government-sponsored entities, such as the Government National Mortgage Association (''GNMA'' or ''Ginnie Mae''), the Federal National Mortgage Association (''FNMA'' or ''Fannie Mae'') or the Federal Home Loan Mortgage Corporation (''FHLMC'' or ''Freddie Mac'').

[16] Stripped mortgage-backed securities are securities where mortgage payments are divided up between paying the loan's principal and paying the loan's interest.

[17] The Fund will typically invest in ABS backed by pools of home equity loans and other mortgage-related debt. ABS are collateralized by pools of obligations or assets. ABS may take the form of commercial paper, notes, or pass-through certificates and may be structured as floaters, inverse floaters, interest-only and principal-only obligations.

[18] For purposes of this filing, cash equivalents are the securities included in Commentary .01(c) to NYSE Arca Rule 8.600–E.

[19] For purposes of this filing, non-agency CLOs are excluded from the definition of ''Private ABS/MBS.'' For avoidance of doubt, the Fund will comply with Commentary.01(b)(5) to NYSE Arca Rule 8.600–E, which provides that non-agency, non-government-sponsored entity (''GSE'') and privately-issued mortgage-related and other asset-backed securities components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the portfolio. For purposes of this filing, all non-agency, non- GSE and privately-issued mortgage-related and other asset-backed securities components of the Fund's portfolio, including, without limitation, Private ABS/MBS and non-agency CLOs, shall not account, in the aggregate, for more than 20% of the weight of the Fund's portfolio.

The Fund may hold the following over-the-counter (''OTC'') derivative instruments: Forwards, options, and OTC total return swaps on commodities, currencies, U.S. and non-U.S. equity securities, fixed income securities as defined in Commentary .01(b) to Rule 8.600–E, interest rates, or a basket or index of any of the foregoing. The Fund also may hold OTC credit default swaps.

The Fund may enter into OTC options on swap agreements (''swaptions'').

The Fund's holdings in OTC derivatives will comply with the criteria in Commentary .01(e) of NYSE Arca Rule 8.600–E.

The Fund may invest in ETFs other than ETFs that invest principally in mortgage-backed securities.[20]

The Fund may invest in securities of non-exchange-traded investment company securities, subject to applicable limitations under Section 12(d)(1) of the 1940 Act.

The Fund may invest in private placements, restricted securities and Rule 144A securities.

All (1) Mortgage-Related Fixed Income Instruments other than Private ABS/MBS, and (2) Other Fixed Income Securities will meet the requirements of Commentary .01(b)(4) to Rule 8.600–E.

The Fund will not invest in securities or other financial instruments that have not been described in this proposed rule change.

Other Restrictions

The Fund's investments, including derivatives, will be consistent with the Fund's investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).[21]

The Fund's Use of Derivatives

Investments in derivative instruments will be made in accordance with the Fund's investment objective and policies.

To limit the potential risk associated with such transactions, the Fund will enter into offsetting transactions or segregate or ''earmark'' assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board of Trustees (the ''Board''). In addition, the Fund has included appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged.

Creation and Redemption of Shares

According to the Registration Statement, the Trust will issue and redeem Shares only in ''Creation Units'' of at least 25,000 Shares on a continuous basis at their NAV per Share next determined after receipt of an order on any business day. The size of a Creation Unit is subject to change. The consideration for purchase of Creation Units of the Fund generally consists of cash. If creations are not conducted in cash, the consideration for purchase of Creation Units of the Fund generally consists of the in-kind deposit of a designated portfolio of securities (including any portion of such securities for which cash may be substituted) (''Deposit Securities'') and the Cash Component computed as described below. Together, the Deposit Securities and the Cash Component constitute the ''Fund Deposit,'' which will be applicable to creation requests received in proper form. The Fund Deposit represents the minimum initial and subsequent investment amount for a Creation Unit of a Fund.

The ''Cash Component'' is an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the ''Deposit Amount,'' which is an amount equal to the market value of the Deposit Securities, and serves to compensate for any differences between the NAV per Creation Unit and the Deposit Amount.

Janus Capital makes available through the National Securities Clearing Corporation (''NSCC'') on each business day prior to the opening of business on the Exchange, the list of names and the required number or par value of each Deposit Security and the amount of the Cash Component to be included in the current Fund Deposit (based on information as of the end of the previous business day for the Fund). Such Fund Deposit is applicable to purchases of Creation Units of Shares of the Fund until such time as the next-announced Fund Deposit is made available.

The Fund reserves the right to permit or require the substitution of a ''cash in lieu'' amount to be added to the Cash Component to replace any Deposit Security that may not be available in sufficient quantity for delivery or that may not be eligible for transfer through Depository Trust Company (''DTC'') or the Clearing Process (as discussed below). The Fund also reserves the right to permit or require a ''cash in lieu'' amount in certain circumstances, including circumstances in which (i) the delivery of the Deposit Security by the Authorized Participant (as described below) would be restricted under applicable securities or other local laws or (ii) the delivery of the Deposit Security to the Authorized Participant would result in the disposition of the Deposit Security by the Authorized Participant becoming restricted under applicable securities or other local laws, or in certain other situations.

Procedures for Creating Creation Units

To be eligible to place orders with the Distributor and to create a Creation Unit of the Fund, an entity must be: (i) A ''Participating Party,'' *i.e.,* a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the NSCC (the ''Clearing Process'') or (ii) a DTC Participant, and must have executed an agreement with the Distributor, with respect to creations and redemptions of Creation Units (''Authorized Participant Agreement''). A Participating Party or DTC Participant who has executed an Authorized Participant Agreement is referred to as an ''Authorized Participant.'' Creation Units may be purchased only by or through a DTC Participant that has entered into an Authorized Participant Agreement with the Distributor.

Purchase Orders

To initiate an order for a Creation Unit, an Authorized Participant must submit to the Distributor or its agent an irrevocable order to purchase Shares of the Fund, in proper form, by the ''Cutoff Time'' (as defined below).

An Authorized Participant must submit an irrevocable order to purchase Shares of the Fund generally before 3:00 p.m. (''Cutoff Time''), Eastern time (''E.T.'') on any business day in order to receive that day's NAV. Purchase orders and redemption requests, if accepted by the Trust, will be processed based on the NAV next determined after such acceptance.

Redemption of Creation Units

Shares of the Fund may be redeemed by Authorized Participants only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Transfer Agent or its agent and only on a business day.

[20] *See* note 13, *supra.*

[21] The Fund's broad-based securities benchmark index will be identified in a future amendment to the Registration Statement following the Fund's first full calendar year of performance.

Janus Capital will make available through the NSCC, prior to the opening of business on the Exchange (currently 9:30 a.m. E.T.) on each business day, the designated portfolio of securities (including any portion of such securities for which cash may be substituted) that will be applicable to redemption requests received in proper form on that day (''Fund Securities''), and an amount of cash (the ''Cash Amount,'' as described below). Fund Securities received on redemption may not be identical to Deposit Securities that are applicable to creations of Creation Units.

The redemption proceeds for a Creation Unit generally consist of Fund Securities, plus the Cash Amount, which is an amount equal to the difference between the net asset value of the Shares being redeemed, as next determined after the receipt of a redemption request in proper form, and the value of Fund Securities, less a redemption transaction fee.

The Trust may, in its sole discretion, substitute a ''cash in lieu'' amount to replace any Fund Security. The Trust also reserves the right to permit or require a ''cash in lieu'' amount in certain circumstances. The amount of cash paid out in such cases will be equivalent to the value of the substituted security listed as a Fund Security. In the event that the Fund Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the difference is required to be made by or through an Authorized Participant by the redeeming shareholder. The Fund generally redeems Creation Units in Fund Securities, plus any Cash Amount due.

Cash Redemption Method

Although the Trust will not ordinarily permit partial or full cash redemptions of Creation Units of the Fund, when partial or full cash redemptions of Creation Units are available or specified they will be effected in essentially the same manner as in-kind redemptions thereof. In the case of partial or full cash redemption, the Authorized Participant receives the cash equivalent of the Fund Securities it would otherwise receive through an in-kind redemption, plus the same Cash Amount to be paid to an in-kind redeemer.[22]

Placement of Redemption Orders

Redemption requests for Creation Units of the Fund must be submitted to the Transfer Agent by or through an Authorized Participant. An Authorized Participant must submit an irrevocable request to redeem Shares of the Fund generally before 3:00 p.m., E.T. on any business day, in order to receive that day's NAV.

Disclosed Portfolio

The Fund's disclosure of derivative positions in the applicable Disclosed Portfolio includes information that market participants can use to value these positions intraday. On a daily basis, the Fund will disclose the information regarding the Disclosed Portfolio required under NYSE Arca Rule 8.600–E (c)(2) to the extent applicable. The Fund's website information will be publicly available at no charge.

Impact on Arbitrage Mechanism

The Adviser believes there will be minimal impact to the arbitrage mechanism as a result of the use of derivatives. Market makers and participants should be able to value derivatives as long as the positions are disclosed with relevant information. The Adviser believes that the price at which Shares trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem Shares at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

The Adviser does not believe there will be any significant impacts to the settlement or operational aspects of the Fund's arbitrage mechanism due to the use of derivatives. Because derivatives generally are not eligible for in-kind transfer, they will typically be substituted with a ''cash in lieu'' amount when the Fund processes purchases or redemptions of creation units in-kind.

Application of Generic Listing Requirements

The Exchange is submitting this proposed rule change because the portfolio for the Fund will not meet all of the ''generic'' listing requirements of Commentary .01 to NYSE Arca Rule 8.600–E applicable to the listing of Managed Fund Shares. The Fund's portfolio would meet all such requirements except for those set forth in Commentary .01(a)(1) with respect to non-exchange traded investment company securities[23] and Commentary .01(b)(4)[24] to NYSE Arca Rule 8.600–E with respect to Private ABS/MBS.

The Fund will not comply with the requirements in Commentary .01(b)(4) to Rule 8.600–E that component securities that in the aggregate account for at least 90% of the fixed income weight of the portfolio meet one of the criteria specified in Commentary .01(b)(4), because certain Private ABS/MBS by their nature cannot satisfy the

[22] The Adviser represents that, to the extent the Trust effects the creation or redemption of Shares in cash on any given day, such transactions will be effected in the same manner for all Authorized Participants placing trades with the Fund on that day.

[23] Commentary .01(a) to Rule 8.600–E specifies the equity securities accommodated by the generic criteria in Commentary .01(a), namely, U.S. Component Stocks (as described in Rule 5.2–E(j)(3)) and Non-U.S. Component Stocks (as described in Rule 5.2–E(j)(3)). Commentary .01(a)(1) to Rule 8.600–E (U.S. Component Stocks) provides that the component stocks of the equity portion of a portfolio that are U.S. Component Stocks shall meet the following criteria initially and on a continuing basis:

(A) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 90% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each shall have a minimum market value of at least $75 million;

(B) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 70% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each shall have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months;

(C) The most heavily weighted component stock (excluding Derivative Securities Products and Index-Linked Securities) shall not exceed 30% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Derivative Securities Products and Index-Linked Securities) shall not exceed 65% of the equity weight of the portfolio;

(D) Where the equity portion of the portfolio does not include Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 13 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Derivative Securities Products or Index-Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Derivative Securities Products or Index-Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares; and

(E) Except as provided herein, equity securities in the portfolio shall be U.S. Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934.

[24] Commentary .01(b)(4) provides that component securities that in the aggregate account for at least 90% of the fixed income weight of the portfolio must be either: (a) From issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; (c) from issuers that have outstanding securities that are notes, bonds debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion; (d) exempted securities as defined in Section 3(a)(12) of the Act; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country.

criteria in Commentary .01(b)(4).[25] Instead, the Exchange proposes that the Fund's investments in (1) Mortgage-Related Fixed Income Instruments other than Private ABS/MBS, and (2) Other Fixed Income Securities will be required to comply with the requirements of Commentary .01(b)(4). The Exchange believes that excluding Private ABS/MBS from the 90% calculation in Commentary .01(b)(4) is consistent with the Act because the Fund's portfolio will minimize the risk to the overall Fund associated with any particular holding of the Fund as a result of the diversification provided by the investments and the Adviser's selection process, which closely monitors investments to ensure maintenance of credit and liquidity standards. Further, the Exchange believes that this alternative limitation is appropriate because Commentary .01(b)(4) to Rule 8.600–E is not designed for structured finance vehicles such as Private ABS/MBS. The Exchange notes that all (1) Mortgage-Related Fixed Income Instruments other than Private ABS/MBS, and (2) Other Fixed Income Securities will meet the requirements of Commentary .01(b)(4) to Rule 8.600–E.

The Exchange notes that the Commission has previously approved the listing of Managed Fund Shares with similar investment objectives and strategies without imposing requirements that a certain percentage of such funds' securities meet one of the criteria comparable to those set forth in Commentary .01(b)(4).[26]

The Fund may invest in non-exchange-traded investment company securities, which are equity securities. Because such securities have a net asset value based on the value of securities and financial assets the investment company holds, the Exchange believes it is both unnecessary and inappropriate to apply to such investment company securities the criteria in Commentary .01(a)(1).[27]

The Exchange notes that the Commission has previously approved the listing of Managed Fund Shares with similar investment objectives and strategies where such funds were permitted to invest in the shares of other registered investment companies that are not ETFs or money market funds.[28]

The Adviser represents that the proposed exceptions from the requirements of Commentary .01 to Rule 8.600–E described above are consistent with the Fund's investment objective, and will further assist the Adviser to achieve such investment objective. Deviations from the generic requirements are necessary for the Fund to achieve its investment objective in a manner that is cost-effective and that maximizes investors' returns. Further, the proposed alternative requirements are narrowly tailored to allow the Fund to achieve its investment objective in manner that is consistent with the principles of Section 6(b)(5) of the Act. As a result, it is in the public interest to approve listing and trading of Shares of the Fund on the Exchange pursuant to the requirements set forth herein.

The Exchange notes that, other than Commentary .01(a)(1) with respect to non-exchange traded investment company securities and Commentary .01(b)(4) to Rule 8.600–E with respect to Private ABS/MBS, as described above, the Fund's portfolio will meet all other requirements of Rule 8.600–E.

Availability of Information

The Fund's website (*www.janushenderson.com*), which is publicly available, includes a form of the prospectus for the Fund that may be downloaded. The Fund's website includes additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[29] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Adviser discloses on the Fund's website the Disclosed Portfolio for the Fund as defined in NYSE Arca Rule 8.600–E(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day.[30]

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.*

Quotation and last sale information for the Shares and ETFs will be available via the CTA high speed line. Price information for U.S. and foreign exchange-traded futures, options, options on futures and swaps will be available from the exchange on which they are listed. Quotation and last sale information for exchange-listed options

[25] Private ABS/MBS are generally issued by special purpose vehicles in amounts smaller than the minimum dollar threshold set forth in Commentary .01(b)(4), so the criteria in Commentary .01(b)(4) to Rule 8.600–E regarding an issuer's market capitalization and the remaining principal amount of an issuer's securities are typically unavailable with respect to Private ABS/MBS, even though such Private ABS/MBS may own significant assets.

[26] *See, e.g.,* Securities Exchange Act Release Nos. 67894 (September 20, 2012), 77 FR 59227 (September 26, 2012) (SR–BATS–2012–033) (order approving the listing and trading of shares of the iShares Short Maturity Bond Fund); 70342 (September 6, 2013), 78 FR 56256 (September 12, 2013) (SR–NYSEArca19–2013–71) (order approving the listing and trading of shares of the SPDR SSgA Ultra Short Term Bond ETF, SPDR SSgA Conservative Ultra Short Term Bond ETF and SPDR SSgA Aggressive Ultra Short Term Bond ETF). *See also,* Securities Exchange Act Release Nos. 84047 (September 6, 2018), 83 FR 46200 (September 12, 2018) (SR–NASDAQ–2017–128) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, to List and Trade Shares of the Western Asset Total Return ETF); 85022 (January 31, 2019), 25 FR 2265 (February 6, 2019) (SR–NASDAQ–2018–080) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 2 and 3, To List and Trade Shares of the BrandywineGLOBAL-Global Total Return ETF).

[27] The Commission has previously approved proposed rule changes under Section 19(b) of the Act for series of Managed Fund Shares that may invest in non-exchange traded investment company securities. *See, e.g.,* Securities Exchange Act Release No. 85244 (March 4, 2019), 84 FR 8553 (March 8, 2019) (SR–NYSEArca19–2018–82) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Regarding Certain Changes Relating to Investments of the PGIM Active High Yield Bond ETF).

[28] *See, e.g.,* Securities Exchange Act Release Nos. 79053 (October 5, 2016), 81 FR 70468 (October 12, 2016) (SR19–BatsBZX–2016–35) (permitting the JPMorgan Global Bond Opportunities ETF to invest in ''investment company securities that are not ETFs''); 74297 (February 18, 2015), 80 FR 9788 (February 24, 2015) (SR–BATS–2014–056) (permitting the U.S. Fixed Income Balanced Risk ETF to invest in ''exchange traded and non-exchange traded investment companies (including investment companies advised by the Adviser or its affiliates) that invest in such Fixed Income Securities''); 83319 (May 24, 2018), 83 FR 25097 (May 31, 2018) (SR–NYSEArca19–2018–15), (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Continue Listing and Trading Shares of the PGIM Ultra Short Bond ETF under NYSE Arca Rule 8.600–E).

[29] The Bid/Ask Price of the Fund's Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices are retained by the Fund and/or its service providers.

[30] Under accounting procedures to be followed by the Fund, trades made on the prior business day (''T'') are booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund is able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

cleared via the Options Clearing Corporation also will be available via the Options Price Reporting Authority. Information regarding market price and trading volume for the Shares is 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 are published daily in the financial section of newspapers.

Quotation information for Mortgage-Related Fixed Income Instruments, Other Fixed Income Securities, OTC derivatives and cash equivalents may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements. Price information for OTC derivative instruments 144A securities, non-exchange-traded investment company securities, private placement securities and restricted securities is available from major market data vendors. Price information relating to municipal obligations is available through the Municipal Securities Rulemaking Board's (''MSRB'') EMMA system.

In addition, the Portfolio Indicative Value (''PIV''), as defined in NYSE Arca Rule 8.600–E(c)(3), is widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[31] The dissemination of the PIV, together with the Disclosed Portfolio, allows investors to determine the approximate value of the underlying portfolio of the Fund on a daily basis and provides a close estimate of that value throughout the trading day.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[32] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares of the Fund inadvisable.

Trading in the Shares will be subject to NYSE Arca Rule 8.600–E(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. E.T. in accordance with NYSE Arca Rule 7.34–E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Except as described herein, the Shares of the Fund will conform to the continued listing criteria under NYSE Arca Rule 8.600–E. The Exchange represents that, for continued listing, the Fund will be in compliance with Rule 10A–3 [33] under the Act, as provided by NYSE Arca Rule 5.3–E. The Exchange has obtained a representation from the issuer of the Shares of the Fund that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Surveillance

The Exchange represents that trading in the Shares is subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[34] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, ETFs, certain futures, and certain exchange-traded options and options on 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 securities and financial instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[35] FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine (''TRACE''). FINRA also can access data obtained from the MSRB relating to municipal obligations trading activity for surveillance purposes in connection with trading in the Shares.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio holdings or reference assets, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

Information Bulletin

The Exchange will inform its Equity Trading Permit (''ETP'') Holders in an

[31] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available PIVs taken from the CTA or other data feeds.

[32] *See* NYSE Arca Rule 7.12–E.

[33] 17 CFR 240 10A–3.

[34] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[35] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares of the Fund. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) NYSE Arca 9.2–E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Early and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (4) how information regarding the PIV and the Disclosed Portfolio is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares of the Fund will be calculated after 4:00 p.m. E.T. each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [36] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.600–E. The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and has implemented and will maintain a fire wall with respect to such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. The Exchange represents that trading in the Shares is subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, ETFs, certain futures, and certain exchange-traded options and options on futures with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities and financial instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE. FINRA also can access data obtained from the MSRB relating to municipal obligations trading activity for surveillance purposes in connection with trading in the Shares.

Except as described herein, the Shares of the Fund will conform to the continued listing criteria under NYSE Arca Rule 8.600–E. The Exchange represents that, for continued listing, the Fund will be in compliance with Rule 10A–3 under the Act, as provided by NYSE Arca Rule 5.3–E. The Exchange has obtained a representation from the issuer of the Shares of the Fund that the NAV per Share is calculated daily and that the NAV and the Disclosed Portfolio are made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. The Fund's portfolio holdings are disclosed on its website daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day. On a daily basis, the Fund discloses the information regarding the Disclosed Portfolio required under NYSE Arca Rule 8.600–E (c)(2) to the extent applicable. The Fund's website information is publicly available at no charge.

Investors can also obtain the Trust's SAI, the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.*

The website for the Fund includes a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Rule 8.600–E(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors have ready access to information regarding the Fund's holdings, the PIV, the Disclosed Portfolio, and quotation and last sale information for the Shares. The Fund's investments, including derivatives, will be consistent with the Fund's investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).

With respect to the Fund's investment in Private ABS/MBS, the proposed non-compliance with the requirements in Commentary .01(b)(4) to Rule 8.600–E that component securities that in the aggregate account for at least 90% of the fixed income weight of the portfolio meet one of the criteria specified in Commentary .01(b)(4) is appropriate because certain Private ABS/MBS by their nature cannot satisfy the criteria in Commentary .01(b)(4). Instead, the Exchange proposes that the Fund's investments in (1) Mortgage-Related Fixed Income Instruments other than Private ABS/MBS, and (2) Other Fixed Income Securities will be required to comply with the requirements of Commentary .01(b)(4). The Exchange believes that excluding Private ABS/MBS from the 90% calculation in Commentary .01(b)(4) is consistent with

[36] 15 U.S.C. 78f(b)(5).

the Act because the Fund's portfolio will minimize the risk to the overall Fund associated with any particular holding of the Fund as a result of the diversification provided by the investments and the Adviser's selection process, which closely monitors investments to ensure maintenance of credit and liquidity standards. Further, the Exchange believes that this alternative limitation is appropriate because Commentary .01(b)(4) to Rule 8.600–E is not designed for structured finance vehicles such as Private ABS/MBS. The Exchange notes that all (1) Mortgage-Related Fixed Income Instruments other than Private ABS/MBS, and (2) Other Fixed Income Securities will meet the requirements of Commentary .01(b)(4) to Rule 8.600–E. Non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities components of the Fund's portfolio shall not account, in the aggregate, for more than 20% of the weight of the portfolio and, therefore, the Fund will comply with Commentary.01(b)(5) to NYSE Arca Rule 8.600–E.

The Exchange notes that the Commission has previously approved the listing of Managed Fund Shares with similar investment objectives and strategies without imposing requirements that a certain percentage of such funds' securities meet one of the criteria set forth in Commentary .01(b)(4).[37]

The Fund may invest in shares of non-exchange-traded open-end management investment company securities, which are equity securities. Therefore, the Fund will not comply with the requirements of Commentary .01(a)(1) to NYSE Arca Rule 8.600–E (U.S. Component Stocks) with respect to its equity securities holdings. It is appropriate and in the public interest to approve listing and trading of Shares of the Fund notwithstanding that the Fund's holdings in such securities would not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600–E. The Fund's investment in shares of non-exchange-traded open-end management investment company securities will be utilized in order to obtain income on short-term cash balances while awaiting attractive investment opportunities, to provide liquidity in preparation for anticipated redemptions or for defensive purposes, which will allow the Fund to obtain the benefits of a more diversified portfolio available in the shares of non-exchange-traded open-end management investment company securities than might otherwise be available. Moreover, such investments, which may include mutual funds that invest, for example, principally in fixed income securities, would be utilized to help the Fund meet its investment objective and to equitize cash in the short term. The Fund will invest in such securities only to the extent that those investments would be consistent with the requirements of Section 12(d)(1) of the 1940 Act and the rules thereunder. Because such securities must satisfy applicable 1940 Act diversification requirements, and have a net asset value based on the value of securities and financial assets the investment company holds, it is both unnecessary and inappropriate to apply to such investment company securities the criteria in Commentary .01(a)(1).

The Exchange notes that it would be difficult or impossible to apply to mutual fund shares certain of the generic quantitative criteria (*e.g.,* market capitalization, trading volume, or portfolio criteria) in Commentary .01(a)(1) (A) through (D) applicable to U.S. Component Stocks. For example, the requirements for U.S. Component Stocks in Commentary .01(a)(1)(B) that there be minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months are tailored to exchange-traded securities (*i.e.,* U.S. Component Stocks) and not to mutual fund shares, which do not trade in the secondary market and for which no such volume information is reported. In addition, Commentary .01(a)(1)(A) relating to minimum market value of portfolio component stocks, Commentary .01(a)(1)(C) relating to weighting of portfolio component stocks, and Commentary .01(a)(1)(D) relating to minimum number of portfolio components are not appropriately applied to open-end management investment company securities; open-end investment companies hold multiple individual securities as disclosed publicly in accordance with the 1940 Act, and application of Commentary .01(a)(1)(A) through (D) would not serve the purposes served with respect to U.S. Component Stocks, namely, to establish minimum liquidity and diversification criteria for U.S. Component Stocks held by series of Managed Fund Shares.

The Exchange accordingly believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Fund on the Exchange notwithstanding that the Fund would not meet the requirements of Commentary .01(a)(1)(A) through (D) and (b)(4) to Rule 8.600–E. The Exchange notes that, other than Commentary .01(a)(1) and (b)(4) to Rule 8.600–E, the Fund's portfolio will meet all other requirements of Rule 8.600–E.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that principally holds fixed income securities and derivatives and that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares of the Fund and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors have ready access to information regarding the Fund's holdings, the PIV, the Disclosed Portfolio for the Fund, and quotation and last sale information for the Shares of the Fund.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that principally holds fixed income securities, ETFs, derivatives, cash and cash equivalents, and that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[38] In

[37] *See* note 24, *supra.*

[38] In approving this proposed rule change, the Commission has considered the proposed rule's

Continued

particular, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act,[39] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

According to the Exchange, other than Commentary .01(a)(1) relating to non-exchange-traded open-end management investment company securities and Commentary .01(b)(4) relating to Private ABS/MBS, as described above, the Fund will meet all other requirements of NYSE Arca Rule 8.600–E.

With respect to the Fund's investments in shares of non-exchange-traded open-end management investment company securities, which will not comply with Commentary .01(a)(1) to NYSE Arca Rule 8.600–E, the Commission notes that: (1) Such securities must satisfy applicable 1940 Act diversification requirements; and (2) the value of such securities is based on the value of securities and financial assets held by those investment companies.[40] The Commission therefore believes that the Fund's investments in non-exchange-traded open-end management investment company securities would not make the Shares susceptible to fraudulent or manipulative acts and practices.[41]

In addition, while the Fund will not meet the requirement that component securities that in the aggregate account for at least 90% of the fixed income weight of the portfolio meet one of the criteria set forth in in Commentary .01(b)(4) to NYSE Arca Rule 8.600–E, the Commission believes that the diversification of the Fund's portfolio, the Fund's representation that it will continue to comply with Commentary .01(b)(5), and the fact that the fixed income portion of the portfolio, excluding Private ABS/MBS, will comply, and will continue to comply, with Commentary .01(b)(4), mitigate manipulation concerns relating to the Shares.

The Exchange represents that all statements and representations made in the filing regarding (a) the description of the portfolio holdings or reference assets, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in the rule filing constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor[42] for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act[43] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Solicitation of Comments on Amendment No. 2 to the Proposed Rule Change

Interested persons are invited to submit written views, data, and arguments concerning whether Amendment No. 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–NYSEArca–2019–51 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2019–51. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2019–51 and should be submitted on or before February 11, 2020.

V. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 2 in the **Federal Register**. The Commission notes that Amendment No. 2 clarified the investments of the Fund and the application of NYSE Arca Rule 8.600–E, Commentary .01 to the Fund's investments. Amendment No. 2 also provided other clarifications and additional information related to the proposed rule change. The changes and additional information in Amendment No. 2 assist the Commission in evaluating the Exchange's proposal and in determining that it is consistent with the Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[44] to approve the

impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[39] 15 U.S.C. 78f(b)(5).

[40] *See supra* Section II.A.2 (Application of Generic Listing Standards).

[41] The Commission notes it has approved other exchange-traded funds that can hold non-exchange-traded open-end management investment company securities in a manner that does not comply with Commentary .01(a)(1) to Rule 8.600–E. *See, e.g.,* Securities Exchange Act Release No. 86362 (July 12, 2019), 84 FR 34457 (July 18, 2019) (SR–NYSEArca–2019–36).

[42] The Commission notes that certain proposals for the listing and trading of exchange-traded products include a representation that the exchange will ''surveil'' for compliance with the continued listing requirements. *See, e.g.,* Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428, 20432 (April 7, 2016) (SR–BATS–2016–04). In the context of this representation, it is the Commission's view that ''monitor'' and ''surveil'' both mean ongoing oversight of compliance with the continued listing requirements. Therefore, the Commission does not view ''monitor'' as a more or less stringent obligation than ''surveil'' with respect to the continued listing requirements.

[43] 15 U.S.C. 78f(b)(5).

[44] 15 U.S.C. 78s(b)(2).

proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[45] that the proposed rule change (SR–NYSEArca–2019–51), as modified by Amendment No. 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.[46]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–00800 Filed 1–17–20; 8:45 am]

BILLING CODE 8011–01–P

[45] *Id.*

[46] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before March 23, 2020.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Alison Amann, Attorney Advisor, Office of General Counsel, Small Business Administration, 409 3rd Street, 7th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Alison Amann, Attorney Advisor, 202–205–6841, *alison.amann@sba.gov,* Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: This collection is essential to the Agency's mission because if SBA designates an area as a Governor-designated covered area, based on the information provided by the State Governor, additional small businesses may become eligible for certification as HUBZone small business concerns, which in turn will provide them with more contracting opportunities. These additional contracting opportunities create incentives for individuals to start small businesses and allow existing small businesses to grow. SBA has taken all practicable steps to consult with interested agencies and members of the public to minimize the burden of this information collection. SBA intends to make available on its website a list of the areas within each State that meet the statutory definition of ''covered area'' according to the most recent Bureau of the Census data. This will minimize the burden on State governments by eliminating the need to gather this data and do the necessary analysis to determine which areas may meet the definition of ''covered area.'' Finally, pursuant to 5 CFR 1320.13(d), SBA also requests a waiver from the requirement to publish a 60-day notice in the **Federal Register** requesting comments on this information collection. SBA will publish the required notice as part of the standard submission process before the emergency approval expires.

Summary of Information Collection

Title: HUBZone Program Petition for Governor-Designated Covered Areas.

Description of Respondents: HUBZone Small Business concerns.

Form Number: N/A.

Annual Responses: 53.

Annual Burden: 265.

Curtis Rich,

Management Analyst.

[FR Doc. 2020–00817 Filed 1–17–20; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before March 23, 2020.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Louis Cupp, New Markets Policy Analyst, Office of Investment and Innovation, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Louis Cupp, New Markets Policy Analyst, 202–619–0511, *louis.cupp@sba.gov.* Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: Reporting and recordkeeping requirements, Investment companies, Finance, Business/Industry, Small Business. Conduct standards.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Title: Financing Eligibility Statement—Social Disadvantage/Economic: Disadvantage.

Frequency: On Occasion.

SBA Form Numbers: 1941A, 1941B, 1941C.

Description of Respondents: Small Business Investment Companies and Small Businesses.

Responses: 10.

Annual Burden: 15.

Curtis Rich,

Management Analyst.

[FR Doc. 2020–00818 Filed 1–17–20; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 11005]

Raw or Semi-Finished Metals Covered Under IFCA 1245(d)

ACTION: Notice of reports.

SUMMARY: The Iran Freedom and Counter-Proliferation Act (IFCA) of 2012 Section 1245(d) describes ''graphite, raw or semi-finished metals such as aluminum and steel, coal, and software for integrating industrial processes.'' The Department of State is providing notice of a list of materials that constitute ''raw or semi-finished metals'' under IFCA 1245(d) for the purpose of implementing provisions of IFCA delegated to the Secretary of State, including Sections 1245(a)(1)(B), 1245(a)(1)(C), and 1245(e).

DATES: The Secretary of State approved this action January 9, 2020.

FOR FURTHER INFORMATION CONTACT: Alexander Stolar, Office of

Counterproliferation Initiatives, Bureau of International Security and Nonproliferation, Department of State, Telephone: (202)-647–5035

SUPPLEMENTARY INFORMATION: For the purpose of implementing the provisions of IFCA delegated to the Secretary of State, including Sections 1245(a)(1)(B), 1245(a)(1)(C), and 1245(e), ''raw or semi-finished metals'' under IFCA 1245(d) includes, but is not limited to, the following materials (including all types of such materials and all alloys or compounds containing such materials): Aluminum, Americium, Antimony, Barium, Beryllium, Bismuth, Boron, Cadmium, Calcium, Cerium, Cesium, Chromium, Cobalt, Copper, Dysprosium, Erbium, Europium, Gallium, Gadolinium, Germanium, Gold, Hafnium, Hastelloy, Inconel, Indium, Iridium, Iron, Lanthanum, Lithium, Lead, Lutetium, Manganese, Magnesium, Mercury, Molybdenum, Monel, Neodymium, Neptunium, Nickel, Niobium, Osmium, Palladium, Platinum, Plutonium, Polonium, Potassium, Praseodymium, Promethium, Radium, Rhenium, Rhodium, Ruthenium, Samarium, Scandium, Silicon, Silver, Sodium, Steels, Strontium, Tantalum, Technetium, Tellurium, Terbium, Thallium, Thorium, Tin, Titanium, Tungsten, Uranium, Vanadium, Ytterbium, Yttrium, Zinc, and Zirconium.

Gonzalo O. Suarez,

Acting Deputy Assistant Secretary, International Security and Non-Proliferation, Department of State.

[FR Doc. 2020–00816 Filed 1–17–20; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF STATE

[Public Notice 11007]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: ''Lucian Freud: The Self Portraits'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''Lucian Freud: The Self Portraits'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Museum of Fine Arts, Boston, in Boston, Massachussetts, from on or about March 1, 2020, until on or about May 25, 2020, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Paralegal Specialist, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Marie Therese Porter Royce,

Assistant Secretary, Educational and Cultural Affairs, Department of State.

[FR Doc. 2020–00867 Filed 1–17–20; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 10967]

Designation of Iranian Entity Pursuant to Executive Order 13382

ACTION: Notice of Designation.

SUMMARY: Pursuant to the authority in Section 1(ii) of Executive Order 13382, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters,'' the State Department, in consultation with the Secretary of the Treasury and the Attorney General, has determined that Mahan Air engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern.

DATES: Mahan Air was designated pursuant to Executive Order 13382 on December 11, 2019.

FOR FURTHER INFORMATION CONTACT: Harry Thompson, Office of Counterproliferation Initiatives, Bureau of International Security and Nonproliferation, Department of State, Washington, DC 20520, tel.: 202–736–7065.

SUPPLEMENTARY INFORMATION: On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 CFR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 30, 2005. In the Order the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery, including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

Information on the designees is as follows:

Mahan Air

Also Known As: Mahan Air Co.
Location:
(a) No. 21, Mahan Air Tower, Azadegan Street, Jenah Expressway, Beginning of Sheykh Fazlollah Exp. Way, First of Karaj High Way, Tehran, 1481655761, Iran (Islamic Republic of)
(b) Mahan Air Tower, 21st Floor, Azadeghan Street, Karaj Highway, P.O. Box 14515–411, Tehran, Iran (Islamic Republic of)
(c) Mahan Air Tower, Azadegan St., Karaj Highway, P.O. Box 411–14515, Tehran, 1481655761, Iran (Islamic Republic of)

Gonzalo O. Suarez,

Acting Deputy Assistant Secretary, International Security and Non-Proliferation, Department of State.

[FR Doc. 2020–00815 Filed 1–17–20; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Rescinding the Notice of Intent for an Environmental Impact Statement: Washington and Benton Counties, Arkansas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescind Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS).

SUMMARY: The FHWA is issuing this notice to advise the public that the NOI for the preparation of an EIS to study a proposed intermodal highway project in Washington and Benton Counties, Arkansas is being rescinded. The NOI was published in the **Federal Register** on February 4, 2000, and a draft EIS was released in October 2012. This rescission is based on important changes in the existing infrastructure that allows for a substantially reduced scope of work.

FOR FURTHER INFORMATION CONTACT: Peter A. Jilek, FHWA—Acting Division Administrator, Arkansas Division Office, 700 West Capitol Ave., Rm. 3130, Little Rock, AR 72201–3298; 501–324–5625; fax: 501–324–6423.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Arkansas Department of Transportation and the Northwest Regional Airport Authority, initiated a study to identify a new intermodal access road to the Northwest Regional Airport. The project was studied as a toll facility connecting the Northwest Regional Airport to either US 71 (currently I–49) or US 412 for approximately eight to twelve miles. A preferred alternative was not determined. The NOI for the previously notified EIS is being rescinded due to important infrastructure changes affecting the originally proposed alternatives. With the upgrade of US 71 to I–49 and the construction of the Northern Springdale Bypass the scale of the project, the range of alternatives, and the potential for significant impacts is substantially reduced. The reduced scope allows for a separate project to be completed that will satisfy the purpose and need and would likely be studied as an Environmental Assessment.

Comments and questions concerning the proposed action should be directed to the FHWA contact person at the address provided above.

Authority: 23 U.S.C. 315; 49 CFR 1.48 rescind.

Issued on: January 9, 2010.

Peter A. Jilek,

Acting Division Administrator, Little Rock, AR.

[FR Doc. 2020–00900 Filed 1–17–20; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0048]

California's Meal and Rest Break Rules for Drivers of Passenger-Carrying Commercial Motor Vehicles; Petition for Determination of Preemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Order; grant of petition for determination of preemption.

SUMMARY: The FMCSA grants the petition submitted by the American Bus Association (ABA) requesting a determination that the State of California's Meal and Rest Break rules (MRB rules) are preempted under 49 U.S.C. 31141 as applied to passenger-carrying commercial motor vehicle drivers subject to FMCSA's hours of service regulations. Federal law provides for preemption of State laws on commercial motor vehicle safety that are additional to or more stringent than Federal regulations if they (1) have no safety benefit; (2) are incompatible with Federal regulations; or (3) would cause an unreasonable burden on interstate commerce. The FMCSA has determined that California's MRB rules are laws on commercial motor vehicle (CMV) safety, that they are more stringent than the Agency's hours of service regulations, that they have no safety benefits that extend beyond those already provided by the Federal Motor Carrier Safety Regulations, that they are incompatible with the Federal hours of service regulations, and that they cause an unreasonable burden on interstate commerce. The California MRB rules, therefore, are preempted under 49 U.S.C. 31141(c).

FOR FURTHER INFORMATION CONTACT: Charles J. Fromm, Deputy Chief Counsel, Office of the Chief Counsel, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 493–0349; email *Charles.Fromm@dot.gov.*

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year.

Privacy Act: Anyone may search the FDMS for all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on December 29, 2010. 75 FR 82132.

Background

On January 10, 2019, ABA petitioned FMCSA to preempt California statutes and rules requiring employers to give their employees meal and rest breaks during the work day, as applied to drivers of passenger-carrying CMVs subject to FMCSA's hours of service (HOS) regulations. For the reasons set forth below, FMCSA grants the petition.

California Meal and Rest Break Rules

Section 512, Meal periods, of the California Labor Code reads, in part, as follows:

''(a) An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the

employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.''

''(b) Notwithstanding subdivision (a), the Industrial Welfare Commission may adopt a working condition order permitting a meal period to commence after six hours of work if the commission determines that the order is consistent with the health and welfare of the affected employees.''

Section 516 of the California Labor Code reads, in relevant in part, as follows:

''(a) Except as provided in Section 512, the Industrial Welfare Commission may adopt or amend working condition orders with respect to break periods, meal periods, and days of rest for any workers in California consistent with the health and welfare of those workers.''

Section 226.7 of the California Labor Code reads, in relevant part, as follows:

''(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission. . . .''

''(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, . . . the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.''

Section 11090 of Article 9 (Transport Industry) of Group 2 (Industry and Occupation Orders) of Chapter 5 (Industrial Welfare Commission) of Division 1 (Department of Industrial Relations) of Title 8 (Industrial Relations) of the California Code of Regulations, is entitled ''Order Regulating Wages, Hours, and Working Conditions in the Transportation Industry'' hereafter: ''8 CCR section 11090'' or ''section 11090.'' [1] Section 11090(11). Meal Periods, reads as follows:

''(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.''

''(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.''

''(C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an ''on duty'' meal period and counted as time worked. An ''on duty'' meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.''

''(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.''

''(E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.''

Section 11090(12). Rest Periods, reads as follows:

''(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.''

''(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.''

Although section 11090(3)(L) provides that ''[t]he provisions of this section are not applicable to employees whose hours of service are regulated by: (1) The United States Department of Transportation, Code of Federal Regulations, Title 49, sections 395.1 to 395.13, Hours of Service of Drivers,'' the California courts have interpreted the word ''section'' to refer only to section 11090(3), which regulates ''hours and days of work,'' not to all of section 11090, including meal and rest breaks in section 11090(11) and (12). *See Cicairos* v. *Summit Logistics, Inc.,* 133 Cal App. 4th 949 (2006).

Federal Preemption Under the Motor Carrier Safety Act of 1984

Section 31141 of title 49, United States Code, a provision of the Motor Carrier Safety Act of 1984 (the 1984 Act), 49 U.S.C. Chap. 311, Subchap. III, prohibits States from enforcing a law or regulation on CMV safety that the Secretary of Transportation (Secretary) has determined to be preempted. To determine whether a State law or regulation is preempted, the Secretary must decide whether a State law or regulation: (1) Has the same effect as a regulation prescribed under 49 U.S.C. 31136, which is the authority for much of the Federal Motor Carrier Safety Regulations; (2) is less stringent than such a regulation; or (3) is additional to or more stringent than such a regulation. 49 U.S.C. 31141(c)(1). If the Secretary determines that a State law or regulation has the same effect as a regulation based on section 31136, it may be enforced. 49 U.S.C. 31141(c)(2). A State law or regulation that is less stringent may not be enforced. 49 U.S.C. 31141(c)(3). And a State law or regulation the Secretary determines to be additional to or more stringent than a regulation based on section 31136 may be enforced unless the Secretary decides that the State law or regulation (1) has no safety benefit; (2) is incompatible with the regulation prescribed by the Secretary; or (3) would cause an unreasonable burden on interstate commerce. 49 U.S.C. 31141(c)(4). To determine whether a State law or regulation will cause an unreasonable burden on interstate commerce, the Secretary may consider the cumulative effect that the State's law or regulation and all similar laws and regulations of other States will have on interstate commerce. 49 U.S.C. 31141(c)(5). The Secretary need only find that one of the conditions set forth at paragraph (c)(4) exists to preempt the State provision(s) at issue. The Secretary may review a State law or regulation on her own initiative, or on the petition of an interested person. 49 U.S.C. 31141(g). The Secretary's authority under section 31141 is delegated to FMCSA Administrator by 49 CFR 1.87(f).

Federal Motor Carrier Safety Regulations (FMCSRs) Concerning HOS for Drivers of Passenger-Carrying CMVs, Fatigue, and Coercion

For drivers operating a passenger-carrying CMV in interstate commerce, the Federal HOS rules allow up to 10 hours of driving time following 8 consecutive hours off duty, and driving is prohibited after the operator has

[1] California Industrial Welfare Commission Order No. 9–2001 is identical to 8 CCR Section 11090.

accumulated 15 hours of on-duty time.[2] 49 CFR 395.5(a). The 15-hour on-duty limit is non-consecutive; therefore, any time that a driver spends off-duty does not count against the 15-hour window.[3] While the HOS rules for passenger-carrying CMVs impose limits after which driving is prohibited, they do not mandate a 30-minute rest period within the drive-time window, unlike the HOS rules for property-carrying CMVs. The HOS rules also impose weekly driving limits. In this regard, drivers are prohibited from operating a passenger-carrying CMV after having been on duty 60 hours in any 7 consecutive days, if the employing motor carrier does not operate CMVs every day of the week; or after having been on duty 70 hours in any period of 8 consecutive days, if the employing motor carrier operates CMVs every day of the week. 49 CFR 395.5(b).

Additionally, the FMCSRs prohibit a driver from operating a CMV, and a motor carrier from requiring a driver to operate a CMV, while the driver is impaired by illness, fatigue, or other cause, such that it is unsafe for the driver to begin or continue operating the CMV. 49 CFR 392.3. The FMCSRs also prohibit a motor carrier, shipper, receiver or transportation intermediary from coercing a driver to operate a CMV in violation of this and other provisions of the FMCSRs. 49 CFR 390.6.

The ABA Petition and Comments Received

As set forth more fully below, ABA argues that California's MRB rules are within the scope of the Secretary's preemption authority under section 31141 because they are laws ''on commercial motor vehicle safety.'' In this regard, ABA cites the Agency's 2018 Decision finding that the MRB rules are preempted under section 31141, as applied to drivers of property-carrying CMVs subject to the HOS rules. Additionally, ABA argues that the MRB rules ''undermine existing Federal fatigue management rules'' and ''require drivers to take breaks that might be counterproductive to safety.'' The ABA also contends that the MRB rules ''conflict with driver attendance needs,'' that they are ''untenable'' due to inadequate parking for CMVs, and that they make it difficult to comply with the Federal regulations governing passenger service responsibility and terminal facilities. Lastly, ABA argues that ''compliance costs create an unreasonable burden on interstate commerce.'' The ABA's petition seeks an FMCSA determination that California's MRB rules, as applied to passenger-carrying CMV drivers who are subject to the HOS rules, are preempted pursuant to 49 U.S.C. 31141 and, therefore, may not be enforced.

The FMCSA published a notice in the **Federal Register** on May 9, 2019, seeking public comment on whether California's MRB rules, as applied to drivers of passenger-carrying CMVs, are preempted by Federal law. 84 FR 20463. Although preemption under section 31141 is a legal determination reserved to the judgment of the Agency, FMCSA sought comment on issues raised in ABA's petition or otherwise relevant. While the public comment period ended on June 10, 2019, the Agency accepted all public comments submitted through November 7, 2019. The Agency received 28 comments, with 20 in support of the petition and 8 in opposition.[4] The Agency considered all the comments received. They are discussed more fully below.

The Agency's Prior Decisions Regarding Preemption Under Section 31141

I. FMCSA's Decision Rejecting a Petition for a Preemption Determination

On July 3, 2008, a group of motor carriers[5] petitioned FMCSA for a determination under 49 U.S.C. 31141(c) that: (1) The California MRB rules are regulations on CMV safety, (2) the putative State regulation imposes limitations on a driver's time that are different from and more stringent than Federal ''hours of service'' regulations governing the time a driver may remain on duty, and (3) that the State law should therefore be preempted. 73 FR 79204.

On December 24, 2008, the Agency denied the petition for preemption, reasoning that the MRB rules are merely one part of California's comprehensive regulation of wages, hours, and working conditions, and that they apply to employers in many other industries in addition to motor carriers. 73 FR 79204. The FMCSA concluded that the MRB rules were not regulations ''on commercial motor vehicle safety'' within the meaning of 49 U.S.C. 31141 because they applied broadly to all employers and not just motor carriers, and that they therefore were not within the scope of the Secretary's statutory authority to declare unenforceable a State motor vehicle safety regulation that is inconsistent with Federal safety requirements.[6] *Ibid.* at 79205–06.

II. FMCSA's 2018 Decision Granting Petitions To Preempt the MRB Rules

In 2018, the American Trucking Associations (ATA) and the Specialized Carriers and Rigging Association (SCRA) petitioned FMCSA to reconsider its 2008 Decision and declare California's MRB rules preempted under section 31141 insofar as they apply to drivers of CMVs subject to the Federal HOS rules. The ATA acknowledged that FMCSA had previously determined that it could not declare the California MRB rules preempted under section 31141 because they were not regulations ''on commercial motor vehicle safety.'' The 2018 petitioners urged the Agency to revisit that determination, noting that, by its terms, the statute did not limit the Agency's preemption authority to those State laws that directly targeted the transportation industry. Rather, the appropriate question was whether the State law targeted conduct already covered by a Federal regulation designed to ensure motor vehicle safety. The 2018 petitioners also provided evidence that California's meal and rest break laws were detrimental to the safe operation of CMVs.

The FMCSA published a notice in the **Federal Register** seeking public comment on whether the California MRB rules should be declared preempted. 83 FR 50142 (Oct. 4, 2018). The Agency sought public comments in order to make an informed decision on issues relevant to the determination, including what effect California's rules had on interstate motor carrier

[2] Subject to certain conditions, a driver who is driving a passenger-carrying CMV that is equipped with a sleeper berth, may accumulate the equivalent of 8 consecutive hours of off-duty time by taking a combination of at least 8 consecutive hours off-duty and sleeper berth time; or by taking two periods of rest in the sleeper berth. 49 CFR 395.1(g)(3).

[3] ''Off-duty'' time is not specifically defined in the HOS rules; however, the Agency issued guidance stating that a driver may record time as off-duty provided: (1) The driver is relieved of all duty and responsibility for the care and custody of the vehicle, its accessories, and any cargo or passengers it may be carrying, and (2) during the stop, and for the duration of the stop, the driver must be at liberty to pursue activities of his/her own choosing. 78 FR 41852 (July 12, 2013).

[4] A comment letter submitted by the Center for Justice and Democracy, opposing ABA's petition, was joined by 23 organizations.

[5] Affinity Logistics Corp.; Cardinal Logistics Management Corp.; C.R. England, Inc.; Diakon Logistics (Delaware), Inc.; Estenson Logistics, LLC; McLane Company, Inc.; McLane/Suneast, Inc.; Penske Logistics, LLC; Penske Truck Leasing Co., L.P.; Trimac Transportation Services (Western), Inc.; and Velocity Express, Inc.

[6] In a 2014 amicus brief in the matter of *Dilts* v. *Penske Logistics, LLC,* United States Court of Appeals for the Ninth Circuit, No. 12–55705 (2014), the United States explained that FMCSA continued to adhere to the view expressed in the 2008 Decision that California's MRB rules were not preempted by section 31141 because they were not laws ''on commercial motor vehicle safety.'' 2014 WL 809150, 26–27. The Ninth Circuit made no determination whether the MRB rules were within the scope of the Secretary's preemption authority under section 31141 because that question was not before the Court. *See* 769 F.3d 637.

operations. *Ibid.* In total, FMCSA received more than 700 comments, and several letters from members of Congress.

On December 21, 2018, FMCSA issued a determination declaring the MRB rules preempted with respect to operators of property-carrying motor vehicles subject to the Federal HOS rules. 83 FR 67470. The Agency first acknowledged that it was departing from its 2008 Decision finding that the MRB rules were not laws ''on commercial motor vehicle safety'' because they were laws of broad applicability and not specifically directed to motor vehicle safety. *Ibid.* at 67473–74. The Agency explained that its 2008 Decision was ''unnecessarily restrictive'' and not supported by either the statutory language or legislative history. *Ibid.* The Agency considered the fact that language of section 31141 mirrors that of 49 U.S.C. 31136, which instructs the Secretary to ''prescribe regulations on commercial motor vehicle safety.'' 49 U.S.C. 31136(a). The Agency explained that Congress, by tying the scope of the Secretary's preemption authority directly to the scope of the Secretary's authority to regulate the CMV industry, provided a framework for determining whether a State law or regulation is subject to section 31141. The Agency concluded that ''[I]f the State law or regulation imposes requirements in an area of regulation that is already addressed by a regulation promulgated under 31136, then the State law or regulation is a regulation ''on commercial motor vehicle safety.'' *Ibid.* at 67473. The Agency further determined that because California's MRB rules plainly regulated the same conduct as the Federal HOS regulations, they were laws ''on commercial motor vehicle safety.''

Having concluded that the California MRB rules were laws ''on commercial motor vehicle safety,'' under section 31141, the Agency next determined that they are additional to or more stringent than the Federal HOS regulations. 83 FR 67474–75. The FMCSA found that the MRB rules require employers to provide property-carrying CMV drivers with more rest breaks than the Federal HOS regulations; and allow a smaller window of driving time before a break is required. *Ibid.*

The Agency next explained that because the MRB rules are more stringent, they may be preempted if the Agency determined that that MRB rules have no safety benefit, that they are incompatible with HOS regulations, or that enforcement of the MRB rules would cause an unreasonable burden on interstate commerce. 83 FR 67475. The FMCSA found that the MRB rules provided no safety benefit beyond the Federal regulations, and that given the current shortage of available parking for CMVs, the required additional breaks adversely impacted safety because they exacerbated the problem of CMVs parking at unsafe locations. *Ibid.* at 67475–77. The Agency also determined that the MRB rules were incompatible with the Federal HOS regulations because they required employers to provide CMV drivers with more breaks, at less flexible times, than the Federal HOS regulations. *Ibid.* at 67477–78.

Lastly, the Agency determined that enforcing the MRB rules would impose an unreasonable burden on interstate commerce. 83 FR 67478–80. In this regard, the 2018 petitioners and other commenters provided information demonstrating that the MRB rules imposed significant and substantial costs stemming from decreased productivity and administrative burden. *Ibid.* at 67478–79. The Agency also considered the cumulative effect on interstate commerce of similar laws and regulations in other States. Currently 20 other States have varying applicable break rules. The Agency determined that the diversity of State regulation of meal and rest breaks for CMV drivers has resulted in a patchwork of requirements that the Agency found to be an unreasonable burden on interstate commerce. *Ibid.* at 67479–80.

Accordingly, FMCSA granted the petitions for preemption and determined that California ''may no longer enforce'' its meal and rest break rules with respect to drivers of property-carrying commercial motor vehicles subject to the HOS rules.

Decision

I. Section 31141 Expressly Preempts State Law Therefore the Presumption Against Preemption Does Not Apply

In their comments, the International Brotherhood of Teamsters (the Teamsters) and the American Association for Justice contend that California's MRB rules are subject to a presumption against preemption. Citing the Agency's amicus brief in *Dilts* v. *Penske,* the Teamsters argue that the MRB rules fall within an area of California's traditional police power and thus are subject to the presumption. The American Association of Justice argues that the presumption requires FMCSA to adopt ''the reading that disfavors pre-emption'' in interpreting section 31141.

The presumption against preemption is a canon of statutory interpretation employed by courts that favors reading ambiguous Federal statutes in a manner that avoids preempting State law absent clear congressional intent to do so. *See, e.g., Association des Eleveurs de Canards et d'Oies du Quebec* v. *Becerra,* 870 F.3d 1140, 1146 (9th Cir. 2017). The FMCSA acknowledges that ''in all preemption cases, and particularly in those in which Congress has legislated in a field which the States have traditionally occupied, [there] is an assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.'' *Wyeth* v. *Levine,* 555 U.S. 555, 565 (2009) (alterations omitted). Where, however, a provision at issue constitutes an area of traditional State regulation, ''that fact alone does not 'immunize' state employment laws from preemption if Congress in fact contemplated their preemption.'' *Dilts* v. *Penske Logistics, LLC,* 769 F.3d 637, 643 (9th Cir. 2014). And here there is no dispute that Congress has given FMCSA the authority to review and preempt State laws; the only questions concern the application of that authority to specific State laws. The FMCSA is aware of no authority suggesting that the presumption against preemption limits an agency's ability to interpret a statute authorizing it to preempt State laws.

In any event, when a ''statute contains an express pre-emption clause, [courts] do not invoke any presumption against pre-emption but instead focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' pre-emptive intent.'' *Puerto Rico* v. *Franklin California Tax-Free Trust,* 136 S. Ct. 1938, 1946 (2016) (quotations omitted); *see also Atay* v. *County of Maui,* 842 F.3d 688, 699 (9th Cir. 2016). Section 31141 expressly preempts State laws on commercial motor vehicle safety. Thus, the MRB rules are not subject to a presumption against preemption, and the question that FMCSA must answer is whether the MRB rules, as applied to drivers of passenger-carrying CMVs, should be preempted under section 31141.

II. The California MRB Rules, as Applied to Drivers of Passenger-Carrying CMVs, Are Laws or Regulations ''on Commercial Motor Vehicle Safety'' Within the Meaning of 49 U.S.C. 31141

The initial question in a preemption analysis under section 31141 is whether the State provisions at issue are laws or regulations ''on commercial motor vehicle safety.'' 49 U.S.C. 31141(c)(1). In the 2008 Decision, the Agency narrowly construed section 31141 to conclude that because the MRB rules are ''one part of California's comprehensive regulations governing wages, hours and

working conditions,'' and apply to employers in many other industries in addition to motor carriers, the provisions are not regulations ''on commercial motor vehicle safety,'' and, thus, were not within the scope of the Secretary's preemption authority. 73 FR 79204, 79206. The FMCSA reconsidered this conclusion and explained in its 2018 Decision that both the text of section 31141 and its structural relationship with other statutory provisions make it clear that Congress's intended scope of section 31141 was broader than the construction the Agency gave it in the 2008 Decision. In this regard, the Agency explained:

> The ''on commercial motor vehicle safety'' language of section 31141 mirrors that of section 31136, and by tying the scope of the Secretary's preemption authority directly to the scope of the Secretary's authority to regulate the CMV industry, the Agency believes that Congress provided a framework for determining whether a State law or regulation is subject to section 31141. In other words, if the State law or regulation imposes requirements in an area of regulation that is already addressed by a regulation promulgated under 31136, then the State law or regulation is a regulation ''on commercial motor vehicle safety.'' Because California's MRB rules impose the same types of restrictions on CMV driver duty and driving times as the FMCSA's HOS regulations, which were enacted pursuant to the Secretary's authority in section 31136, they are ''regulations on commercial motor vehicle safety.'' Thus, the MRB rules are ''State law[s] or regulation[s] on commercial motor vehicle safety,'' and are subject to review under section 31141. 83 FR 67470.

Consistent with the reasoning in the 2018 Decision, the Agency finds that if the State law or regulation at issue imposes requirements in an area of regulation that is within FMCSA's section 31136 regulatory authority, then the State law or regulation is a regulation ''on commercial motor vehicle safety.

Regarding California's MRB rules, as applied to drivers of passenger-carrying CMVs, ABA argues that the MRB rules ''require[ ] meal and rest breaks of fixed durations and at mandated intervals throughout the work day so as to prevent fatigue-related incidents.'' The ABA further contends that, ''The fact that the FMCSA has promulgated regulations for commercial truck and bus drivers in 49 CFR part 395 addressing the very hours of service and break issues encompassed in the California MRB Rules underscores that the State rules are requirements 'on commercial motor vehicle safety.' '' The Agency agrees. As explained above, the Federal HOS rules for passenger-carrying CMVs have long imposed drive time limits for drivers. While the HOS rules do not include a mandated 30-minute rest period, they regulate how long a driver may operate a passenger-carrying CMV before an off-duty period is required. The Federal regulations also prohibit drivers from operating CMVs when fatigued, and thus require drivers to take any additional breaks necessary to prohibit fatigued driving, and prohibit employers from coercing drivers into operating a CMV during these required breaks. Thus, both the HOS and MRB rules impose requirements for off-duty periods. Therefore, the Agency determines that, because the HOS and MRB rules cover the same subject matter, the MRB rules, as applied to drivers of passenger-carrying CMVs, are laws on CMV safety.

California's Labor Commissioner, California's Attorney General, the American Association for Justice, the Teamsters, and other commenters who oppose ABA's petition argue that the Agency's analysis and conclusions in the 2018 Decision were incorrect and that FMCSA should revert to the legal position articulated in the 2008 Decision and in the Government's amicus brief in *Dilts* v. *Penske.* California's Labor Commissioner and Attorney General further contend the Agency's 2018 Decision ''improperly changed the agency's position and expanded the preemptive scope of the statute'' and that the MRB rules are ''are employment laws of general applicability rather than regulations on commercial motor vehicles'' as the Agency determined in 2008 and in its *Dilts* amicus brief. The FMCSA disagrees with this argument. As the Agency explained in the 2018 Decision, its prior position articulated in 2008 need not forever remain static. When an Agency changes course, it must provide a ''reasoned analysis for the change.'' *See Motor Vehicle Manufacturers* v. *State Farm,* 463 U.S. 29, 42 (1983). The Agency's 2018 Decision acknowledged the changed interpretation of section 31141 and provided a reasoned explanation for the new interpretation. *See FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 514–16 (2009). Similarly, this decision explains the basis for the Agency's conclusion that the MRB rules are laws on CMV safety, as applied to drivers of passenger-carrying CMVs. Irrespective of the whether the MRB rules have general applicability to employers and workers in the State, when they are applied to CMV drivers, they govern the same conduct as the Federal HOS rules. Therefore, they are laws on CMV safety.

FMCSA's interpretation of section 31141 is consistent with the legislative history of the 1984 Act. As originally enacted, the 1984 Act granted the Agency authority to promulgate regulations ''pertaining to'' CMV safety, and likewise to review State laws ''pertaining to'' CMV safety. Public Law 98–554 §§ 206(a), 208(a) (originally codified at 49 U.S.C. App. 2505, 2507). Congress amended these provisions during the 1994 recodification of Title 49 of the United States Code. See Public Law 103–272 (July 5, 1994), 108 Stat. 1008. As recodified, the law allows the Agency to promulgate regulations and review State laws ''on commercial motor vehicle safety,'' rather than ''pertaining to commercial motor vehicle safety.'' *Compare* 49 U.S.C. app. 2505 and 49 U.S.C. app. 2507 (1984) with 49 U.S.C. 31136 and 49 U.S.C. 31141(c)(1) (1994). Congress made clear, however, that any changes made during their comprehensive effort to restructure and simplify Title 49 ''may not be construed as making a substantive change in the laws replaced.'' Public Law 103–272 §§ 1(e), 6(a). The change in wording therefore did not narrow the Agency's rulemaking authority or the scope of the State laws subject to preemption review. California's MRB rules clearly ''pertain to'' CMV safety as applied to drivers of passenger-carrying CMVs subject to the HOS rules, and therefore fall within the scope of section 31141. *See, e.g.,* ''Pertain,'' *Dictionary.com, https://www.dictionary.com/browse/pertain* (definition 1) (''to have reference or relation; relate.'').

The Agency's interpretation is also consistent with congressional purposes. Congress was concerned that a lack of uniformity between Federal and State laws on the same subject matter could impose substantial burdens on interstate truck and bus operations, and potentially hamper safety. *See, e.g.,* 1984 Cong. Rec. 28215 (Oct. 2, 1984) (statement of Sen. Packwood); *ibid.* at 28219 (statement of Sen. Danforth). Accordingly, as the Senate Report on the bill that became the 1984 Act explained, the preemption review provision was designed to ensure ''as much uniformity as practicable whenever a Federal standard and a State requirement cover the same subject matter.'' S. Rep. 98–424 at 14 (1984). The fact that a State regulation may be broader than a Federal safety regulation and impose requirements outside the area of CMV safety does not eliminate Congress's concerns. Such laws may still be incompatible with Federal safety standards or unduly burden interstate commerce when applied to the operation of a CMV.

In their comments, the Labor Commissioner and Attorney General also argue that the Agency should not preempt the MRB rules because the ''FMCSA specifically declined to regulate rest periods for drivers of passenger-carrying commercial motor vehicles and the Federal commercial motor vehicle safety regulations are only intended to be 'minimum safety standards.' '' The Agency finds this argument unpersuasive. As explained above, both the MRB rules, as applied to drivers of passenger-carrying CMVs, and the Federal HOS rules limit the amount of time that a driver may work before an off-duty period is required. In comments on ABA's petition, the ATA correctly pointed out that the Agency made the affirmative decision in 2003 not to subject drivers of passenger-carrying CMVs to the same HOS rules as property-carriers because of operational considerations that distinguish bus drivers from truck drivers with respect to fatigue. *See* 68 FR 22456, 22462 (Apr. 28, 2003). Irrespective of the fact that the HOS rules for passenger-carrying CMVs do not include a provision requiring a 30-minute rest break, both the HOS and the MRB rules govern the same subject matter—how long a driver may drive before a required off-duty period. The absence of a 30-minute break provision in the HOS rules for passenger carriers does not mean that California's MRB rules are not laws on CMV safety.

As the Agency noted in the 2018 Decision, in response to the ATA and SCRA petitions regarding property-carrying CMVs, the California Labor Commissioner acknowledged that the MRB rules improve driver and public safety. Here, in response to ABA's petition, the Labor Commissioner and the Attorney General ''reaffirm that California's meal and rest period requirements promote driver and public safety.'' These statements further demonstrate that the MRB rules are rules ''on CMV safety'' and, therefore, fall squarely within the scope of the Secretary's preemption authority.

III. The MRB Rules Are ''Additional to or More Stringent Than'' the Agency's HOS Regulations for Passenger-Carrying Vehicles Within the Meaning of Section 31141

Having concluded that the MRB rules, as applied to drivers of passenger-carrying CMVs, are laws ''on commercial motor vehicle safety,'' under section 31141, the Agency next must decide whether the MRB rules have the same effect as, are less stringent than, or are additional to or more stringent than the Federal HOS regulations for passenger-carrying CMVs. 49 U.S.C. 31141(c)(1).

As explained above, the HOS rules prohibit a driver from operating a passenger-carrying CMV for more than 10 hours following 8 consecutive hours off duty, or for any period after having been on duty 15 hours following 8 consecutive hours off duty. 49 CFR 395.5(a). The 15-hour on-duty limit is non-consecutive; therefore, any time that a driver spends off-duty does not count against the 15-hour duty window. While the HOS regulations permit drivers of passenger-carrying CMVs to take time off duty in the middle of a duty period for a rest break and extend the 15-hour window in which they may drive, the rules do not require that they do so. Conversely, not only do the MRB rules require employers to provide passenger-carrying CMV drivers with meal and rest breaks, they are required to provide them at specified intervals. Therefore, California's MRB rules are additional to or more stringent than the HOS regulations.

California's Labor Commissioner and Attorney General do not deny that the MRB rules require employers to provide for breaks during the work day while the Federal HOS regulations for passenger-carrying CMVs do not. Citing *Augustus* v. *ABM Security Services, Inc.,* 385 P.3d 823 (Cal. 2016), and *Murphy* v. *Kenneth Cole Prods., Inc.,* 155 P.3d 284 (Cal. 2007), they argue in their comments that the MRB rules are not ''additional to or more stringent than'' the Agency's HOS regulations because under the MRB rules, employers may either provide the required meal and rest periods or pay additional wages. The Labor Commissioner and Attorney General assert that California law permits employers to pay higher wages as an alternative to complying with the MRB rules, and that the MRB rules therefore are not more stringent that the HOS regulations.

The Agency disagrees. As FMCSA explained in its December 2018 Decision, California law prohibits an employer from requiring an employee to work during a mandated meal or rest break, and provides for additional pay as a remedy for violating that prohibition. Cal. Labor Code 226.7(b)–(c). The California Supreme Court has held that section 226.7 ''does not give employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour of pay,'' and that ''an employer's provision of an additional hour of pay does not excuse a section 226.7 violation.'' *Kirby* v. *Immoos Fire Protection, Inc.,* 274 P.3d 1160, 1168 (Cal. 2012) (emphasis in original).[7] This ruling is not undercut by the two cases cited by the Labor Commissioner and Attorney General. While it is true that the California Supreme Court stated in *Augustus* v. *ABM Security Services, Inc.* that ''employers who find it especially burdensome to relieve their employees of all duties during rest periods'' could provide the extra hour of pay, it emphasized that this ''option[ ] should be the exception rather than rule, to be used'' only in the context of ''irregular or unexpected circumstances such as emergencies.'' 385 P.3d at 834 & n.14. And while the California Supreme Court in *Murphy* v. *Kenneth Cole Prods., Inc.* held that the extra hour of pay is ''wages'' for statute of limitations purposes, that ruling predated *Kirby* by six years, and is not inconsistent with *Kirby's* holding that an employer does not have a lawful choice to ignore the MRB rules. Indeed, the California Supreme Court in *Kirby* specifically noted that its decision was consistent with *Murphy. See Kirby,* 274 P.3d at 1168 (''[T]o say that a section 226.7 remedy is a wage . . . is not to say that the *legal violation* triggering the remedy is nonpayment of wages. As explained above, the legal violation is nonprovision of meal or rest breaks. . . .''). Accordingly, the MRB rules do not give employers the option of either complying with the requirements or providing the additional hour of pay.[8]

Employers of passenger-carrying CMV drivers complying with the minimum requirements of the HOS regulations would nevertheless be violating the MRB rules on their face. That alone is dispositive of the relevant inquiry. *See, e.g.,* S. Rep. No. 98–424, at 14 (''It is the Committee's intention that there be as much uniformity as practicable whenever a Federal standard and a State requirement cover the same subject matter. However, a State requirement and a Federal standard cover the same

[7] In *Kirby,* the California Supreme Court addressed, *inter alia,* the question of whether a section 226.7 claim alleging an employer's failure to provide statutorily mandated meal and rest periods, constituted an action brought for the nonpayment of wages. *See* 274 P.3d at 1167. The Court held that it did not and explained that the premium pay ''is the legal remedy for a violation . . . but whether or not it has been paid is irrelevant to whether section 226.7 was violated. In other words, section 226.7 does not give employers a lawful choice between providing either meal and rest breaks *or* an additional hour of pay.'' *Ibid.*

[8] Even if employers did have an option of either complying with the MRB Rules or paying additional wages, the MRB Rules would still be ''additional to or more stringent than'' the HOS regulations, since the MRB Rules would either: (1) Require that employers provide for breaks not required by the HOS regulations; or (2) provide the remedy of additional pay not required by the HOS regulations.

subject matter only when meeting the minimum criteria of the less stringent provision causes one to violate the other provision on its face.''). The MRB rules therefore are ''additional to or more stringent than'' the HOS regulations.

IV. The MRB Rules Have No Safety Benefits That Extend Beyond Those Provided by the FMCSRs

Because the MRB rules, as applied to drivers of passenger-carrying CMVs, are more stringent than the Federal HOS regulations, they may be enforced *unless* the Agency also decides either that the MRB rules have no safety benefit, that they are incompatible with the HOS regulations, or that enforcement of the MRB rules would cause an unreasonable burden on interstate commerce. 49 U.S.C. 31141(c)(4). The Agency need only find that one of the aforementioned conditions exists to preempt the MRB rules. *Ibid.*

Section 31141 authorizes the Secretary to preempt the MRB rules if they have ''no safety benefit.'' 49 U.S.C. 31141(c)(4)(A). Consistent with the 2018 Decision, FMCSA continues to interpret this language as applying to any State law or regulation that provides no safety benefit *beyond* the safety benefit already provided by the relevant FMCSA regulations. The statute tasks FMCSA with determining whether a State law that is more stringent than Federal law, which would otherwise undermine the Federal goal of uniformity, is nevertheless justified. There would be no point to the ''safety benefit'' provision if it were sufficient that the more stringent State law provides the *same* safety benefit as Federal law. A State law or regulation need not have a negative safety impact to be preempted under section 31141(c)(4)(A); although, a law or regulation with a negative safety impact could be preempted.

The ABA argues that California's MRB rules ''undermine existing federal fatigue management rules.'' In this regard, ABA contends:

> Under the MRB rules, drivers are required to take periodic breaks at certain times regardless of whether the driver feels fatigued. At other times, when the driver might actually feel fatigued, the driver might feel obligated to continue the trip because of the delay already caused by taking the designated break under California law. FMCSA has determined that providing the driver with flexibility to determine when to take a break, based on the driver's own physiology, traffic congestion, weather and other factors, will encourage safer driving practices than simply mandating a break at designated intervals. The MRB Rules act counter to this FMCSA mandate and the flexibility the FMCSA rules allow.

In its comments on ABA's petition, ATA agreed, stating that ''specifying multiple arbitrary breaks, even when a driver is not fatigued, makes it less likely that a driver will take a break when he or she is fatigued.'' The Truckload Carriers Association also noted that ''flexibility will empower drivers to rest when they are feeling fatigued, regardless of how long they have been in the driver's seat that day or how far they are from their final destination.'' This sentiment was also echoed by other commenters, such as the Greater California Livery Association and the National Limousine Association. Additionally, the United Motorcoach Association stated, ''The application of the California Meal and Rest Break rules clearly endangers passengers and the traveling public. Any suggestion that a bus or motorcoach driver can simply pull off to the side of the road and 'rest' while 50+ passengers sit patiently behind the driver is wildly mistaken.''

Citing several National Transportation Safety Board (NTSB) studies, safety recommendations, and the NTSB 2019–2020 Most Wanted List addressing issues surrounding fatigue-related highway accidents, the California Labor Commissioner and Attorney General contend that the MRB rules support the public safety goal of reducing fatigue-related accidents. In addition, the Labor Commissioner and Attorney General point out that FMCSA commissioned an Evidence Report to assess and characterize the relationship between crash and fatigue in generally healthy motorcoach drivers.[9] They contend that the Evidence Report described studies that showed ''that a 30-minute rest break reduced the incidence of 'safety critical events' while others showed that long-haul truck drivers who napped had a significantly lower incidence of crash or near-crash.'' The Labor Commissioner and Attorney General added that ''the timeframe for incidence of crash maps closely to the timeframe for California's meal and rest periods.'' They argue that because the HOS rules for passenger-carrying CMVs do not require drivers to take the same 30-minute rest period applicable to property-carrying CMVs, ''FMCSA cannot conclude, as it did in the December 2018 preemption determination regarding property-carrying commercial motor vehicles, that California's meal and rest period requirements 'do not provide additional safety benefits.'" Accordingly, they conclude that ''it defies logic to suggest that the safety of bus drivers and their precious human cargo is not enhanced by the State's break requirements.'' The Amalgamated Transit Union, the Transportation Trades Department/AFL–CIO, the Teamsters, and the American Association for Justice make similar arguments and cite publications by the NTSB and others to show that CMV drivers' safety performance can easily deteriorate due to fatigue.

The Agency disagrees that the absence of a 30-minute break requirement in the HOS rules for drivers of passenger-carrying CMVs, unlike property-carriers, renders it impossible for the Agency to find that that the MRB rules provide no safety benefit beyond the Federal regulations. The FMCSA has long recognized that there are operational differences between commercial passenger carriers and commercial freight carriers and that those differences require different fatigue management measures. In this regard, the Agency's 2003 HOS final rule did not propose any changes to the Federal HOS rules for drivers of passenger-carrying CMVs because the Agency determined that the nature of passenger-carrier operations requires a different framework for fatigue management than the HOS rules for property-carrier operations which includes more flexibility to accommodate operational challenges presented in passenger carrier transportation. 68 FR 22456, 22461 (Apr. 28, 2003). In addition, when the Agency revised the HOS rules in 2011 to mandate a 30-minute off-duty rest period for drivers operating property-carrying CMVs, the Agency did not impose a similar requirement on drivers of passenger-carrying CMVs. 76 FR 81134, 81186. In response to a commenter who opposed different HOS rules for property- and passenger-carriers, the Agency explained, ''[T]he HOS rules are not one-size-fits-all.'' *Ibid.* at 81165. The Agency's decision in 2011 not to impose a 30-minute rest period requirement for passenger-carrying CMVs was appropriate given the nature of bus operations, where drivers may stop and rest at times that coincide with passenger rest stops.

The ABA and several commenters have described the operational differences. In this regard, ABA points out, ''In looking at a bus driver's schedule in practice, a scheduled service driver often will take multiple breaks during intermediate stops along a schedule. These will occur whenever practical, such as when all passengers disembark for a food or restroom break.'' Similarly, the United Motorcoach Association explains that ''most charter drivers take their meals with the groups.'' Coach USA notes that

[9] Manila Consulting Group, Inc. Evidence Report, Fatigue and Motorcoach/Bus Driver Safety. McLean, VA: Manila Consulting Group, Inc; December 2012.

''charter/tour drivers are able to take breaks while their passengers are out sightseeing'' and further explains that ''buses operating on long trips take pre-scheduled breaks for the benefit of the drivers and passengers. . . .'' Greyhound Lines (Greyhound) noted that a typical schedule would be ''structured to provide the driver and passenger a safe and comfortable meal and rest stop at the approximate half-way point of the trip.''

The Federal regulations establish a fatigue management framework for drivers of passenger-carrying CMVs that prohibits a driver from operating a CMV if she feels too fatigued or is otherwise unable to safely drive and that prohibits employers from coercing a driver too fatigued to operate the CMV safely to remain behind the wheel. 49 CFR 392.3, 390.6. In addition, the Federal HOS rules provide for a *nonconsecutive* 15-hour duty window that gives drivers flexibility to schedule off-duty breaks at times that accord with the passenger itinerary or travel schedule and with the driver's actual level of fatigue. 49 CFR 395.5(a). The HOS rule in conjunction with FMCSRs prohibiting fatigued driving and coercion sufficiently mitigate the risk that fatigued driving would lead to crashes. Additionally, the Agency believes that this framework is appropriate because it provides the flexibility needed for passenger carrier operations while still prohibiting a driver from operating a CMV when too fatigued to safely do so. Interposing the MRB rules on top of the Agency's framework eliminates the regulatory flexibilities provided and requires the driver to stop the bus and log off duty at fixed intervals each day regardless of the driver's break schedule or actual level of fatigue. The Agency determines that the MRB rules provide no safety benefit beyond the safety benefit already provided by the Federal regulatory framework for passenger-carrying CMVs.

The Agency acknowledges the dangers of fatigued driving. However, the Labor Commissioner and the Attorney General mischaracterize one of the statements quoted from the Evidence Report. In evaluating the question ''How much rest does a fatigued professional driver need to resume driving unimpaired,'' the Evidence Report did, in fact, state that studies found that ''a 30-minute rest break reduced the incidence of 'safety critical events.''' However, that statement was made in relation to drivers of *property-carrying* CMVs. *Evidence Report: Fatigue and Motorcoach/Bus Driver Safety* at 84. With regard to passenger-carrying CMVs, the Evidence Report explained that, ''No included studies assessed only motorcoach drivers or presented data in a manner that allowed us to specifically address this driver group.'' *Ibid.* The Agency notes that the Labor Secretary has provided no data or research to show that California's MRB rules have led to a reduction in fatigue-related crashes among passenger-carrying CMVs.

The ABA further argues that a ''lack of adequate parking also makes the MRB rules untenable.'' In this regard, ABA cites the Agency's finding in the 2018 Decision that the increase in required stops to comply with the MRB Rules, when the driver may not be fatigued, will exacerbate the problem of property-carrying CMV drivers parking at unsafe locations. The ABA contends that ''[b]us drivers face an even more difficult task than truck drivers to find a parking space and safely park the vehicle several times each day in order to comply with the California requirements while ensuring that the passengers are safely accommodated.'' The United Motorcoach Association explained, ''[A] bus or motorcoach parked on the side of the road while a driver 'rests' poses a crash risk from traffic.'' The Truckload Carrier's Association stated, ''While the lack of safe truck parking is already an issue at the forefront of our industry, it is conceivably even worse for buses as they are more restricted than trucks as to where they can park given that they are transporting human cargo.'' The National Limousine Association, Coach USA and other commenters also advanced similar arguments.

The Agency agrees that California's enforcement of the MRB rules could exacerbate the problem of CMV drivers parking at unsafe locations. The shortage of safe, authorized parking spaces for CMVs and the negative safety implication of enforcing the MRB rules is well-documented in FMCSA's 2018 Decision preempting California's MRB rules for drivers of property carrying CMVs. *See* 83 FR 67476–77. The Agency adopts that reasoning here. If a passenger-carrying CMV driver resorted to stopping at an unsafe location—such as a highway shoulder and ramp—to comply with the MRB rules, such an action would present a safety hazard to the passengers, the driver, and other highway users.

In sum, the MRB rules abrogate the flexibilities provided by the Federal HOS rules for passenger-carrying CMVs without an added safety benefit. Therefore, FMCSA determines that the MRB rules do not provide a safety benefit not already realized under the FMCSRs.

V. The MRB Rules Are Incompatible With the Federal HOS Regulations for Passenger-Carrying CMVs

The Agency has determined that the MRB rules are ''additional to or more stringent than a regulation prescribed by the Secretary under section 31136;'' therefore, they must be preempted if the Agency also determines that the MRB rules are ''incompatible with the regulation prescribed by the Secretary.'' 49 U.S.C. 31141(c)(4)(B). The 1984 Act limits the scope of the Agency's inquiry in this regard to a State law's compatibility with a regulation prescribed under section 31136. The ABA argues that the MRB rules conflict with various regulatory provisions that were not prescribed pursuant to the authority of section 31136.[10] Because the provisions cited were not prescribed pursuant to section 31136, they fall outside the scope of a section 31141 compatibility analysis. Therefore, the Agency has limited its compatibility analysis to the question of whether the MRB rules are incompatible with the HOS rules for passenger-carrying CMVs, which were prescribed pursuant to section 31136.

Regarding the MRB rules' compatibility with the HOS rules, ABA argues that ''the timing requirements for meal and rest breaks under the MRB rules remove the flexibility allowed under the federal HOS regulations, thus making the MRB rules incompatible with the federal HOS regulations.'' Similarly, Coach USA stated, ''Under the federal HOS rules applicable to motor passenger carriers, bus drivers have the flexibility to take breaks when they need breaks, and when they can safely do so consistent with the need to monitor the bus and the passengers at all times. These federal rules have proven their worth in terms of bus safety; incompatible state regulations such as California's can only add confusion to the bus sector.''

The American Association for Justice argues that FMCSA erred in applying the regulatory definition for ''compatibility,'' found at 49 CFR 355.5, in the Agency's 2018 Decision preempting the MRB rules for drivers of property carrying CMVs.[11] In this

[10] The ABA cites the regulations implementing the transportation and related provisions of the Americans with Disabilities Act of 1990 at 49 CFR part 37, issued pursuant to 42 U.S.C. 12101–12213 and 49 U.S.C. 322; former Interstate Commerce Commission regulations at 49 CFR part 374, subpart C, issued under 49 U.S.C. 13301 and 14101; and California's regulations prohibiting idling, Cal. Code Regs., tit. 13, § 2485.

[11] Under 49 CFR 355.5, ''Compatible or Compatibility means that State laws and regulations applicable to interstate commerce and to intrastate

regard, the American Association for Justice states, ''If only laws that are 'identical' to federal rules could meet this standard, as ATA and ABA claim, then every state law that is 'additional to or more stringent' than federal law would meet this requirement and be preempted.'' The California Labor Commissioner and Attorney General make a similar argument.

The Agency finds that the MRB rules, as applied to drivers of passenger-carrying CMVs, are incompatible with the Federal HOS regulations. Assuming *arguendo* that the Agency's application of the regulatory definition of ''compatible'' is inconsistent with Congress's intent, FMCSA need not rely on the fact that the MRB rules are not ''identical to'' or ''have the same effect'' as the HOS rules to find them incompatible. Congress's clear intent for the 1984 Act was to minimize disuniformity in the national safety regulatory regime. *See* Pub. L. 98–554, title II § 202, 203 (''The Congress finds that . . . improved, more uniform commercial motor vehicle safety measures and strengthened enforcement would reduce the number of fatalities and injuries and the level of property damage related to commercial motor vehicle operations.''); S.Rep. No. 98–424, at 14 (''It is the Committee's intention that there be as much uniformity as practicable whenever a federal standard and a state requirement cover the same subject matter.''); *see also ibid.* at 15 (''In adopting this section, the Committee does not intend that States with innovative safety requirements that are not identical to the national norm be discouraged from seeking better ways to protect their citizens, so long as a strong safety need exists that outweighs this goal of uniformity.''). As described below, the MRB rules frustrate Congress's goal of uniformity because they abrogate the flexibility that the Agency allows under the HOS rules. This fact alone renders the MRB rules incompatible.

California's MRB rules require employers to provide passenger-carrying CMV drivers with meal and rest breaks of specified duration at specific intervals. With regard to meal break timing, the California Supreme Court clarified that, in the absence of a waiver, California law ''requires a first meal period no later than the end of an employee's fifth hour of work, and a second meal period no later than the end of an employee's 10th hour of work. *Brinker Restaurant Corp.* v. *Superior Court,* 273 P.3d 513, 537 (Cal. 2012). As discussed *infra,* an employer must relieve the employee of all duty and employer control during the meal break. *Ibid.* at 533. On-duty meal breaks (breaks occurring on the jobsite) are permissible under California law ''only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement'' the employer and employee mutually agree to an ''on-the-job paid meal period.'' *Ibid.* California interprets the circumstances justifying on-duty meal periods very narrowly, and any agreement consenting to on-the-job breaks may be revoked by the employee at any time. *See generally Abdullah* v. *U.S. Security Associates, Inc.,* 731 F.3d 952, 958–60 (9th Cir. 2013). While employers do not have an affirmative obligation to ensure that the employee stops working, they do have an obligation to make reasonable efforts to ensure that the employee can take a 30-minute uninterrupted break, free from all responsibilities. *Ibid.* at 535–37. With regard to rest period timing, the California Supreme Court explained, ''Employees are entitled to 10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on.'' *Ibid.* at 529. In contrast to the required meal breaks, employers may never require their employees to remain ''on call'' during these mandatory rest periods. *Augustus* v. *ABM Sec. Servs., Inc.,* 385 P.3d at 832. In contrast, the HOS rules do not mandate breaks at specified intervals. Instead, the HOS rules allow, but do not require, drivers of passenger-carrying CMVs the flexibility to take off-duty breaks as necessary, and other provisions of the FMCSRs prohibit a driver from operating a CMV when too fatigued to safely do so.

The Labor Commissioner and the Attorney General contend that the MRB rules are not incompatible with the HOS rules because they ''impose an obligation to provide required meal and rest periods or to simply provide an additional hour of pay for not providing the break (assuming an exemption has not been granted for the rest period requirement, and that there is no waiver of the meal period or agreement to an on-duty meal period).'' This argument is also unavailing. As explained *supra,* in *Kirby* v. *Immoos Fire Protection, Inc.,* the California Supreme Court held that section 226.7 ''does not give employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour of pay,'' and that ''an employer's provision of an additional hour of pay does not excuse a section 226.7 violation.'' 274 P.3d at 1168 (emphasis in original). In addition, while California's regulations authorize the Labor Commissioner to grant an employer an exemption from the 10-minute rest break requirement, such exemptions are granted at the Labor Commissioner's discretion, and there is no provision for an exemption from the 30-minute meal break requirement.[12] *See* Cal. Code Regs. tit. 8, 11090 (IWC Order 9–2001), subd. 17. Lastly, while the Labor Commissioner and the Attorney General mention that the meal break may be waived, it may only be waived by the mutual consent of the employer and employee, and if the employee's shift is of sufficient length to require two 30-minute meal breaks, both may not be waived. *See* Cal. Code Regs. tit. 8, 11090 (IWC Order 9–2001), subd. 11(A)–(B).

The Teamsters contend that ''California's rule in no way conflicts with Federal regulations.'' This argument also fails. The Agency's compatibility determination is different from ''conflict preemption'' under the Supremacy Clause, where conflict arises when it is impossible to comply with both the State and Federal regulations. The express preemption provision in section 31141 does not require such a stringent test. In any event, California's MRB rules actively undermine Congress's goal of uniformity, as well as FMCSA's affirmative policy objectives by abrogating the flexibility that the Agency built into the HOS rules. That would be sufficient to support a finding of incompatibility even under the conflict preemption test urged by the Teamsters.

The FMCSA determines that the MRB rules, as applied to drivers of passenger-carrying CMVs, are incompatible with the Federal HOS regulations.

VI. Enforcement of the MRB Rules Would Cause an Unreasonable Burden on Interstate Commerce

The MRB rules may not be enforced if the Agency decides that enforcing them ''would cause an unreasonable burden on interstate commerce.'' 49 U.S.C. 31141(c)(4)(C). Section 31141 does not prohibit enforcement of a State requirement that places an incidental

movement of hazardous materials are identical to the FMCSRs and the HMRs or have the same effect as the FMCSRs. . . .'' *See also* 49 CFR 350.105.

[12] The Labor Commissioner may grant an employer's exemption request if, after due investigation, it is found that the enforcement of the rest period provision would not materially affect the welfare or comfort of employees and would work an undue hardship on the employer. *See* Cal. Code Regs. tit. 8, 11090 (IWC Order 9–2001), subd. 17.

burden on interstate commerce, only burdens that are unreasonable.

A. Operational Burden and Costs

The ABA argues that complying with the MRB rules is operationally burdensome because the rules require that drivers be relieved of all duty during the mandated meal and rest breaks, which do not permit a driver to attend to passenger needs. The ABA also argues that complying with the MRB rules compromises operators' ability to meet passenger itinerary and scheduling requirements. The ABA further contends that the cost of complying with MRB rules unreasonably burdens interstate commerce.

In describing the operational burden caused by the MRB rules' requirement that drivers be relieved of all duty, ABA explains:

> Under the California MRB rules, when the bus driver logs off duty to take the required meal or rest breaks, the driver must be ''relieved of all duty'' for the break period, unless the ''nature of the work prevents an employee from being relieved of all duty,'' and the employee enters into a revocable written agreement to remain on duty. Calif. Wage Order 9 11(C). This is simply not feasible for typical intercity bus operations. Drivers cannot leave the bus, the passengers and their baggage and other belongings for ten or 30 minutes several times each day, abdicating all responsibility for the safety or security of the passengers or property on the bus.

The ABA asserts that ''during the MRB mandated 'breaks' it is unreasonable to assume that the driver may simply disavow any responsibility for the passengers, their belongings or the coach.'' The ABA states that while a driver may agree to waive a mandated break, the driver may rescind such an agreement at any time, thus such a waiver agreement affords no certainty to the carrier.

The ABA also argues that complying with the MRB rules compromises operators' ability to meet scheduling requirements. In this regard, ABA states, ''[I]ntercity bus companies providing scheduled service typically offer interline connections with other motor carriers through the National Bus Traffic Association and also with Amtrak. They have designated and agreed times at which the services will meet, and passengers will transfer from one carrier to another.'' The ABA further explains, ''Charter and tour bus operators, while typically not interlining with other carriers, also have dedicated schedules and service obligations to their passengers. They frequently must meet time constraints to deliver their passengers to a scheduled athletic contest, an artistic performance, or other timed event.'' The ABA concludes that requiring a driver to comply with the MRB rules ''while accounting for traffic, weather, passenger rest stop needs and other disruptions, makes it inconceivable that a carrier could reliably meet the requirements of these service obligations.''

In addition, ABA further contends that the cost of complying with the MRB rules unreasonably burdens interstate commerce, stating, ''The cost of compliance with the meal and rest break rules are staggering. Nor are these costs hypothetical.'' The ABA states, ''Requiring additional driving time and/or drivers would change the fundamental nature of bus service. Buses would no longer offer the most affordable source of intercity passenger transportation.''

Several commenting motor carriers also described the operational burdens imposed by the MRB rules. Greyhound expressed concern about the requirement that drivers be relieved of all duty during meal breaks under the MRB rules, stating, ''During rest stops, Greyhound drivers are still responsible for the safety and security of the bus as well as passengers. The driver must ensure the safe de-boarding of passengers and their safe and timely re-boarding, ensure the bus remains secure, answer passenger questions, retrieve luggage if requested and respond to emergency situations.'' Greyhound argues, ''The nature of the job prohibits a completely duty-free break in the majority of locations where the driver may stop.'' Greyhound states that a driver cannot be relieved of all duty during MRB rule mandated breaks without other Greyhound personnel present. Coach USA stated:

> Even during scheduled meal and rest breaks, a driver cannot safely be relieved of all duty. During a scheduled meal stop, for example, all passengers exit the vehicle, and the driver secures the bus and then begins his or her meal break. During these breaks, Coach drivers sometimes are required to address emergency passenger situations that arise, such as a passenger who needs urgent access to her insulin or another who needs to access an EpiPen left on the bus to deal with an allergic reaction. Passengers also sometimes need bus access for any number of other reasons, such as having left money needed to purchase food on the bus. If the bus is locked and secured and the driver has left the area of the bus to take a California-rule mandated off-duty break, these passengers will face real problems. Further, passengers with mobility impairments may also need attention, including assistance in boarding and de-boarding the bus. In these situations, drivers cannot ignore a passenger's urgent needs, yet could not meet those needs to the extent they are required by California regulation to be relieved of all duty.

Transportation Charter Services commented that complying with the MRB rules interferes with operational schedules and service connections. The company explained that the driver's daily itinerary is determined by the group chartering the bus and that passenger meal, rest, and view point stops are scheduled based on travel times between destinations, which do not always coincide with the break time required by the MRB rules. Other commenters including H & L Charter Co., Pacific Coachways Charter Services, Best Limousines & Transportation, Royal Coach Tours, Sierra Pacific Tours, the California Bus Association, and Classic Charter made similar arguments.

In addition, several commenters described the ways in which complying with the MRB rules compromises operators' ability to meet scheduling requirements. Coach USA explained, ''Such mandated stops make it difficult, if not impossible, for bus carriers to meet schedules that passengers expect them to meet.'' Coach USA further stated, ''Passengers depend on such schedules to make connections and timely arrive at their destinations. The California rules impair the ability of bus carriers to provide the timely and efficient service passengers expect and thus unduly burden commerce.'' Coach USA also said that the unpredictability of driving conditions is already a burden that bus carriers need to deal with while maintaining schedules and that ''[a]dding mandatory rest and meal breaks at given hours into the mix of factors that impact schedules will make keeping such schedules all the more difficult, burdening the ability of carriers to meet their interstate commerce obligations.''

Greyhound explained that its network ''is an interlocking interstate system of schedules which connect with other buses of Greyhound, other intercity bus companies, local transit, Amtrak and other modes at hundreds of locations in California and across the country.'' Greyhound argued that if a driver stops to take a required break, ''that stop will jeopardize connections throughout the system that interstate passengers rely on.'' Greyhound said that it carried 769,566 interstate passengers in the last fiscal year who either started or finished their journeys at a California location. The company contends, ''All of these passengers face potential disruptions to their trips because of missed connections or delayed arrivals and departures caused by the inflexibility of the MRB Rules on the one hand and the

vagaries of California traffic on the other.''

Mr. Thomas Miller, an airport shuttle and charter bus operator, also described administrative and operational burdens associated with complying with the MRB rules and how they affect scheduling. He explained, ''California laws with respect to the 5-hour meal break rules do not work in the bus and charter operator business. Traffic is so unpredictable you cannot stay legal 100% of the time.'' Mr. Miller further stated, ''We require our drivers to take an unpaid rest break at the airport even if the total round trip is under 5 hours. They hate it, they would rather have it at home on their split shift.''

Several commenters discussed the need to have additional personnel present with the driver to attend to passenger needs or the need to undertake other measures in order to comply with the MRB rules. In this regard, the United Motorcoach Association commented that ''The California MRB needlessly extends a driver's workday and . . . will periodically require a relief driver to avoid exceeding driving and/or on-duty limits to accommodate the California MRB.'' Similarly, Greyhound stated that complying with the requirement that drivers be relieved of all duty is impracticable without other Greyhound personnel present. Coach USA stated, ''Commerce would be further burdened if carriers were forced to meet the California rules by hiring two drivers. . . . Not only would this impose extraordinary cost burdens, but it would make much worse a driver shortage that already confronts the motor passenger carrier industry.'' Mr. Miller explained that his attorney advised him to consider having his drivers report for work 40 minutes earlier to account for the MRB rules mandated breaks. Other commenters such as the Greater California Livery Association and the National Limousine Association stated that complying the with MRB rules would result in a ''substantial increase in driver costs'' due to decreased productivity and the need for additional drivers.

The California Labor Commissioner and Attorney General dispute that enforcing the MRB rules unreasonably burdens interstate commerce. They rely on *Yoder* v. *Western Express, Inc.,* 181 F. Supp.3d 704 (C.D. Cal. 2015), in which a Federal district court held that application of California's wage and hour laws to a motor carrier did not violate the dormant Commerce Clause. The Labor Commissioner and the Attorney General argue that ''California wage and hour laws at issue, including meal and rest break requirements, should be afforded, at minimum, significant weight in a Commerce Clause analysis.'' They explain that the district court in *Yoder* applied the standard set forth in *Pike* v. *Bruce Church, Inc.,* 397 U.S. 137 (1970), under which non-discriminatory State laws will generally not be found to violate the dormant Commerce Clause ''unless the burden imposed on [interstate] commerce is clearly excessive in relation to the putative local benefits.'' *See Yoder,* 181 F. Supp. 3d at 718 (quoting *Pike,* 397 U.S. at 142). They note that the court in *Yoder* found that ''California has an indisputably legitimate public interest in enforcing labor laws which protect its workers'' and rejected the claim of the defendant, Western Express, that the burden on interstate commerce was clearly excessive in relation to California's legitimate public interest in regulating employment matters. *See Yoder,* 181 F. Supp. 3d at 720. The Labor Commissioner and the Attorney General conclude that ABA's assertions of an unreasonable burden on interstate commerce fails ''in light of California's 'legitimate interest in promoting driver and public safety' which FMCSA has recognized.''

The Amalgamated Transit Union contends that ABA's petition failed to ''include any evidence of the costs of the MRB rules.'' Similarly, the Transportation Trades Department/AFL–CIO argues that ''while ABA makes the claim that 'the cost of compliance with the meal and rest break rules are staggering' it provides absolutely no empirical evidence for this statement and relies entirely on conjecture.'' The Teamsters state that ABA ''provides no empirical evidence'' to support its argument related to the costs associated with MRB rule compliance. The Teamsters continue, ''For decades, the motor carrier industries have presumably found a way—one that is feasible—to comply with federal laws in conjunction with state laws. While and to the extent that compliance can result in increased expenditures, this does not outweigh the safety benefits that protect drivers and passengers.''

The FMCSA concludes that application of the MRB rules to passenger-carrying motor carriers unreasonably burdens interstate commerce. The Agency does not believe that the operational burdens described by ABA and the carriers are mere speculation. As ABA correctly states, the MRB rules provide that ''[u]nless the employee is *relieved of all duty during a 30 minute meal period,* the meal period shall be considered an ''on duty'' meal period and counted as time worked.'' Cal. Code Regs. tit. 8, 11090 ((IWC Order 9–2001), subd. 11(C) (emphasis added). The California Supreme Court explained that the employee must be free to leave the premises, without any work-related responsibilities, during the entire 30-minute period. *Brinker Restaurant Corp.* v. *Superior Court,* 273 P.3d at 533. Further, ''[a]n 'on duty' meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties. . . . that the employee may, in writing, revoke the agreement at any time.'' *Ibid.* Moreover, an employer may never require their employees to remain ''on call'' during a 10-minute rest break. *Augustus* v. *ABM Sec. Servs., Inc.,* 385 P.3d at 832. The Agency agrees that the requirement that a driver be relieved of all duty for a meal break or rest break at specified intervals without regard to location or passenger needs would result in significant operational burden for the motor carrier. While the MRB rules provide that an employer and employee may agree to an ''on duty'' meal break or to waive the meal break altogether, the employee may unilaterally rescind that agreement at any time. As ABA and most commenters have described, it would be untenable for a motor carrier transporting passengers to have the driver become unavailable to attend to passenger needs at an inopportune time and location due to an MRB-mandated off-duty break. The Agency also agrees with ABA that complying with the MRB rules presents an operational burden regarding scheduling. Under the Federal HOS rules, motor carriers and drivers have the flexibility to schedule off-duty breaks in a way the best accommodates the driver's need for rest, passenger needs, and the travel schedule; the MRB rules offer much less flexibility.

The FMCSA also concludes that the California Labor Commissioner and Attorney General do not show that there is no unreasonable burden by relying on the district court opinion in *Yoder* v. *Western Express.* As noted above, *Yoder* analyzed whether California's wage and hour laws violated the dormant Commerce Clause, not whether those laws were preempted under 49 U.S.C. 31141. FMCSA acknowledges that it has suggested in the past that the test for determining whether a State law unreasonably burdens interstate commerce under section 31141 is the same as or similar to the test for determining whether a State law

violates the dormant Commerce Clause. Upon further consideration, however, FMCSA concludes that nothing in the text of section 31141 or elsewhere suggests that only unconstitutional State laws can cause an unreasonable burden on interstate commerce. In any event, even if FMCSA could only find an unreasonable burden on interstate commerce by finding that the burdens on commerce are clearly excessive in relation to putative local benefits, that standard would easily be met here. As discussed above, there is no evidence that the MRB rules provide a safety benefit beyond the benefits already provided by the Federal HOS regulations. The significant burdens identified by ABA and the carriers thus are clearly excessive.

Based on the foregoing, FMCSA concludes that the MRB rules cause an unreasonable burden on interstate commerce.

B. Cumulative Effect of the MRB Rules and Other States' Similar Laws

Section 31141 does not limit the Agency to looking only to the State whose rules are the subject of a preemption determination. The FMCSA ''may consider the effect on interstate commerce of implementation of that law or regulation with the implementation of all similar laws and regulations of other States.'' 49 U.S.C. 31141(c)(5). To date, 20 States in addition to California regulate, in varying degrees, meal and rest break requirements, as the National Conference of State Legislators, the Center for Justice and Democracy, and the American Association for Justice have pointed out.[13] The ABA argues that ''[c]omplying with each of these regulatory schemes absolutely presents an unreasonable burden on interstate commerce.'' Several other commenters have described the burden resulting from differing State meal and rest break laws. Greyhound explained, ''20 other states have meal and rest break provisions. . . . [t]he potential applicability of these provisions could wreak havoc on Greyhound's carefully constructed interstate, interconnected route system and could pose a serious threat to the many small bus companies, who rely on their Greyhound connections to support their intercity services.'' The National Limousine Association and the Greater California Livery Association explained, ''The proliferation of rules like California's in at least 20 other states, applied to drivers of CMVs in interstate commerce, would increase the associated productivity loss enormously and represent an even greater burden on interstate commerce.'' Coach USA stated that ''confusion would become commonplace to meet all such break requirements as state borders are crossed.'' The United Motorcoach Association commented, ''As passenger carrier drivers cross multiple state lines, the result can be fluctuating start/stop times resulting in sleep truncation and disruption.'' Other commenters, such as Transportation Charter Services, Pacific Coachways Charter Services, Best Limousine & Transportation, Royal Coach Tours, Sierra Pacific Tours, the California Bus Association, and Classic Charter stated that having to comply with the meal and rest break requirements of 20 states and the Federal HOS rules would make it impossible for them to meet planned schedules and itineraries.

In the 2018 Decision, FMCSA described the meal and rest break laws of Oregon, Nevada, and Washington and noted differences regarding when each State required a break to occur. *See* 83 FR 67470, 67479–80. The Agency determined that the diversity of State regulation of required meal and rest breaks for CMV drivers has resulted in a patchwork of requirements. *Ibid.* The Agency adopts that reasoning here.

The American Association for Justice argues that ABA failed to provide ''adequate justification for singling out the laws of one state when similar arguments can be made for the laws in the other 20 states.'' Similarly, the Center for Justice and Democracy argues that ABA has provided ''no adequate explanation for specifically singling out California law in this petition.'' The Agency is not persuaded by this argument. Nothing in section 31141 prohibits a petitioner from seeking a preemption determination concerning the laws of one State, even where other States have similar laws. Having concluded that the MRB rules impose significant operational burden and costs, the Agency further determines that the burden would be increased by the cumulative effect of other States' similar laws.

C. Summary

Consistent with the Agency's 2018 Decision, FMCSA acknowledges that the State of California has a legitimate interest in promoting driver and public safety. However, just as the Federal HOS rules and other provisions in the FMCSRs serve to promote that interest with respect to drivers of property-carrying CMVs, so do they serve to promote it for drivers of passenger-carrying CMVs. The Labor Commissioner and the Attorney General have stated that the local benefit of enforcing the MRB rules is driver and public safety. However, the Agency has determined that the MRB rules offer no safety benefit beyond the Federal regulations governing drive-time limits, fatigue, and coercion. The FMCSA also determines that enforcing the MRB rules results in increased operational burden and costs. In addition, the Agency finds that requiring motor carriers to comply with Federal HOS rules and also identify and adjust their operations in response to the many varying State requirements is an unreasonable burden on interstate commerce. Even where the differences between individual State regulations are slight, uniform national regulation is significantly less burdensome. The Agency finds that the burden on interstate commerce caused by the MRB rules is clearly excessive relative to any safety benefit. The Agency therefore concludes that the MRB rules place an unreasonable burden on interstate commerce.

Preemption Decision

As described above, FMCSA concludes that: (1) The MRB rules are State laws or regulations ''on commercial motor vehicle safety,'' to the extent they apply to drivers of passenger-carrying CMVs subject to FMCSA's HOS rules; (2) the MRB rules are additional to or more stringent than FMCSA's HOS rules; (3) the MRB rules have no safety benefit; (4) the MRB rules are incompatible with FMCSA's HOS rules; and (5) enforcement of the MRB rules would cause an unreasonable burden on interstate commerce. Accordingly, FMCSA grants ABA's petition for preemption and determines that the MRB rules are preempted pursuant to 49 U.S.C. 31141. Effective the date of this decision, California may no longer enforce the MRB rules with respect to drivers of passenger-carrying CMVs subject to FMCSA's HOS rules.

Issued under authority delegated in 49 CFR 1.87 and redelegated by Notice executed on January 7, 2020, on: January 13, 2020.

Alan Hanson,

Chief Counsel.

[FR Doc. 2020–00835 Filed 1–17–20; 8:45 am]

BILLING CODE 4910–EX–P

[13] According to the National Conference of State Legislators and the American Association for Justice, the following States have meal and rest break laws: California, Colorado, Connecticut, Delaware, Illinois, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Nebraska, Nevada, New Hampshire, New York, North Dakota, Oregon, Rhode Island, Tennessee, Vermont, Washington, and West Virginia.

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0155]

Request for Comments on a New Information Collection

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on October 7, 2019.

DATES: Comments must be submitted on or before February 20, 2020.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert Bouchard, 202–366–5076, Office of Infrastructure Development and Congestion Mitigation, Maritime Administration, 1200 New Jersey Avenue, SE Washington, DC 20590. Email: *Robert.Bouchard@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Port Infrastructure Development Program.

OMB Control Number: 2133–NEW.

Type of Request: New Information Collection.

Background: A **Federal Register** Notice with a 60-day comment period soliciting comments on the information collection was published on October 7, 2019. One comment was received in response to the Notice. The commenter recommended that harmful materials not be allowed or permitted to be transferred under this program. In response, the Maritime Administration will implement the program in accordance with the eligibility requirements as provided in the statute.

On February 15, 2019, the President signed the Consolidated Appropriations Act, 2019 (FY 2019 Appropriations Act), and on December 20, 2019 the President signed the Further Consolidated Appropriations Act 2020 (FY 2020 Appropriations Act), to make grants to improve port facilities as authorized under section 50302 of title 46, to be awarded by the U.S. Department of Transportation (Department) for the Port Infrastructure Development Program (Program). These appropriations acts allow the Department to make discretionary grants to improve port facilities. This Program supports the Department of Transportation (DOT) strategic goal of infrastructure investment to ensure safety and to stimulate economic growth, productivity and competitiveness for American workers and businesses. DOT seeks to work effectively with State, local, Tribal, and private partners to guide investments that stimulate economic growth, improve the condition of transportation infrastructure, and enable the efficient and safe movement of people and goods. To achieve this goal, DOT will provide guidance, technical assistance, and research that leverages Federal funding, accelerates project delivery, reduces project lifecycle costs, and optimizes the operation and performance of existing facilities. By using innovative forms of project delivery, encouraging partnerships between the public and private sectors, and strategically balancing investments across various modes of transportation to promote greater efficiencies, DOT can maximize the returns to the Nation's economy and people.

Respondents: 250.

Affected Public: State, Local, or Tribal Government.

Total Estimated Number of Responses: 250.

Frequency of Collection: Annually.

Estimated Time per Respondent: 160.

Total Estimated Number of Annual Burden Hours: 40,000.

Public Comments Invited: Comments are invited on whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.93.)

* * * * *

Dated: January 15, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–00836 Filed 1–17–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0003]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel LEAKIN LENA (Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 20, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0003 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0003 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0003, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on

submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel LEAKIN LENA is:

—*Intended Commercial Use of Vessel:* ''Charter sport fishing''

—*Geographic Region Including Base of Operations:* ''Alaska'' (Base of Operations: Ketchikan, AK)

—*Vessel Length and Type:* 40′ motor vessel.

The complete application is available for review identified in the DOT docket as MARAD–2020–0003 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2020–0003 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* 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.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

Dated: January 15, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary,Maritime Administration.

[FR Doc. 2020–00841 Filed 1–17–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0004]

Request for Comments of a Previously Approved Information Collection

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on October 7, 2019.

DATES: Comments must be submitted on or before February 20, 2020.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Michael C. Pucci, (202) 366–5167, Division of Maritime Programs, Maritime Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: Requirements for Eligibility of U.S.-Flag Vessels of 100 Feet or Greater in Registered Length to Obtain a Fishery Endorsement.

OMB Control Number: 2133–0530.

Type of Request: Renewal of a Previously Approved Information Collection.

Background: In accordance with the American Fisheries Act of 1998, owners of vessels of 100 feet or greater who wish to obtain a fishery endorsement to the vessel's documentation are required to file with the Maritime Administration (MARAD) an Affidavit of United States Citizenship and other supporting documentation.

Respondents: Vessel Owners, charterers, mortgagees, mortgage trustees and managers of vessels of 100 feet or greater who seek a fishery endorsement for the vessel.

Affected Public: Business or other for profit.

Total Estimated Number of Responses: 500.

Frequency of Collection: Annually.

Estimated time per Respondent: 6 hours.

Total Estimated Number of Annual Burden Hours: 2,950.

Public Comments Invited: Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and

clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.93)

* * * * *

Dated: January 15, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–00838 Filed 1–17–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

U.S. Merchant Marine Academy Board of Visitors; Public Meeting

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: The U.S. Department of Transportation, Maritime Administration announces a meeting of the U.S. Merchant Marine Academy Board of Visitors (BOV).

DATES: The meeting will be held on February 3, 2020, from 9:00 a.m. to 3:00 p.m. Requests for, and the written materials to be reviewed during the meeting must be received no later than January 31, 2020.

Requests to attend the meeting must be received by January 30, 2020.

Requests for special accommodations must be received by January 31, 2020.

ADDRESSES: The meeting will be held at the U.S. Merchant Marine Academy, Kings Point, NY, Melville Hall.

FOR FURTHER INFORMATION CONTACT: The BOV's Designated Federal Officer and Point of Contact George Rhynedance, 516–726–6048 or via email at *rhynedanceg@usmma.edu.*

SUPPLEMENTARY INFORMATION: The USMMA BOV is a Federal Advisory Committee originally established as a Congressional Board by Section 51312 of Title 46, United States Code ''to provide independent advice and recommendations on matters relating to the United States Merchant Marine Academy.'' The Board was chartered under the Federal Advisory Committee Act (FACA) on October 25, 2019.

Members of the BOV for the 116th Congress are:

Senator Roger Wicker (MS), *ex officio*
Senator Jerry Moran (KS)
Rep. Adam Smith (WA–09), *ex officio*
Rep. Max Rose (NY–11)
Rep. Mikie Sherrill (NJ–11)
Rep. Jack Bergman (MI–01)
Rep. Peter King (NY–02)
Rep. Tom Suozzi (NY–03)
Ms. Jennifer Boykin (USMMA Graduate)
Mr. Kevin Walsh (USMMA Graduate)
Mr. Stephen Carmel (Maritime Industry Representative)
Vice Admiral Johnny R. Wolfe, Jr. (USN Flag Officer)
Lieutenant Colonel Robert Scott Volkert (USMC Flag Officer)
Rear Admiral Michael A. Wettlaufer, USN, Commander, Military Sealift Command, *ex officio*
Vice Admiral Daniel B. Abel, USCG, Deputy Commandant for Operations, *ex officio*
Dr. Henry S. Marcus, DBA, Chairman, USMMA Advisory Board, *ex officio*

Agenda

At the meeting, the agenda will cover the following topics:

(a) Introduce the Academy Superintendent and Academic Dean/Provost to new members of the Board of Visitors.

(b) Provide a briefing on the Critical Infrastructure Plan, the infrastructure spending plan and ongoing capital improvements.

(c) Provide an update on the general state of the Academy, Class of 2023 performance, and status of incoming class of 2024.

(d) Provide an update on the Sexual Assault/Sexual Harassment program progress.

(e) Provide an update on the status of implementing the 5-year Strategic Plan as well as the Master Plan.

(f) Establish the meeting schedule for CY 2020.

Public Participation

This meeting is open to the public. Seating is on a first-come basis. Members of the public wishing to attend the meeting will need to present photo identification to gain access to the meeting location. The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or special accommodations, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Any member of the public is permitted to file a written statement with the BOV. Written statements should be sent to the Designated Federal Officer listed in the **FOR FURTHER INFORMATION CONTACT** section (Please contact the Designated Federal Officer for information on submitting comments via fax). Only written statements will be considered by the BOV; no member of the public will be allowed to present questions from the floor or speak to any issue under consideration by the BOV unless requested to do so by a member of the Board.

(Authority: 46 U.S.C. 51312; 5 U.S.C. 552b; 5 U.S.C. App. 2; 41 CFR parts 102–3.140 through 102–3.165)

* * * * *

Dated: January 15, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–00834 Filed 1–17–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0002]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel METANI (Sailboat); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 20, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0002 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0002 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0002, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel METANI is:

—*Intended Commercial Use of Vessel:* ''Intend to operate for day sails, sunset sails and overnight charters.''

—*Geographic Region Including Base of Operations:* ''Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York (excluding New York Harbor), New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida.'' (Base of Operations: Key West, FL)

—*Vessel Length and Type:* 53′ sailboat.

The complete application is available for review identified in the DOT docket as MARAD–2020–0002 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2020–0002 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* 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.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

Dated: January 15, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–00839 Filed 1–17–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0001]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel H2 (Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 20, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0001 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0001 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0001, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and

specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel H2 is:

—*Intended Commercial Use of Vessel:* ''Private Vessel Charters, Passengers Only.''

—*Geographic Region Including Base of Operations:* ''Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York (excluding waters in New York Harbor), New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, East Florida, California, Oregon, Washington, and Alaska (excluding waters in Southeastern Alaska).'' (Base of Operations: Marina Del Ray, CA)

—*Vessel Length and Type:* 75′ motor vessel

The complete application is available for review identified in the DOT docket as MARAD–2019–0001 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2020–0001 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* 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.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

Dated: January 15, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–00840 Filed 1–17–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: *OFAC:* Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On January 20, 2020, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Entities

1. KOREA NAMGANG TRADING CORPORATION (a.k.a. DPRK NAMGANG TRADING COMPANY), Pyongyang, Korea, North; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3] [DPRK–NKSPEA].

Designated pursuant to section 2(a)(iv) of Executive Order 13722 of March 15, 2016, ''Blocking Property of the Government of North Korea and the Worker's Party of Korea, and Prohibiting Certain Transactions With Respect to North Korea'' (E.O. 13722), for

having engaged in, facilitated, or been responsible for the exportation of workers from North Korea, including exportation to generate revenue for the Government of North Korea or the Workers Party of Korea.

Also designated pursuant Section 104(b)(1)(L) of the North Korea Sanctions and Policy Enhancement Act of 2016, Pub. L. 114–122, as amended by section 311 of the Countering America's Adversaries Through Sanctions Act (Pub. L. 115–44) (NKSPEA, as amended) for knowingly, directly or indirectly, engaged in, facilitated, or having been responsible for the exportation of workers from North Korea in a manner intended to generate significant revenue, directly or indirectly, for use by the Government of North Korea or by the Worker's Party of Korea.

2. BEIJING SUKBAKSO, Qixingmen Store, No. 8 Apartment, Fangcaodi West Road, Chaoyang District, Beijing 100020, China (中国北京市朝阳区芳草地面街8号搂底商七星门葩); Liangzi Zu Way (Ground Level, White Gate), No. 42, Gangshan Road, Shunyi District, Beijing 101300, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210 [DPRK3] [DPRK-NKSPEA].

Designated pursuant to section 2(a)(vii) of E.O. 13722, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods and services to or in support of KOREA NAMGANG TRADING CORPORATION, an entity whose property and interests in property are blocked pursuant to E.O. 13722.

Also designated pursuant Section 104(b)(1)(A) of NKSPEA, as amended, knowingly engaging in, contributing to, assisting, sponsoring, or providing financial, material or technological support for, or goods and services in support of, KOREA NAMGANG TRADING CORPORATION, an entity whose property and interests in property are blocked pursuant to E.O. 13722 and NKSPEA, as amended.

Also designated pursuant to section 2(a)(vii) of E.O. 13722, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods and services to or in support of NAMGANG CONSTRUCTION, an entity whose property and interests in property are blocked pursuant to E.O. 13722.

Dated: January 14, 2020.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2020–00771 Filed 1–17–20; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Credit for Indian Coal Production and Inflation Adjustment Factor for Calendar Years 2018 and 2019

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Publication of inflation adjustment factor for Indian coal production for calendar years 2018 and 2019 under section 45(e)(10)(B) (26 U.S.C. 45(e)(10)(B)) of the Internal Revenue Code.

SUMMARY: The inflation adjustment factor is used in determining the availability of the credit for Indian coal production under section 45. Section 128 of Division Q of the Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94) extends the credit period for the Indian coal production credit from a 12-year period beginning on January 1, 2006, to a 15-year period beginning on January 1, 2006. This provision is effective for coal produced in the United States or a possession thereof after December 31, 2017.

DATES: The 2018 inflation adjustment factor applies to calendar year 2018 sales of Indian coal produced in the United States or a possession thereof. The 2019 inflation adjustment factor applies to calendar year 2019 sales of Indian coal produced in the United States or a possession thereof.

Inflation Adjustment Factor: The inflation adjustment factor for calendar year 2018 for Indian coal is 1.2330. The inflation adjustment factor for calendar year 2019 for Indian coal is 1.2627.

Credit Amount for Indian Coal: As required by section 45(e)(10)(B)(ii), the $2.00 amount in section 45(e)(10)(B)(i) is adjusted by multiplying such amount by the inflation adjustment factor for the calendar year. Under the calculation required by section 45(e)(10)(B)(ii), the credit for Indian coal production for calendar year 2018 under section 45(e)(10)(B) is $2.466 per ton on the sale of Indian coal. Under the calculation required by section 45(e)(10)(B)(ii), the credit for Indian coal production for calendar year 2019 under section 45(e)(10)(B) is $2.525 per ton on the sale of Indian coal.

FOR FURTHER INFORMATION CONTACT: Charles Hyde, CC:PSI:6, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, (202) 317–6853 (not a toll-free number).

Christopher T. Kelley,

Special Counsel to the Associate Chief Counsel, (Passthroughs and Special Industries).

[FR Doc. 2020–00884 Filed 1–17–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Electronic Tax Administration Advisory Committee (ETAAC); Nominations

AGENCY: Internal Revenue Service, Department of the Treasury.

ACTION: Request for nominations.

SUMMARY: The Internal Revenue Service (IRS) is requesting applications from individuals with experience in such areas as state tax administration, cybersecurity and information security, tax software development, tax preparation, payroll and tax financial product processing, systems management and improvement, implementation of customer service initiatives, public administration, and consumer advocacy to be considered for selection as members of the Electronic Tax Administration Advisory Committee (ETAAC). The IRS also strongly encourages representatives from consumer groups with an interest in tax issues to apply.

DATES: Written nominations must be received on or before February 14, 2020.

ADDRESSES: Nominations should be sent to: Sean Parman, IRS National Public Liaison Office, CL:NPL:SRM, Room 7559, 1111 Constitution Avenue NW, Washington, DC 20224, Attn: ETAAC Nominations. Applications may also be submitted via fax to 855–811–8020 or via email at *PublicLiaison@irs.gov.* Application packages are available on the IRS website at *https://www.irs.gov/e-file-providers/apply-for-membership-on-the-electronic-tax-administration-advisory-committee-etaac.* Application packages may also be requested by telephone from National Public Liaison, 202–317–6247 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Sean Parman at (202) 317–6247, or send an email to *publicliaison@irs.gov.*

SUPPLEMENTARY INFORMATION: The establishment and operation of the Electronic Tax Administration Advisory Committee (ETAAC) is required by the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98), Title II, Section 2001(b)(2). ETAAC follows a charter in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The ETAAC provides continued input into the development and implementation of the IRS's strategy for electronic tax administration. The ETAAC will research, analyze, consider, and make recommendations on a wide range of electronic tax administration issues and will provide input into the development of the strategic plan for electronic tax administration. Members will provide an annual report to Congress by June 30.

Nominations should describe and document the proposed member's qualification for ETAAC membership, including the applicant's knowledge of regulations and the applicant's past or current affiliations and dealings with the particular tax segment or segments of the community that the applicant wishes to represent on the committee. Applications will be accepted for current vacancies from qualified individuals and from professional and public interest groups that wish to have representation on ETAAC. Submissions must include an application and resume.

ETAAC provides continuing input into the development and implementation of the IRS organizational strategy for electronic tax administration. The ETAAC will provide an organized public forum for discussion of electronic tax administration issues such as prevention of identity theft-related refund fraud in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC members work closely with the Security Summit, a joint effort of the IRS, state tax administrators and the nation's tax industry, to fight identity theft and refund fraud. The ETAAC members will convey the public's perceptions of IRS electronic tax administration activities, offer constructive observations about current or proposed policies, programs and procedures, and suggest improvements.

This is a volunteer position and members will serve three-year terms on the ETAAC to allow for a rotation in membership which ensures that different perspectives are represented. Travel expenses within government guidelines will be reimbursed. In accordance with Department of Treasury Directive 21–03, a clearance process including fingerprints, annual tax checks, a Federal Bureau of Investigation criminal check and a practitioner check with the Office of Professional Responsibility will be conducted.

Applicants must complete the application form, which includes describing and documenting the applicant's qualifications for ETAAC membership. Applicants must submit a short one- or two-page statement including recent examples of specific skills and qualifications as they relate to: Cybersecurity and information security, tax software development, tax preparation, payroll and tax financial product processing, systems management and improvement, implementation of customer service initiatives, consumer advocacy and public administration. Examples of critical thinking, strategic planning and oral and written communication are desirable.

An acknowledgement of receipt will be sent to all applicants.

Equal opportunity practices will be followed in all appointments to the ETAAC in accordance with Department of Treasury and IRS policies. The IRS has a special interest in assuring that women and men, members of all races and national origins, and individuals with disabilities have an opportunity to serve on advisory committees. Therefore, IRS extends particular encouragement to nominations from such appropriately qualified individuals.

Dated: January 9, 2020.

John Lipold,

Designated Federal Official.

[FR Doc. 2020–00463 Filed 1–17–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Availability of Report of 2018 Closed Meetings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, and the Government in the Sunshine Act, a report summarizing the closed meeting activities of the Art Advisory Panel during Fiscal Year 2018 has been prepared. A copy of this report has been filed with the Assistant Secretary for Management of the Department of the Treasury.

DATES: *Applicable Date:* This notice is effective January 21, 2020.

ADDRESSES: The report is available at *https://www.irs.gov/compliance/appeals/art-appraisal-services.*

FOR FURTHER INFORMATION CONTACT: Maricarmen R. Cuello, AP:SO:AAS, Internal Revenue Service/Independent Office of Appeals, 51 SW 1st Avenue, Room 1014, Miami, FL 33130, Telephone number (305) 982–5364 (not a toll free number).

SUPPLEMENTARY INFORMATION: It has been determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is, therefore, not required. Additionally, this document does not constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Andrew J. Keyso,

Acting Chief, Independent Office of Appeals.

[FR Doc. 2020–00883 Filed 1–17–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (the SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; or Assistant Director for Regulatory Affairs, tel.: 202–622–4855.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On January 8, 2020, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following person are blocked under the relevant sanctions authority listed below.

Individual

1. GAI, Taban Deng, Juba, South Sudan; DOB 01 Jan 1953; POB Kuerbona, South Sudan; nationality South Sudan; Gender Male (individual) [GLOMAG].

Designated pursuant to section 1(a)(ii)(A) of Executive Order 13818 of December 20, 2017, ''Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption,'' 82 FR 60839, 3 CFR, 2017 Comp., p. 399, for being a foreign person who is responsible for or complicit in, or has directly or indirectly engaged in, serious human rights abuse.

Dated: January 8, 2020.

Andrea Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2020–00808 Filed 1–17–20; 8:45 am]

BILLING CODE 4810–AL–P

UNIFIED CARRIER REGISTRATION PLAN

Sunshine Act Meeting Notice; Unified Carrier Registration Plan Board of Directors Meeting

TIME AND DATE: January 28, 2020, from 10:00 a.m. to 1:00 p.m., Central time.

PLACE: Drury Inn & Suites Riverwalk Hotel, 201 N St. Mary's Street, San Antonio, Texas. This meeting will be accessible via conference call. Any interested person may call 1–866–210–1669, passcode 5253902# to participate in this meeting.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the ''Board'') will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement. The subject matter of the meeting will include:

Agenda

Open to the Public

I. Welcome and Call to Order—UCR Board Chair

The UCR Board Chair will welcome attendees, call the meeting to order, call roll for the Board, and facilitate self-introductions.

II. Verification of Meeting Notice—UCR Executive Director

The UCR Executive Director will verify the publication of the meeting notice on the UCR website and in the **Federal Register**.

III. Review and Approval of Board Agenda and Setting of Ground Rules—UCR Board Chair

For Discussion and Possible Action

Agenda will be reviewed and the Board will consider adoption.

Ground Rules:

➢ Board action only to be taken in designated areas on agenda
➢ Please MUTE your phone
➢ Please do NOT place the call on HOLD

IV. Approval of Minutes of the December 5, 2019 UCR Board Meeting—UCR Board Chair

For Discussion and Possible Action

• Minutes of the December 5, 2019 Board meeting will be reviewed. The Board will consider action to approve.

V. Report of FMCSA—FMCSA Representative

FMCSA will provide a report on any relevant activity or rulemaking, including any pending appointments, as well as any update available regarding a final rulemaking on 2020 UCR fees.

VI. Enforcement Delay—UCR Executive Director

For Discussion and Possible Action

The UCR Executive Director will lead a discussion on a recommended enforcement date for the 2020 Registration Year. The Board may act to recommend to law enforcement a 2020 Registration Year enforcement date.

VII. Data Event Update—Chief Legal Officer

The Chief Legal Officer will provide an update to the Board on the action items approved at its August 1, 2019 meeting related to the March 2019 data event.

VIII. UCR Handbook Amendments—Vice Chair

The Board will consider and may act on proposed amendments to the UCR Handbook concerning intrastate DOT numbers and the UCR fees for the 2020 registration year.

IX. UCR Plan Website Agreement—Kellen & Seikosoft

For Discussion and Possible Action

The Board will consider and may act upon a proposed UCR Plan website Agreement with either Kellen or Seikosoft. Each vendor will have approximately 10 minutes to present and the Board will have time to ask questions.

X. Subcommittee Reports

Audit Subcommittee—Subcommittee Chair

A. State Compliance Review Results—UCR Depository Manager

For Discussion and Possible Action

The UCR Depository Manager will report on key findings from recently completed state compliance reviews. The Board may act to adopt recommended corrective actions required by the states in areas deemed not in compliance with UCR policy.

B. State Audit Performance Standards—UCR Depository Manager

For Discussion and Possible Action

The UCR Depository Manager will review draft state audit performance standards. The Board may act to adopt state audit performance standards.

C. Report on 2020 State Compliance Reviews—UCR Depository Manager

The UCR Depository Manager will report on plans for conducting state compliance reviews in 2020 and answer questions.

D. Communication Campaigns—Subcommittee Chair

For Discussion and Possible Action

The Subcommittee Chair will lead a discussion on the need for UCR to execute carrier solicitations for states currently running limited or no campaigns of their own. Next, the Subcommittee Chair will discuss the need for UCR to execute communications to carriers, identified through roadside inspections to be operating in interstate commerce, but identified in MCMIS as ''inactive'' or ''intrastate.'' The Board may act to adopt the proposals.

E. UCR State-Carrier Audit Methodology—Subcommittee Chair

For Discussion and Possible Action

The Board will consider proposed amendments, related to state carrier

audits, for the UCR Agreement and Handbook in order to align both guidance documents with current practice and may act to adopt.

F. Report on the Depository Audit for 2017 and 2018—UCR Depository Manager

The UCR Depository Manager will report on results from the 2017 and 2018 Depository audits and answer questions.

G. Report on the Depository Financial Statement Audit for 2019—UCR Depository Manager

The UCR Depository Manager will report on the status of the Depository financial audit and answer questions. The Board may act to adopt this proposal.

H. Potential of Additional Funding for DSL—Subcommittee Chair

For Discussion and Possible Action

The Subcommittee Chair will lead a discussion on a proposal for the UCR Board to fund an additional one-half Full Time Equivalent for DSL for the purpose of continuing to process prior year Focused Anomalies Reviews (FARs). The Board may act to adopt this proposal.

Finance Subcommittee—Subcommittee Chair

A. Initial 2020 Distributions to States—UCR Depository Manager

For Discussion and Possible Action

The Board will review proposed plans for initial distributions to states for 2020 registration year and reducing excess fees from certain past years by including these sums in the distributions. The Board may act to adopt.

B. Certificates of Deposit—UCR Depository Manager

For Discussion and Possible Action

The UCR Depository Manager will provide a report on activities required to redeem certificates of deposit at the Bank of North Dakota scheduled to mature on February 5, 2020 as well as discuss reinvestment of the proceeds from the matured CDs. The Board may act to adopt the proposal.

C. Board Insurance—UCR Depository Manager

For Discussion and Possible Action

The Board will hear a report on plans to procure insurance for the UCR Board and Officers (directors and officers, cybersecurity, general liability). The Board may act to adopt the proposal.

D. Financial & Unbudgeted Expense Reserves—UCR Depository Manager

The UCR Depository Manager will report on the financial and unbudgeted expense reserve fund.

E. 2019 Administrative Expenses—UCR Depository Manager

The UCR Depository Manager will provide a report on 2019 administrative expenses.

Education and Training Subcommittee—Subcommittee Chair

A. Report on Plans To Launch Training Modules—UCR Operations Manager

The UCR Operations Manager will report on plans to launch an initial wave of training modules by June 2020.

B. Mandatory Training for States—Subcommittee Chair

For Discussion and Possible Action

The Subcommittee Chair will lead a discussion on a proposed policy requiring all participating states to engage in UCR trainings once available. Specifically, the proposed policy would require at least one state representative to participate in any new remote trainings (*e.g.,* videos, webinars) within 30 days of its release, as well as attend any new live/in-person training when scheduled. The Board may act to adopt the policy.

C. Travel Reimbursement for Training Attendees—Subcommittee Chair

For Discussion and Possible Action

The Subcommittee Chair will lead a discussion on a proposed policy stating that UCR will reimburse one attendee from each state for reasonable travel expenses incurred for attending any mandatory UCR trainings. The Board may act to adopt the policy.

XI. Updates Concerning UCR Legislation—Board Chair

The UCR Board Chair will call for any updates regarding UCR legislation since the last Board meeting.

XII. Contractor Reports—UCR Executive Director

- UCR Executive Director

The UCR Executive Director will provide a report covering recent activity for the UCR Program.

- UCR Administrator (Kellen)

The UCR Administrator will provide their management report covering recent activity for the Depository, Operations, and Communications.

- DSL Transportation Services, Inc.

DSL will report on the latest data on state collections based on reporting from the Focused Anomalies Review (FARs) program.

- Seikosoft

Seikosoft will provide an update on recent/new activity related to the National Registration System.

XIII. Other Business—Board Chair

The UCR Board Chair will call for any business, old or new, from the floor.

XIV. Adjournment—Board Chair

The UCR Board Chair will adjourn the meeting.

This agenda will be available no later than 5:00 p.m. Eastern time, January 20, 2020 at: *https://plan.ucr.gov.*

CONTACT PERSON FOR MORE INFORMATION: Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of Directors, (617) 305–3783, *eleaman@board.ucr.gov.*

Alex B. Leath,

Chief Legal Officer, Unified Carrier Registration Plan.

[FR Doc. 2020–00988 Filed 1–16–20; 4:15 pm]

BILLING CODE 4910–YL–P

FEDERAL REGISTER

Vol. 85 Tuesday,

No. 13 January 21, 2020

Part II

Environmental Protection Agency

40 CFR Part 49

Federal Implementation Plan for Managing Emissions From Oil and Natural Gas Sources on Indian Country Lands Within the Uintah and Ouray Indian Reservation in Utah; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA–R08–OAR–2015–0709; FRL–10003–12–Region 8]

RIN 2008–AA03

Federal Implementation Plan for Managing Emissions From Oil and Natural Gas Sources on Indian Country Lands Within the Uintah and Ouray Indian Reservation in Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to promulgate a Federal Implementation Plan (FIP) under the Clean Air Act (CAA) and the EPA's implementing regulations that consists of control requirements for new, modified, and existing oil and natural gas sources located on Indian country lands within the Uintah and Ouray Indian Reservation (also referred to as the U&O Reservation) to address air quality in and around the Uinta Basin Ozone Nonattainment Area in northeast Utah. The proposed FIP would also continue the streamlined approach to authorize new and modified minor oil and natural gas production sources on the reservation that has been established through national rulemakings. This proposed U&O FIP will establish emissions control requirements for oil and natural gas activity that contribute to the Uinta Basin's winter ozone problem; establish regulatory requirements that are the same or consistent between Indian country and neighboring jurisdictions within the Basin; and allow for reasonable continued development of the Basin's oil and natural gas resources on the Indian country lands within the U&O Reservation that are included in the current Uinta Basin Ozone Nonattainment Area. VOC emissions control requirements for existing oil and natural gas sources are currently required in areas of the Basin under Utah jurisdiction, but do not exist for most sources on the U&O Reservation. Additionally, this proposed U&O FIP will ensure new development on the U&O Reservation will not cause or contribute to a NAAQS violation. We are proposing to determine that it is necessary and appropriate to promulgate this proposed U&O FIP to protect air quality on the U&O Reservation, under the authority provided in the CAA and the EPA's Tribal Air Quality Planning and Management regulations. We designed this proposed U&O FIP to protect air quality while also providing the regulated community certainty that requirements will be consistent across the Uinta Basin and allow for continued, responsible development of new and modified minor oil and natural gas sources. Unless and until replaced by a Tribal Implementation Plan, this proposed U&O FIP will be implemented by the EPA, or by the Ute Indian Tribe if the EPA delegates that authority to the Tribe.

DATES: Comments must be received on or before March 23, 2020. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before February 20, 2020.

Public hearing: A public hearing for this proposal is scheduled to be held on Thursday, February 6, 2020, at the Ute Indian Tribe Administration Offices Auditorium, from 1 p.m. until 5 p.m., and again from 6 p.m. until 8 p.m. (local time). The hearing will be held to accept oral comments on this proposed U&O FIP.

ADDRESSES: The public hearing will be held at the Ute Indian Tribe Administration Offices Auditorium, 6964 East 1000 South, Fort Duchesne, Utah 84026. Submit your comments, identified by Docket ID No. EPA–R08–OAR–2015–0709, by one of the following methods:

- *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Carl Daly, Acting Director, Air and Radiation Division, U.S. EPA, Region 8, Mail Code 8ARD, 1595 Wynkoop St., Denver, CO 80202–1129.
- *Hand Delivery:* Carl Daly, Acting Director, Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8ARD, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2015–0709. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov.* The *http://www.regulations.gov* site is an ''anonymous access'' system, which means that the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. In some instances, we reference documents from the dockets for other rulemakings. For this proposed rule, we have incorporated by reference Docket ID No. EPA–HQ–OAR–2010–0505,[1] Docket ID EPA–R08–OAR–2012–0479,[2] Docket ID No. EPA–HQ–OAR–2003–0076, and Docket ID No. EPA–HQ–OAR–2014–0606 into Docket ID EPA–R08–OAR–2015–0709. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the following locations: Air and Radiation Division, U.S. EPA, Region 8, Mail Code 8ARD, 1595 Wynkoop Street, Denver, Colorado 80202–1129; and Air Quality Program, Ute Indian Tribe, P.O. Box 70, Fort Duchesne, Utah 84026–0190. The EPA requests that if at all possible, you contact the persons listed

[1] Final Rule: Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources, *See* 81 FR 35823 (June 3, 2016); docket available at *http://www.regulations.gov,* accessed August 16, 2019.

[2] Final Rule: Federal Implementation Plan for Oil and Natural Gas Well Production Facilities, Fort Berthold Indian Reservation, North Dakota, *See* 78 FR 17835 (March 22, 2013); docket available at *http://www.regulations.gov,* accessed August 16, 2019.

in the **FOR FURTHER INFORMATION CONTACT** section if you wish to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Smith, U.S. EPA, Region 8, Air and Radiation Division, Mail Code 8ARD, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6520, *smith.claudia@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

APA: Administrative Procedure Act.
Act or *CAA:* Clean Air Act, unless the context indicates otherwise.
BTU: British Thermal Unit.
CBI: Confidential Business Information.
CDPHE: Colorado Department of Public Health and Environment's Air Pollution Control Division.
CO: carbon monoxide.
EPA, we, us or *our:* The United States Environmental Protection Agency.
FBIR: Fort Berthold Indian Reservation.
FIP: Federal Implementation Plan.
GOR: gas-to-oil ratio.
HAP: hazardous air pollutants.
LACT: lease automatic custody transfer.
MDEQ: Montana Department of Environmental Quality's Air Resources Management Bureau.
NAAQS: National Ambient Air Quality Standards.
NAICS: North American Industry Classification System.
NDDoH: North Dakota Department of Health's Division of Air Quality.
NESHAP: National Emission Standards for Hazardous Air Pollutants.
NMED: New Mexico Environment Department's Air Quality Bureau.
NO_X: nitrogen oxides.
NO_2: nitrogen dioxide.
NSPS: New Source Performance Standards.
NSR: New Source Review.
ODEQ: Oklahoma Department of Environmental Quality's Air Quality Division.
PM: particulate matter.
PSD: Prevention of Significant Deterioration.
PTE: potential to emit.
RCT: Railroad Commission of Texas, Oil and Gas Division.
RIA: Regulatory Impact Analysis
SCADA: Supervisory Control and Data Acquisition.
SIP: State Implementation Plan.
SO_2: sulfur dioxide.
TAR: Tribal Authority Rule.
TAS: treatment in the same manner as a state.
TIP: Tribal Implementation Plan.
UDEQ: Utah Department of Environmental Quality's Division of Air Quality.
U&O Reservation or the Reservation: Indian country lands within the Uintah & Ouray Indian Reservation.
VOC: volatile organic compound(s).
VRU: vapor recovery unit.
WDEQ: Wyoming Department of Environmental Quality's Air Quality Division.

The information presented in this preamble is organized as follows:

I. General Information
A. What entities are potentially affected by this proposal?
B. What should I consider as I prepare my comments to the EPA?
C. Where can I get a copy of this document and other related information?
II. Purpose of This Action
III. Background
A. Uintah and Ouray Indian Reservation
B. Tribal Authority Rule
C. Federal Indian Country Minor NSR Rule
D. Air Quality and Attainment Status
E. Emissions Information
F. What is a FIP?
G. Oil and Natural Gas Sector in the Uinta Basin
IV. Development of the Proposed Rule
A. Rationale for the Proposed Rule
B. Uinta Basin Air Quality Solutions: Stakeholder Feedback
C. Ensuring Streamlined Construction Authorizations on the U&O Reservation
D. Developing the Proposed Control Requirements
E. Effect on Determining Site-Specific Permitting Requirements
F. Evaluation of Emissions Impacts of the Proposed Rule
G. Costs and Benefits of the Proposed Rule
V. Summary of FIP Provisions
A. Introduction
B. Provisions for Delegation of Administration to the Tribe
C. General Provisions
D. Emissions Inventory Requirements
E. Compliance With the National Indian Country Oil and Natural Gas Federal Implementation Plan for New and Modified True Minor Oil and Natural Gas Sources in the Uinta Basin Ozone Nonattainment Area
F. VOC Emissions Control Requirements
G. Monitoring Requirements
H. Recordkeeping Requirements
I. Notification and Reporting Requirements
VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs
C. Paperwork Reduction Act (PRA)
D. Regulatory Flexibility Act (RFA)
E. Unfunded Mandates Reform Act (UMRA)
F. Executive Order 13132: Federalism
G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
J. National Technology Transfer and Advancement Act (NTTAA)
K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. What entities are potentially affected by this proposal?

Entities potentially affected by this proposal include the Ute Indian Tribe,[3] as well as new, modified and existing sources that are in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector and are on Indian country[4] lands within the U&O Reservation. All of the Ute Indian Tribe Indian country lands of which the EPA is aware are located within the exterior boundaries of the Reservation, and this proposed U&O FIP will apply to all such lands. To the extent that there are Ute Indian Tribe Dependent Indian Communities under 18 U.S.C. 1151(b) or allotted lands under 18 U.S.C. 1151(c) that are located outside the exterior boundaries of the Reservation, those lands will not be covered by this proposed U&O FIP.[5] In addition, this

[3] The Ute Indian Tribe is a federally recognized tribe organized under the Indian Reorganization Act of 1934, with a Constitution and By-Laws adopted by the Tribe on December 19, 1936 and approved by the Secretary of the Interior on January 19, 1937. *See* Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, *See* 82 FR 4915 (January 17, 2017); 48 Stat. 984, 25 U.S.C. 5123 (IRA); Constitution and By-Laws of the Ute Indian Tribe of the Uintah and Ouray Reservation, available at *https://www.loc.gov/law/help/american-indian-consts/PDF/37026342.pdf,* accessed August 16, 2019.

[4] Indian country is defined at 18 U.S.C. 1151 as: (a) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

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

In 2014, the U.S. Court of Appeals for the D.C. Circuit addressed EPA's authority to promulgate a FIP establishing certain CAA permitting programs in Indian country. *Oklahoma Dept. of Environmental Quality* v. *EPA,* 740 F. 3d 185 (D.C. Cir. 2014). In that case, the court recognized EPA's authority to promulgate a FIP to directly administer CAA programs on Indian reservations but

Continued

proposed rule will not apply to any sources on non-Indian-country lands, including any non-Indian-country lands within the exterior boundaries of the Reservation.[6]

TABLE 1—SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

Industry category	NAICS code	Examples of regulated entities/description of industry category
Oil and Gas Production/Operations	21111	Exploration for crude petroleum and natural gas; drilling, completing, and equipping wells; operation of separators, emulsion breakers, desilting equipment, and field gathering lines for crude petroleum and natural gas; and all other activities in the preparation of oil and gas up to the point of shipment from the producing property.
	.....	Production of crude petroleum, the mining and extraction of oil from oil shale and oil sands, the production of natural gas, sulfur recovery from natural gas, and the recovery of hydrocarbon liquids from oil and gas field gases.
Crude Petroleum and Natural Gas Extraction.	211111	Exploration, development and/or the production of petroleum or natural gas from wells in which the hydrocarbons will initially flow or can be produced using normal pumping techniques or production of crude petroleum from surface shales or tar sands or from reservoirs in which the hydrocarbons are semisolids.
Natural Gas Liquid Extraction	211112	Recovery of liquid hydrocarbons from oil and gas field gases; and sulfur recovery from natural gas.
Drilling Oil and Gas Wells	213111	Drilling oil and gas wells for others on a contract or fee basis, including spudding in, drilling in, redrilling, and directional drilling.
Support Activities for Oil and Gas Operations.	213112	Performing support activities on a contract or fee basis for oil and gas operations (except site preparation and related construction activities) such as exploration (except geophysical surveying and mapping); excavating slush pits and cellars, well surveying; running, cutting, and pulling casings, tubes, and rods; cementing wells, shooting wells; perforating well casings; acidizing and chemically treating wells; and cleaning out, bailing, and swabbing wells.
Engines (Spark Ignition and Compression Ignition) for Electric Power Generation.	2211	Provision of electric power to support oil and natural gas production where access to the electric grid is unavailable.

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities potentially affected by this action. To determine whether your source could be affected by this action, you should examine the proposed U&O FIP applicability criteria in § 49.4169. If you have any questions regarding the applicability of this action to a particular entity, contact the appropriate person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What should I consider as I prepare my comments to the EPA?

Submitting CBI. Do not submit this information to the EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: Mr. Aaron Zull, c/o Air and Radiation Division U.S. EPA, Region 8, Mail Code 8ARD, 1595 Wynkoop St., Denver, CO 80202–1129, and Attention Docket ID No. EPA–R08–OAR–2015–0709.

Docket. The docket number for this action is EPA–R08–OAR–2015–0709.

Preparing comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Respond to specific questions and link comments to specific CFR references when appropriate.
- Explain why you agree or disagree and suggest alternatives. Include specific regulatory text that implements your requested changes.
- Explain technical information and/or data that you used to as the basis of your comment and provide references to the supporting information.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

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

In addition to being available in the docket, an electronic copy of this proposal will also be posted at: *https://www.epa.gov/air-quality-implementation-plans/approved-air-quality-implementation-plans-region-8* (Approved Air Quality Implementation Plans in Region 8 page).

II. Purpose of This Action

In this action, the EPA is proposing to exercise its authority under sections 301(a) and 301(d)(4) of the CAA and 40 CFR 49.11 to promulgate FIP provisions that are necessary and appropriate to protect air quality on the U&O Reservation and in nearby communities. The purpose of this proposed U&O FIP is threefold. First, this proposed U&O FIP would improve air quality in the

invalidated the FIP at issue as applied to non-reservation areas of Indian country in the absence of a demonstration of an Indian tribe's jurisdiction over such non-reservation area. Because the current proposed rule would apply only on Indian country lands that are within the exterior boundaries of the U&O Reservation, *i.e.,* on Reservation lands, it is unaffected by the *Oklahoma* court decision.

[6] As a result of a series of federal court decisions, there are some non-Indian-country lands within the exterior boundaries of the Uintah and Ouray Indian Reservation. *See* note 19.

U&O Reservation by addressing emissions from oil and natural gas activity that contribute to the winter ozone problem in the physiographic region known as the Uinta Basin,[7] within which the U&O Reservation is located, and where ambient ozone levels have exceeded both the 2008 and the 2015 ozone NAAQS.[8] The EPA designated portions of the Uinta Basin, including large portions of the U&O Reservation, as nonattainment for the 2015 ozone NAAQS.[9]

As recently as February 2019, the Uinta Basin experienced very poor air quality. The problem is caused by emissions of VOC and NO_X reacting in the presence of sunlight and widespread snow cover during temperature inversion conditions to form ground-level ozone at levels that exceed the ozone NAAQS and are, therefore, detrimental to public health. The main sources in the Basin responsible for VOC and NO_X emissions are existing sources in the oil and natural gas sector. As explained in section III.D. (Air Quality Information), available information indicates that winter ozone formation in the Basin is driven by local emissions and is significantly more sensitive to changes in VOC emissions than NO_X emissions. As explained in section III.E. (Emissions Information), available information indicates that the large majority of VOC emissions in the Basin are from existing oil and natural gas activity, and the large majority of those emissions are from existing sources on the U&O Reservation and in the nonattainment area. VOC emissions control requirements for existing oil and natural gas sources currently exist in areas of the Basin under Utah jurisdiction, but do not exist in the U&O Reservation and are necessary to protect air quality.

The CAA does not require an attainment plan for Marginal ozone nonattainment areas.[10] Accordingly, this proposed U&O FIP is not intended to bring the Uinta Basin back into attainment with the ozone standard. However, we do anticipate that this proposed U&O FIP will make a meaningful improvement in air quality through the reduction of VOC, which are an ozone precursor, while also allowing continued construction authorization of new development in the Basin and the positive economic impact that development brings to the Tribe.

This proposed action is driven by the EPA's authority and responsibility to protect air quality in Indian country arising from provisions in sections 301(a) and 301(d)(4) of the CAA and 40 CFR 49.11. Regarding permitting of new or modified sources of air pollution in nonattainment areas in Indian country, the reviewing authority must demonstrate that construction authorization of minor sources would not cause or contribute to a NAAQS violation in the nonattainment area (*see* 49.155(a)(7)(ii)) and that construction authorization of major sources would provide a net air quality benefit in the nonattainment area (*see* 40 CFR 49.169(b)(4)). While the CAA Indian country nonattainment permit program for *major* sources specifies offset requirements as the method to make such a demonstration (*see* 40 CFR 49.169(b)(3)), the CAA Indian country nonattainment permit program for *minor* sources is not prescriptive as to how to make such a demonstration. The requirements in this proposed U&O FIP resulting in VOC emission reductions from existing sources would improve air quality and also allow the EPA to rely on those reductions to meet the NAAQS protection requirements for continued construction authorization of new or modified minor sources in the nonattainment area.

Regarding the focus on VOC emission reductions in this proposed U&O FIP, according to the Uinta Basin Ozone Studies, which consist of field studies conducted in the Basin from 2011 to 2014,[11] improvements in ozone levels in the Basin are most likely to come from VOC emissions reductions from existing oil and natural gas sources. After a careful analysis of emissions data provided by industry in the 2014 Uinta Basin Emissions Inventory, we have determined that most of the existing oil and natural gas sources on the U&O Reservation are largely uncontrolled for VOC and other emissions. Therefore, in developing this rule, we have concentrated on determining the most effective control requirements to reduce VOC emissions from oil and natural gas sources to address the winter ozone exceedances.

Second, the proposed control requirements are intended to be the same as or consistent with the requirements applicable to similar sources on Utah-regulated lands, to promote a more consistent regulatory environment across the Basin. Where we are proposing to regulate existing equipment or activities that are regulated by EPA standards for the oil and natural gas sector, we also have consulted those EPA standards.

We are proposing to make the final rule effective on the date of publication. We are proposing that compliance with the FIP for sources that construct on or after the effective date of the final rule would be required upon startup. Compliance for sources that commence construction before the effective date of the final rule would be required no later than 18 months after the effective date of the final rule.

Finally, given the number of oil and natural gas projects in the Basin that are already approved or are in the federal review and approval process through evaluations conducted under the National Environmental Policy Act (NEPA) by other federal agencies,[12] in the coming years the EPA could receive a large number of applications for authorization to construct new and modified synthetic minor oil and natural gas sources on the U&O Reservation and registrations of new and modified true minor oil and natural gas sources on the U&O Reservation under the National O&NG FIP. We

[7] For the purpose of this rulemaking, the EPA defines the geographic scope of the Uinta Basin to be consistent with the Uinta Basin 2014 Air Agencies Oil and Gas Emissions Inventory (herein after referred to as the 2014 Uinta Basin Emissions Inventory), which encompasses Duchesne and Uintah counties. The 2014 Uinta Basin Emissions Inventory is available at: *https://deq.utah.gov/air-quality/2014-air-agencies-oil-and-gas-emissions-inventory-uinta-basin,* accessed August 16, 2019.

[8] The 2015 ozone NAAQS is 70 parts per billion (ppb) (40 CFR 50.19). The 2008 ozone NAAQS is 75 ppb. Historical ozone NAAQS information is available at: *https://www.epa.gov/ozone-pollution/table-historical-ozone-national-ambient-air-quality-standards-naaqs,* accessed August 16, 2019.

[9] On April 30, 2018, the EPA designated portions of the Uinta Basin below a contiguous external perimeter of 6,250 ft. as nonattainment for the 2015 ozone NAAQS. This includes land under both state and tribal jurisdiction. For more information, see *https://www.epa.gov/ozone-designations/additional-designations-2015-ozone-standards,* accessed August 16, 2019.

[10] The requirements for Marginal ozone nonattainment areas are specified in Clean Air Act Title I, Part D, subpart 2 (see 42 U.S.C. 7511a(a)) and requirements include: (1) Comprehensive, accurate, current inventory of actual ozone precursor emissions from all sources; (2) Corrections, if necessary, to existing implementation plans to meet specific requirements, including for nonattainment major source permitting; (3) Triennial emissions inventory updates; and (4) General offset requirements for new and modified major sources.

[11] Utah DEQ: Ozone in the Uinta Basin: Overview web page with reports on Uinta Basin ozone field studies from 2011 to 2014: *https://deq.utah.gov/air-quality/ozone-in-the-uinta-basin,* accessed August 16, 2019. The RIA for this rule contains detailed discussion of the studies and can be viewed in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709).

[12] Spreadsheet titled ''Uinta Basin OG NEPA Evaluations 9.11.19.pdf'', available in the Docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709), lists oil and natural gas production projects in the Uinta Basin that have been subject to evaluation under NEPA.

recently took action to reinstate the streamlined construction authorization mechanism available for true minor oil and natural gas sources in Indian country through the National O&NG FIP (codified at 40 CFR part 49, subpart C, §§ 49.101–49.105) [13] for the portions of the U&O Reservation that are included in the area of the Uinta Basin that has been designated nonattainment for the 2015 ozone NAAQS.[14] In the separate action, we amended the National O&NG FIP to extend its geographic coverage to the Indian country portions of the U&O Reservation that are part of the Uinta Basin Ozone Nonattainment Area. In addition to providing a streamlined construction authorization mechanism to new and modified true minor oil and natural gas sources,[15] the National O&NG FIP requires compliance with a suite of eight federal oil and natural gas sector emissions standards [16] for new and modified sources, as applicable. The existing source emissions reductions achieved under the proposed FIP, once implemented, would allow the EPA to demonstrate that both permitting the construction of new and modified synthetic minor oil and natural gas sources and registration of new and modified true minor oil and natural gas sources under the National O&NG FIP would be protective of the NAAQS on the U&O Reservation. This will be described in greater detail in Sections IV.C. and V.E.

In this action we are proposing to continue the streamlined construction authorization mechanism permanently for true minor oil and natural gas sources on the Indian country portions of the U&O Reservation that are part of the Uinta Basin Ozone Nonattainment Area through a different regulatory mechanism than the one we employed in our recent final action (*i.e.,* amending the National O&NG FIP). Instead, in this action we are proposing to apply the requirements of the National O&NG FIP (through 40 CFR part 49, subpart K) to the portions of the U&O Reservation that are included in the Uinta Basin Nonattainment Area. The effect of this proposal, if finalized as proposed, will be the permanent continuation of uninterrupted streamlined construction authorizations on the U&O Reservation; the advantage of using the different regulatory mechanism that we are proposing here is that the requirements (or at least reference to them) for the Indian country portions of the U&O Reservation that are part of the Uinta Basin Ozone Nonattainment Area relative to oil and natural gas will be located in one place in the Code of Federal Regulations, which we believe provides a more efficient and user-friendly approach.[17] This will be described in greater detail in Sections IV.C. and V.E.

In the preamble to the final National O&NG FIP published on June 3, 2016, we indicated that the most appropriate means for addressing air quality concerns on specific reservations due to impacts from oil and natural gas activity is through area- or reservation-specific FIPs and not through the National O&NG FIP. Further, we stated that such FIPs may need to include requirements for existing, new and modified sources beyond those in the National O&NG FIP.[18] Consistent with that approach, this action would impose some requirements for new and modified sources that are in addition to what is required by the eight federal oil and natural gas sector emissions standards incorporated in the National O&NG FIP. Therefore, new and modified true minor oil and natural gas sources on the U&O Reservation that would use the National O&NG FIP for construction authorization may have to comply with other requirements for certain equipment or activities not covered by the eight federal standards, as applicable under this action, in addition to the requirements in the National O&NG FIP.[19] We are relying on the VOC emissions reductions in this action to support the limited extension of the National O&NG FIP to the Indian country portion of the Uinta Basin Ozone Nonattainment Area.

Emissions from existing oil and natural gas sources have been shown to be the largest contributor to VOC emissions on the U&O Reservation and in the Uinta Basin, and therefore, the largest contributor to elevated winter ozone levels in the area. Implementing this proposed U&O FIP at existing oil and natural gas sources on the U&O Reservation will result in significant annual VOC reductions, thus improving air quality within the Basin.

The combination of this proposed U&O FIP (when finalized) and the National O&NG FIP amendments is intended to: (1) Improve air quality on the U&O Reservation; (2) promote a more consistent regulatory environment across the Basin; and (3) ensure that the emissions reductions achieved from this proposed U&O FIP can be the basis for new development and a streamlined construction authorization mechanism for new or modified true minor oil and natural gas sources wishing to locate or expand on the Indian country portions of the ozone nonattainment area through the National O&NG FIP amendments.

III. Background

A. Uintah and Ouray Indian Reservation

The Uintah and Ouray Indian Reservation was formed from the Uintah Valley and Uncompahgre Reservations, which were established by executive order in 1861 and 1882, respectively.[20] In 1886 the Department of the Interior merged the two reservations to create the U&O Reservation, and in 1948 Congress expanded the Reservation with

[13] Final Rule: Federal Implementation Plan for True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector; Amendments to the Federal Minor New Source Review Program in Indian Country to Address Requirements for True Minor Sources in the Oil and Natural Gas Sector, 81 FR 35943 (June 3, 2016); docket No. EPA–HQ–OAR–2014–0606, available at *http://www.regulations.gov,* accessed August 16, 2019.

[14] Final Rule: Amendments to Federal Implementation Plan for Managing Air Emissions from True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector, 84 FR 21240 (May 14, 2019); Docket No. EPA–HQ–OAR–2014–0606, available at *http://www.regulations.gov,* accessed August 16, 2019.

[15] As defined in the Federal Minor New Source Review Program in Indian Country at 40 CFR 49.152, a true minor source is a source that emits or has the potential to emit regulated NSR pollutants in amounts that are less than the major source thresholds in § 49.167 (federal preconstruction permit program for major sources in nonattainment areas in Indian country) or § 52.21 (federal preconstruction permit program for major sources in attainment/unclassifiable areas), as applicable, but equal to or greater than the minor NSR thresholds in § 49.153 (federal preconstruction permit program for minor sources in Indian country), without the need to take an enforceable restriction to reduce its potential to emit to such levels.

[16] *See* 40 CFR 49.105. The National O&NG FIP specifies that sources must comply with, as applicable, the following standards: NESHAP 40 CFR part 63, subpart DDDDD; NESHAP 40 CFR part 63, subpart ZZZZ; NSPS IIII 40 CFR part 60, subpart IIII; NSPS 40 CFR part 60, subpart JJJJ; NSPS 40 CFR part 60, subpart Kb; NSPS 40 CFR part 60, subpart OOOOa; NESHAP 40 CFR part 63, subpart HH; and NSPS 40 CFR part 60, subpart KKKK.

[17] If this action as proposed is finalized, then the EPA's intent would be to propose to withdraw its other action in which it amended the National O&NG FIP to provide streamlined construction authorizations as it would be redundant and no longer needed.

[18] *See* 81 FR 35964 and 35968.

[19] As described in detail later, this action proposes to exempt certain equipment and activities that are subject to the emissions control requirements of certain federal standards, a subset of the eight federal standards in the National O&NG FIP, from having to comply the emissions control requirements in this action for those same equipment and activities, but there are other equipment, such as small and remote glycol dehydrators, that are not regulated by those federal standards, but are proposed to be regulated in this action.

[20] *See* Exec. Order of Oct. 3, 1861, reprinted in 1 Charles J. Kappler, Indian Affairs: Laws and Treaties 900 (1904); confirmed by Congress in the Act of May 5, 1864, ch. 77, 13 Stat. 63; Exec. Order of Jan. 5, 1882, reprinted in Indian Affairs: Laws and Treaties at 901.

the Hill Creek Extension.[21] The U&O Reservation's boundaries have been further addressed and explained in a series of federal court decisions.[22]

B. Tribal Authority Rule

Section 301(d) of the Clean Air Act (CAA) authorizes the EPA to treat Indian tribes in the same manner as states for purposes of implementing the CAA over their entire reservations and over any other areas within their jurisdiction, and directs the EPA to promulgate regulations specifying those provisions of the CAA for which such treatment is appropriate.[23] It also authorizes the EPA, when the EPA determines that the treatment of Indian tribes as identical to states is inappropriate or administratively infeasible, to provide by regulation other means by which the EPA will directly administer the CAA.[24] Acting principally under that authority, on February 12, 1998, the EPA promulgated the Tribal Authority Rule (TAR).[25] In the TAR, we determined that it was appropriate to treat eligible tribes in the same manner as states for all CAA statutory and regulatory purposes, except a list of specified CAA provisions and implementing regulations thereunder.[26] That list of excluded provisions includes specific plan submittal and implementation deadlines for NAAQS-related requirements, among them the CAA section 110(a)(2)(C) requirement to submit a program (including a permit program as required in parts C and D of the CAA) to regulate the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. Other provisions for which we determined that we would not treat tribes in the same manner as states include CAA section 110(a)(1) (SIP submittal) and CAA section 110(c)(1) (directing the EPA to promulgate a FIP ''within 2 years'' after we find that a state has failed to submit a required plan or has submitted an incomplete plan, or within 2 years after we disapprove all or a portion of a plan).

The TAR preamble clarified that by including CAA section 110(c)(1) on the list at 40 CFR 49.4, the ''EPA is not relieved of its general obligation under the CAA to ensure the protection of air quality throughout the nation, including throughout Indian country.''[27] The preamble confirmed that the ''EPA will continue to be subject to the basic requirement to issue a FIP for affected tribal areas within some reasonable time.''[28] Consistent with those statements, the TAR includes a provision requiring the EPA to ''promulgate without unreasonable delay such Federal implementation plan provisions as are necessary or appropriate to protect air quality,'' unless a complete tribal implementation plan is submitted or approved.[29]

The Ute Indian Tribe has not applied for TAS for the purpose of administering a Tribal Implementation Plan (TIP) under the CAA; nor has it submitted a TIP for review and approval. Thus, with respect to the U&O Reservation, there is currently no submitted or EPA-approved tribal plan that would address the air quality purposes described earlier. The FIP the EPA is proposing provides such a plan and applies to all Indian country lands within the exterior boundaries of the U&O Reservation.

C. Federal Indian Country Minor NSR Rule

1. What is the Federal Indian Country Minor NSR rule?

In 2006, acting under the authority provided in CAA section 301(d) and in the TAR, we proposed the FIP regulation: ''Review of New Sources and Modifications in Indian Country'' (Indian Country NSR rule).[30] As a part of this regulation, the EPA made a finding that it was necessary or appropriate to protect air quality by proposing a FIP to establish a program to regulate the modification and construction of minor stationary sources consistent with the requirements of section 110(a)(2)(c) of the CAA, where there was no EPA-approved tribal minor NSR permit program in Indian country to regulate construction of new and modified minor sources and minor modifications of major sources. We call this part of the Indian Country NSR rule the Federal Indian Country Minor NSR rule. In developing that FIP, we sought[31] to ''establish a flexible preconstruction permitting program for minor sources in Indian country that is comparable to similar programs in neighboring states in order to create a more consistent regulatory environment for owners/operators within and outside of Indian country.'' The Federal Indian Country Minor NSR rule provides a mechanism for issuing preconstruction permits for the construction of new minor sources and certain modifications of major and minor sources in areas covered by the rule. In developing the rule, the EPA conducted extensive outreach and consultation, along with a 7-month public comment period that ended on March 20, 2007. The comments provided detailed information specific to Indian country and the final Federal Indian Country Minor NSR rule incorporated many of the suggestions we received. We promulgated final rules on July 1, 2011,[32] and the FIP became effective on August 30, 2011.

The Federal Indian Country Minor NSR rule applies to existing, new, and modified minor stationary sources and to minor modifications at existing major stationary sources in Indian country[33] where there is no EPA-approved program in place. Tribes can elect to develop and implement their own EPA-approved program under the TAR,[34] but

[21] U.S. Office of Indian Affairs, Dept. of the Interior, Annual Report of the Commissioner of Indian Affairs, at 226 (1886); 62 Stat. 72 (1948).

[22] *See Ute Indian Tribe* v. *Utah,* 521 F. Supp. 1072 (D. Utah 1981); *Ute Indian Tribe* v. *Utah,* 716 F.2d 1298 (10th Cir. 1983); *Ute Indian Tribe* v. *Utah,* 773 F.2d 1087 (10th Cir. 1985) (en banc), *cert. denied,* 479 U.S. 994 (1986); *Hagen* v. *Utah,* 510 U.S. 399 (1994); *Ute Indian Tribe* v. *Utah,* 935 F. Supp. 1473 (D. Utah 1996); *Ute Indian Tribe* v. *Utah,* 114 F.3d 1513 (10th Cir. 1997), *cert. denied,* 522 U.S. 1107 (1998); *Ute Indian Tribe* v. *Utah,* 790 F.3d 1000 (10th Cir. 2015), *cert. denied,* 136 S. Ct. 1451 (2016); and *Ute Indian Tribe* v. *Myton,* 835 F.3d 1255 (10th Cir. 2016), *cert. dismissed,* 137 S. Ct. 2328 (2017).

[23] 42 U.S.C. 7601(d)(1) and (2); *See* 63 FR 7254–57 (February 12, 1998) (explaining that CAA section 301(d) includes a delegation of authority from Congress to eligible Indian tribes to implement CAA programs over all air resources within the exterior boundaries of their Reservations).

[24] 42 U.S.C. 7601(d)(4).

[25] ''Indian Tribes: Air Quality Planning and Management.'' *see* 63 FR 7254 (February 12, 1998); 40 CFR 49.1–49.11.

[26] 40 CFR 49.3–.4. To be eligible for treatment in a similar manner as a state (TAS) under the Tribal Authority Rule, a tribe must meet four requirements: (1) Be a federally recognized tribe; (2) have a governing body carrying out substantial governmental duties and functions; (3) propose to carry out functions pertaining to the management and protection of air resources of the tribe's reservation or other areas within the tribe's jurisdiction; and (4) be reasonably expected to be capable of carrying out the functions. 40 CFR 49.6. A tribe interested in administering a particular CAA program or function may apply to the appropriate regional administrator for a determination of whether it meets these TAS eligibility criteria with respect to that program or function. 40 CFR 49.7.

[27] *See* 63 FR at 7265 (February 12, 1998).

[28] *Id.*

[29] 40 CFR 49.11(a).

[30] ''Review of New Sources and Modifications in Indian Country,'' Proposed Rule, *See* 71 FR 48696 (Aug. 21, 2006).

[31] *See* 76 FR 38754 (July 1, 2011).

[32] ''Review of New Sources and Modifications in Indian Country,'' Final Rule, *See* 76 FR 38748 (July 1, 2011).

[33] 40 CFR 49.153. Existing sources are only subject to the registration requirements unless they undergo modification.

[34] To be eligible to develop and implement an EPA-approved program, under the Tribal Authority Rule a tribe must meet four requirements: (1) Be a federally-recognized tribe; (2) have a functioning government carrying out substantial duties and powers; (3) propose to carry out functions pertaining to air resources of the reservation or other areas within the tribe's jurisdiction; and (4)

Continued

are not required to do so.[35] In the absence of an EPA-authorized program, the EPA implements the program. Tribes can request administrative delegation of the federal program from the EPA and may be authorized by the EPA to implement agreed upon rules or provisions on behalf of the Agency.

Any existing, new, or modified stationary source in the oil and natural gas sector that emits or has the potential to emit (PTE) a regulated NSR pollutant in amounts equal to or greater than the minor NSR thresholds in the Federal Indian Country Minor NSR rule, but less than the amount that would qualify the source as a major source or a major modification for purposes of the PSD or nonattainment major NSR programs, must submit a registration form to the EPA containing information on, among other things, source-wide actual emissions of NSR regulated pollutants, information on the methods used to calculate the emissions, and descriptions of the various emitting activities and equipment operated at the source. Existing, new, and modified oil and natural gas sources that commenced construction before October 3, 2016, complied with the Federal Indian Country Minor NSR Permit Program by registering under the Existing Source Registration Program at 40 CFR 49.160. Beginning October 3, 2016, the owner/operator of any new true minor oil and natural gas source must comply with the National O&NG FIP or apply for and obtain a site-specific true minor NSR permit before beginning construction. Likewise, the owner/operator of any existing stationary source (minor or major) must comply with the National O&NG FIP or apply for and obtain a minor NSR permit before beginning construction of a physical or operational change that will increase the allowable emissions of the stationary source in amounts equal to or above the specified threshold amounts, if the change does not otherwise trigger PSD or nonattainment major or minor NSR permitting requirements.[36]

2. What are the minor NSR thresholds?

The ''minor NSR thresholds'' establish cutoff levels for each regulated NSR pollutant. If a source has a PTE in amounts lower than the thresholds,[37] then it is exempt from the Federal Indian Country Minor NSR rule for that pollutant. New or modified sources that have a PTE in amounts that are: (1) Equal to or greater than the minor NSR thresholds; and (2) less than the major NSR thresholds (generally 100 or 250 tons per year (tpy)) are ''minor sources'' of emissions and subject to the Federal Indian Country Minor NSR rule requirements at 40 CFR 49.151 through 49.161. Modifications at existing major sources that have PTE equal to or greater than the minor NSR thresholds, but less than the major NSR significant emission rates (range 10–100 tpy, depending on the pollutant) are also ''minor sources'' of emissions and subject to the Federal Indian Country Minor NSR rule requirements.

The minor NSR thresholds for VOC emissions for sources in Indian country are 2 tpy in nonattainment areas and 5 tpy in attainment and unclassifiable areas. Portions of the U&O Reservation are currently designated unclassifiable for the 2008 ozone NAAQS. As discussed previously and further in Section D (Air Quality and Attainment Status), other portions of the U&O Reservation are included in the Uinta Basin Ozone Nonattainment Area, and, therefore, the minor NSR thresholds for VOC are 2 tpy in those portions of the reservation.

D. Air Quality and Attainment Status

With respect to air quality, ozone levels in the Uinta Basin, in which the U&O Reservation is located, have reached unhealthy levels that warrant action. The 2015 8-hour ozone NAAQS is 70 parts per billion (ppb).[38] Compliance with the NAAQS is determined by comparison to a ''design value'' based on a three-year average of the fourth highest daily maximum 8-hour average ozone levels measured in a year at each monitoring site. The state of Utah, the National Park Service (NPS), and the Ute Indian Tribe operate ozone, $PM_{2.5}$, and NO_2 monitors in and around the Uinta Basin. The ambient air concentrations measured at some of these stations show that ozone levels in the Uinta Basin have repeatedly violated both the 2008 and 2015 ozone NAAQS. Based on 2012–2017 regulatory air quality monitoring data, ozone design values exceed the 2015 ozone NAAQS at five monitoring sites in the Uinta Basin. The highest valid ozone design value in the Uinta Basin for 2012–2017 was from the Ouray monitor at 88 ppb.[39] Additionally, higher single 8-hour average ozone concentrations were observed at some monitoring sites, before the sites were designated as regulatory monitors.[40] For example, 8-hour average ozone concentrations reached values as high as 141 ppb at the Ouray monitor in March 2013. This concentration corresponds to an Air Quality Index value of 211, which is characterized as ''Very Unhealthy.''[41] As discussed previously, the EPA designated areas in the Uinta Basin as marginal nonattainment for the 2015 ozone standard.[42] The EPA is issuing this notice of proposed rulemaking (NPRM) today because we have concluded that it is necessary and appropriate to take action to protect air quality on the U&O Reservation due to these elevated ozone levels.

Ambient ozone is a secondary pollutant that is formed from the two primary precursor emissions of VOC and NO_X. Ozone is not emitted directly into the air but is created when VOC and NO_X react in the presence of sunlight. Air quality data and studies in the Uinta Basin show that winter ozone levels above the ozone NAAQS are due to a combination of the unique meteorological and topographical features of the Basin, and abundant local ground level emissions of VOC and NO_X. The unique meteorological and topographic features in the Uinta Basin are strong and persistent temperature inversions forming over snow covered ground and elevated terrain completely surrounding a low basin. The stable atmosphere allows the emissions to accumulate and react with sunlight but prevents the emissions from escaping the temperature inversion layer and dispersing. Therefore, ozone continues to form while the unique

be reasonably expected to be capable of carrying out the program. *See* 40 CFR 40 CFR 49.1–49.11.

[35] Tribes can also establish permit fees under a tribal permitting program pursuant to tribal law, as do most states.

[36] A source may, however, be subject to certain monitoring, recordkeeping, and reporting (MRR) requirements under the major NSR program, if the change has a reasonable possibility of resulting in a major modification. A source may be subject to both the Federal Indian Country Minor NSR rule and the reasonable possibility MRR requirements of the major NSR program(s).

[37] *See* 40 CFR 49.153 and Table 1.

[38] Revised Ozone NAAQS was signed by EPA Administrator Gina McCarthy on October 1, 2015, *See* 80 FR 65292 (October 26, 2015).

[39] Valid design values are the regulatory statistic to determine compliance with a NAAQS. They are calculated in accordance with the appropriate NAAQS-specific appendix to 40 CFR part 50. For the 2008 Ozone NAAQS (75 ppb), the appropriate appendix is 40 CFR part 50, Appendix P, and for the 2015 Ozone NAAQS (70 ppb) it is 40 CFR part 50, Appendix U. Regulatory ozone data is available at *https://www.epa.gov/air-trends/ozone-trends,* accessed August 16, 2019.

[40] A ''regulatory'' monitor is a monitor that meets EPA's air quality monitoring requirements for siting, equipment selection, data sampling protocols, quality assurance and so on under EPA's monitoring regulations at 40 CFR part 58.

[41] The Air Quality Index (AQI) is a normalized system to allow the public to compare health risks of different air pollutants on a common scale. The AQI is divided into six levels of health concern: Good, Moderate, Unhealthy for Sensitive Groups, Unhealthy, Very Unhealthy, and Hazardous.

[42] Affected areas include portions of Uintah and Duchesne counties below 6,250 feet, including portions of the U&O Reservation.

meteorological conditions persist.[43] The state of Utah conducted special field studies in the Uinta Basin from 2011 to 2014 to understand the emissions sources that contribute to winter ozone. Reports for the winter ozone field studies for each year are available on the UDEQ web page.[44] These studies found that the oil and natural gas production sector is the most significant anthropogenic contributor of VOC and NO_X emissions in the Basin. The studies also concluded that ozone production in the Basin is sensitive to reductions in VOC emissions but relatively less sensitive to reductions in NO_X emissions. Thus, ozone levels in the Uinta Basin are being more significantly influenced by VOC emissions than by NO_X emissions.

The EPA has determined that the proposed action would result in large reductions of VOC emissions, and relatively small increases in NO_X emissions, and that this result is expected to reduce ambient ozone and reduce the severity of exceedances of the 2008 and 2015 ozone NAAQS. As discussed in more detail later, the proposed action includes a requirement for owners/operators to submit emissions inventories on a triennial basis. This information will enable the successful partnership to continue among the EPA, the UDEQ, the Tribe and industry in maintaining an accurate oil and natural gas emissions inventory for the Uinta Basin to be used, in part, as a tool for managing the Basin's air quality.

We have previously informed the public of our intent to undertake action specific to the U&O Reservation; as noted earlier, in the preamble to the National O&NG FIP, we indicated that: ''For the Uintah and Ouray Reservation, we have sufficient concerns about the air quality impacts from existing sources that we plan to propose a separate U&O FIP.'' [45] After further review, the EPA concludes that action is needed to address poor air quality on the U&O Reservation.

E. Emissions Information

In 2017, the EPA, in partnership with the UDEQ and the Ute Indian Tribe, developed the 2014 Uinta Basin Emissions Inventory, an emission inventory of oil and natural gas activity in the Uinta Basin that was populated with data provided by oil and natural gas operators in the Basin.[46] We are also aware of several other available sources of information on air emissions from oil and natural gas activity in the Uinta Basin, including: (1) The 2014 National Emissions Inventory (2014 NEI); [47] (2) a study by the Western Regional Air Partnership (WRAP); [48] (3) existing minor source registration data submitted to the EPA per the Federal Indian Country Minor NSR Program; [49] and (4) the EPA Greenhouse Gas Reporting Program, subpart W Petroleum and Natural Gas Systems.[50] They are discussed in more detail in the Regulatory Impact Analysis (RIA) for this proposed rule.[51]

The 2014 NEI provides a general picture of the relative contribution of oil and natural gas emissions compared to other industry sectors, indicating that emissions from the production segment of the oil and natural gas sector were estimated to be the largest anthropogenic contributor of both VOC and NO_X emissions in the Uinta Basin. The WRAP study provides a general picture of the relative emissions contribution in the Basin from various oil and natural gas equipment and activities on Indian country lands. The existing minor source registration data provide a general picture of the large percentage of unpermitted and likely uncontrolled minor emissions sources on the U&O Reservation. The EPA Greenhouse Gas Reporting Program, subpart W, provides annual reports by operators of activity levels and methane emissions from oil and natural gas operations in the Uinta Basin. The 2014 Uinta Basin Emissions Inventory is a comprehensive source of oil and natural gas source VOC emissions data for the Uinta Basin that provided information for the cost and benefit analysis supporting this rulemaking.

The 2014 Uinta Basin Emissions Inventory indicates that the majority of existing oil and natural gas sources in the region are on the U&O Reservation. Most of these existing oil and natural gas sources on the U&O Reservation are minor sources and are uncontrolled. The 2014 NEI indicates that, compared to other industry sector sources, existing oil and natural gas sources are cumulatively the largest contributor of VOC and NO_X to measured exceedances of the ozone NAAQS in the Uinta Basin. Existing oil and natural gas sources on the portions of the Basin regulated by the UDEQ are subject to emission reduction requirements, while existing sources on the U&O Reservation are either subject to less stringent regulation or no regulation at all.

Specifically, the inventory shows that 79 percent of all existing oil and natural gas facilities in the Uinta Basin are located on Indian country lands within the U&O Reservation, producing oil and natural gas (and processing natural gas) from 76 percent of all producing wells in the Basin. According to the inventory, over 71,000 tons of VOC and almost 9,500 tons of NO_X emissions were emitted in 2014 from existing oil and natural gas sources on the U&O Reservation. That is approximately 81 percent of the total oil and natural gas-related VOC emissions in the Uinta Basin and approximately 70 percent of the total oil and natural gas-related NO_X emissions in the Uinta Basin. These data confirm that the bulk of the ozone-related emissions in the Uinta Basin are released from sources on the Indian country lands within the U&O Reservation.

Many of the oil and natural gas sources on the U&O Reservation are uncontrolled. According to the 2014 Uinta Basin Emissions Inventory, on the Indian country lands within the U&O Reservation, 85 percent of the total

[43] The RIA for this proposed rule contains a more detailed discussion of winter ozone and can be viewed in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709).

[44] ''Ozone in the Uinta Basin,'' *https://deq.utah.gov/air-quality/ozone-in-the-uinta-basin,* August 16, 2019.

[45] *See* 81 FR at 35963 (June 3, 2016).

[46] The inventory and supporting analysis can be viewed in the docket for this rule (Docket ID No. EPA–R08–OAR–2015–0709), Microsoft Excel spreadsheet titled ''2014 UB EI summary data U&O FIP NPRM''. The complete, detailed dataset for the 2014 Uinta Basin Emission Inventory can also be viewed in the docket in a SQLite database titled ''OGEI_v2.2_2014FINAL.db''. We are proposing in this proposed U&O FIP to require owners and operators to submit triennial emissions inventories, like a requirement proposed by the UDEQ in October of 2017. These triennial updates will provide information on how emissions are changing in the Basin from the 2014 baseline. See Section V (Summary of FIP Provisions).

[47] 2014 National Emissions Inventory (2014 NEI), available at *https://www.epa.gov/air-emissions-inventories/2014-nei-data,* accessed August 16, 2019. The UDEQ has submitted the 2014 Uinta Basin Emissions Inventory to the 2014 NEI, but the publicly available NEI has not yet been updated to include the Uinta Basin inventory. Analysis of the 2014 NEI for the purposes of this proposed U&O FIP was prepared using the version publicly available before the UDEQ.

[49] Data from existing minor source registration reports submitted under 40 CFR 49.160 of the Federal Indian Country Minor NSR Program by operators of sources on the Indian country lands within the U&O Reservation.

[48] Western Regional Air Partnership (WRAP), O&G Emissions Workgroup: Phase III Inventory, Uinta Basin Reports, 2012 Mid-Term Projection Technical Memo, ''Development of 2012 Oil and Gas Emissions Projections for the Uinta Basin'', March 25, 2009, available at *http://www.wrapair2.org/Phase III.aspx,* accessed August 16, 2019. Some of the 2014 Uinta Basin Emissions Inventory was generated from prorating the 2012 WRAP estimates (which prorated and adjusted their 2006 work) to 2014 activity levels.

[50] EPA Greenhouse Gas Reporting Program (GHGRP) Petroleum and Natural Gas Systems, available at *https://www.epa.gov/ghgreporting/ghgrp-petroleum-and-natural-gas-systems,* accessed August 16, 2019.

[51] The RIA can be viewed in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709).

number of existing storage tanks, 97 percent of the total number of existing glycol dehydrators and 99 percent of existing pneumatic pumps are uncontrolled emitters of VOC. By contrast, on state-regulated land within the Basin, 67 percent of the total number of existing storage tanks and 14 percent of the total number of existing glycol dehydrators are uncontrolled (uncontrolled pneumatic pump numbers are relatively equivalent to Indian country at 98 percent). The UDEQ has adopted revisions to existing oil and natural gas source requirements and existing minor source permitting requirements, and has adopted new requirements, including a Permit by Rule that replaces the requirement for minor oil and natural gas sources to obtain a site-specific permit.[52] Now that the revised and new requirements are effective, we expect the percentage of uncontrolled existing storage tanks and glycol dehydrators in the UDEQ's jurisdiction will decrease from what was reported in the 2014 inventory. The UDEQ's rule revisions and new rules are discussed in more detail in Section IV.D (Developing the Proposed Control Requirements). In addition, the 2014 inventory shows that emissions from oil and natural gas wastewater disposal facilities on the Indian country lands within the U&O Reservation comprise approximately 33 percent of the total VOC emissions from oil and natural gas activity on the U&O Reservation. As explained in Section IV. D. (Developing the Proposed Control Requirements), these facilities may not be controlled under the CAA, because they do not meet the applicability criteria of preconstruction permitting programs or federal emissions standards regulating them.

Based on this collection of emissions information (and other information about meteorological conditions and local geography), the EPA has concluded that winter ozone levels in the Uinta Basin are most significantly influenced by VOC emissions from the presence of numerous minor, unpermitted and largely uncontrolled oil and natural gas production operations on the U&O Reservation.

F. What is a FIP?

Under section 302(y) of the CAA, the term ''Federal implementation plan'' means ''a plan (or portion thereof) promulgated by the Administrator to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a State implementation plan, and which includes enforceable emission limitations or other control measures, means or techniques (including economic incentives, such as marketable permits or auctions of emissions allowances), and provides for attainment of the relevant national ambient air quality standard.'' As discussed previously in section III.B., CAA sections 301(a) and 301(d)(4) and 40 CFR 49.11(a) authorize the EPA to promulgate such FIPs as are necessary or appropriate to protect air quality if a Tribe does not submit or receive EPA approval of a TIP.

The Federal Indian Country Minor NSR rule is an example of a FIP, as discussed in section III.C. Another example of the EPA's use of its FIP authority is to protect air quality in areas of Indian country with no EPA-approved program, while at the same time seeking to provide a consistent regulatory environment where appropriate, is the ''FIP for Oil and Natural Gas Well Production Facilities; Fort Berthold Indian Reservation (FBIR; Mandan, Hidatsa, and Arikara Nation), North Dakota.'' [53] In that rule, we took an important initial step to control volatile organic compound (VOC) emissions from existing, new and modified oil and natural gas operations on the FBIR. We drafted requirements that were consistent to the greatest extent practicable with the most relevant aspects of neighboring state and local rules concerning the air pollutant emitting activities on the FBIR. We did not intend at the time, nor did we expect, the regulation to impose significantly different regulatory burdens upon industry or the residents of the FBIR than those imposed by the rules of state and local air agencies in the surrounding areas.

This proposed U&O FIP specific to the U&O Reservation would reduce VOC emissions related to the formation of ozone, and it is needed to protect air quality on the U&O Reservation because exceedances of both the 2008 and the 2015 ozone NAAQS have occurred at air quality monitors on and around the Reservation. Portions of the Uinta Basin, including portions of the U&O Reservation, were designated by the EPA in 2018 as nonattainment for the 2015 ozone NAAQS. Further, there are no currently approved TIPs that apply to existing oil and natural gas sources on the U&O Reservation. Finally, the majority of these sources are not currently subject to federally required emissions controls, which is discussed further in Section IV.A.

G. Oil and Natural Gas Sector in the Uinta Basin

The oil and natural gas sector in the Uinta Basin includes the extraction and production of oil and natural gas, as well as the processing, transmission, and distribution of natural gas. Specifically, for oil, the sector in the Uinta Basin includes all operations from the well to the transfer to an oil transmission pipeline or other means of transportation to a petroleum refinery. The petroleum refinery is not considered part of the oil and natural gas sector. Thus, with respect to crude oil, the oil and natural gas sector ends where crude oil enters an oil transmission pipeline or other means of transportation to a petroleum refinery. For natural gas, the sector includes all operations from the well to the final end user.

The oil and natural gas sector in the Uinta Basin can generally be separated into four segments: (1) Oil and natural gas production; (2) natural gas processing; (3) natural gas transmission and storage; and (4) natural gas distribution. This proposed U&O FIP for oil and natural gas sources on the U&O Reservation focuses on existing, new, and modified sources in the first and second segments, oil and natural gas production and natural gas processing, because the existing minor sources in those segments cumulatively contribute the largest portion of VOC emissions from the oil and natural gas sector on the U&O Reservation. There are more than 6,700 individual oil and natural gas sources on the U&O Reservation operated by 28 distinct entities, the majority of which are well sites in the oil and natural gas production segment.[54] As discussed earlier, the 2014 NEI shows that emissions from the production segment of the oil and natural gas sector were estimated to be the largest anthropogenic contributor of both VOC and NO_X emissions in the Uinta Basin. Comparatively, the categories that include oil and natural gas storage and transfer and bulk gasoline terminals (segments 3 and 4), are reported in the 2014 NEI as contributing less than one percent each of the total VOC and NO_X emissions in

[52] Utah State Bulletin, Official Notices of Utah State Government, Filed January 03, 2018, 12:00 a.m. through January 16, 2018, 11:59 p.m., 11:59 p.m., Number 2018–3, February 01, 2018, Nancy L. Lancaster, Managing Editor, pages 46–68, available at *https://rules.utah.gov/publicat/bull_pdf/2018/b20180201.pdf,* accessed August 16, 2019.

[53] *See* 78 FR 17836 (March 22, 2013).

[54] 2014 Uinta Basin Emissions Inventory. The inventory and supporting analysis of the data can be viewed in the docket for this NPRM (Docket ID No. EPA–R08–OAR–2015–0709), including a spreadsheet titled ''2014 UB EI summary data U&O FIP NPRM.xlsx.''

the Uinta Basin.[55] Of the approximately 10,400 individual active oil and natural gas wells in the Uinta Basin, over 7,900 wells, or about 76 percent, are on Indian country lands within the U&O Reservation.

The oil and natural gas production segment in the Uinta Basin includes wells and all related processes used in the extraction, production, recovery, lifting, stabilization, and separation or treatment of oil and/or natural gas (including condensate). Production components in the Uinta Basin may include wells and related casing head, tubing head, and ''Christmas tree'' piping, as well as pumps, compressors, heater treaters, separators, storage vessels, pneumatic devices, pneumatic pumps, and natural gas dehydrators. Production operations in the Uinta Basin also include the well drilling, completion, and workover processes, and include all the portable non-self-propelled apparatuses associated with those operations. Production sites in the Uinta Basin include not only the sites where the wells themselves are located, but also centralized gas and liquid gathering sources where oil, condensate, produced water, and natural gas from several wells may be separated, stored, and treated. Production components in the Uinta Basin also include the smaller diameter, low-to-medium-pressure gathering pipelines and related components that collect and transport the oil, natural gas, and other materials and wastes from the wells or well pads.

The natural gas production segment in the Uinta Basin ends where the natural gas enters a natural gas processing plant. Where there is no processing plant, the natural gas production segment ends at the point where the natural gas enters the transmission segment for long-line transport. The crude oil production segment in the Uinta Basin ends at the storage and load-out terminal, which is the point of custody transfer to an oil pipeline or for transport of the crude oil to a petroleum refinery via trucks or railcars.

Each producing crude oil and natural gas field has its own unique properties. The composition of the crude oil and the natural gas as well as the reservoir characteristics are likely to be different across all reservoirs. The RIA for this rule provides a more detailed overview of the products and components of the oil and natural gas industry that are relevant to the activities in the Uinta Basin.[56]

IV. Development of the Proposed Rule

This proposed U&O FIP contains a common set of VOC emissions controls at new, modified and existing oil and natural gas sources on the U&O Reservation. We consulted existing federal CAA oil and natural gas sector standards to develop the VOC emissions control requirements of this proposed U&O FIP. To make VOC emissions control requirements across the Basin consistent, this proposed U&O FIP would go beyond the federal standards, in some cases, to regulate equipment and activities that are not regulated by those standards, but are regulated by the UDEQ, such as small, remote glycol dehydrators; low throughput storage tanks; tanker truck loading and unloading; and certain voluntarily operated control devices. Applicability of the proposed requirements, including for equipment and activities that are regulated by the federal standards, is also consistent with the applicability for equivalent equipment and activities regulated by the UDEQ.

The streamlined construction authorization mechanism in the National O&NG FIP applies on the Indian country portions of the U&O Reservation that are part of the Uinta Basin Ozone Nonattainment Area, as a result of our recent action amending the National O&NG FIP, as previously mentioned. Such true minor sources are required to register and comply with the eight federal standards in the National O&NG FIP, as applicable, to meet the preconstruction permitting requirements of the Federal Indian Country Minor NSR Program. Compliance with the eight federal standards in the National O&NG FIP, as applicable, would not relieve the owners/operators from the other applicable VOC control requirements of this proposed U&O FIP, except that this proposed U&O FIP would exempt certain equipment and activities from it that are in compliance with the applicable federal standards for those equipment and activities that constitute the requirements of the National O&NG FIP.

A detailed discussion of this proposed U&O FIP requirements is found in Section V. Summary of FIP Provisions.

A. Rationale for the Proposed Rule

As discussed earlier, available information indicates that: (1) Winter ozone levels in the Uinta Basin are above the 2008 and 2015 ozone NAAQS, posing a threat to human health, which has led to the designation of portions of the Uinta Basin, including portions of the U&O Reservation, as marginal nonattainment for the 2015 ozone NAAQS; (2) ozone production in the area is driven by a combination of unique meteorological conditions, the geography of the Basin, and significant local emissions of ozone precursors, primarily VOC emissions from existing oil and natural gas activity in the Basin, the majority of which occurs on the U&O Reservation; and (3) reductions in ozone levels in the Basin is most sensitive to reductions in VOC emissions, and relatively insensitive to reductions in NO_X emissions. Further, the majority of those oil and natural gas sources are operating without any federally required emissions controls.[57]

To address these facts, in this proposed action we are determining that it is necessary and appropriate to promulgate this proposed U&O FIP to protect air quality on the U&O Reservation, under the authority provided at 40 CFR 49.11 and CAA sections 301(a) and 301(d)(4). This action includes: (1) Proposed federally enforceable VOC emissions control requirements for new, modified and existing oil and natural gas sources and (2) a proposed requirement to apply the requirements of the National O&NG FIP to new and modified true minor oil and natural gas sources seeking to locate or expand on the Indian country portions of the U&O Reservation that are part of the Uinta Basin Ozone Nonattainment Area, including its streamlined construction authorization mechanism. If the second part of today's action is finalized as proposed, the EPA in a separate rulemaking plans to propose withdrawing its recent rulemaking[58] amending the National O&NG FIP to extend its construction authorization mechanism for new and modified true minor oil and natural gas sources to the Indian country lands within the U&O Reservation that are included in the Uinta Basin Ozone Nonattainment Area because it will no longer be necessary.

Together, the oil and natural gas source controls of this proposed U&O FIP, the construction authorization mechanism of this proposed U&O FIP and the amended National O&NG FIP will:

1. Improve air quality by reducing VOC emissions, thereby reducing ozone,

[55] Based on the NEI Source Type to Sector Crosswalk in the 2014 NEI at *https://gispub.epa.gov/neireport/2014/*, accessed August 16, 2019.

[56] The RIA can be viewed in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709).

[57] *See* Sections III.D. and III.E. for more detailed discussion of air quality problems and emissions information, respectively.

[58] *See* 84 FR 21240 (May 14, 2019).

HAP, and $PM_{2.5}$ levels and protecting public health;

2. Ensure a consistent regulatory environment across the basin, thereby providing certainty to industry and avoiding the imposition of economic burdens on the Ute Indian Tribe or residents of the Reservation; and

3. Support permanent, continued development of the Basin's oil and natural gas resources through a streamlined construction authorization mechanism.

This proposed U&O FIP's VOC emission control requirements will apply to existing, new, and modified oil and natural gas production and natural gas processing sources on the U&O Reservation, whether major or minor.[59]

We have previously informed the public of our intent to undertake this action, as noted earlier, in the preamble to the National O&NG FIP: ''For the Uintah and Ouray Reservation, we have sufficient concerns about the air quality impacts from existing sources that we plan to propose a separate reservation-specific FIP.'' [60] The EPA remains concerned that there is a need for air quality protection on the U&O Reservation. Implementation of the proposed rule is intended to improve air quality, on the U&O Reservation specifically and the Uinta Basin generally, and thereby to protect public health and help return the area to attainment.

B. Uinta Basin Air Quality Solutions: Stakeholder Feedback

Consistent with the federal government's trust responsibility and to improve our understanding of the potential environmental implications of oil and natural gas production operations, the EPA has consulted (and will continue to consult) with the Ute Indian Tribe on this proposed U&O FIP. We appreciate the importance of oil and natural gas activity for the economic vitality of the U&O Reservation, as expressed to us by the Tribe during our government-to-government consultations.

We have held numerous consultations with the Ute Indian Tribe and participated in numerous tribally-convened stakeholder and other meetings, in 2015, 2016, 2017, 2018 and 2019. We have also reached out to stakeholders in 2015 and will continue to do so as follows: (1) Oil and natural gas operators and representatives; (2) environmental groups; (3) Federal Land Managers; and (4) local county officials. These consultations and meetings addressed, at least in part, the issue that has prompted this rulemaking, *i.e.,* the need expressed by the Ute Indian Tribe and others for continued streamlined authorizations to construct to continue to be available on the U&O Reservation as part of the Uinta Basin Ozone Nonattainment Area. For a complete list of these consultations and meetings, including dates, locations and attendees, please consult the docket to this rulemaking.[61]

The purpose of the government-to-government consultations were to receive tribal comments and concerns. The purposes of the EPA, Tribe, and UDEQ meetings were to discuss our intent to address ozone issues in the Uinta Basin and to solicit input on potential solutions to the region's air quality problem, while ensuring continued resource development. We strive to provide greater regulatory certainty and consistency across the Uinta Basin in the regulation of these operations through enhanced data collection and analysis, improved information sharing and partnerships, and focused compliance assistance and enforcement. The EPA is committed to working closely with the Tribe and the state of Utah during this process.

C. Ensuring Streamlined Construction Authorizations on the U&O Reservation

The EPA is committed to achieving our primary objective of improving air quality on the U&O Reservation in a manner that also ensures that streamlined construction authorizations on the U&O Reservation may proceed effectively and efficiently. Accordingly, we have separately amended the National O&NG FIP to extend its construction authorization mechanism to apply to new or modified true minor oil and natural gas sources on the Indian country portions of the U&O Reservation that are part of the Uinta Basin Ozone Nonattainment Area, because the National O&NG FIP ceased to apply upon the effective date of the nonattainment designation (August 3, 2018). The National O&NG FIP, as originally promulgated, covered attainment, unclassifiable and attainment/unclassifiable areas. New and modified true minor oil and natural gas sources constructing in such areas are eligible for coverage under the National O&NG FIP. Since the National O&NG FIP did not apply in nonattainment areas, the streamlined construction authorization mechanism for new and modified true minor oil and natural gas sources was not available after August 3, 1018 for sources locating on Indian country portions of the U&O Reservation that are part of the Uinta Basin Ozone Nonattainment Area. Our recent action amending the National O&NG FIP addressed the issue by permanently re-instating the streamlined construction authorizations. However, we are also in this action proposing to apply the National O&NG FIP (without alteration) to new and modified true minor sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector that propose to locate or expand on Indian country lands within the U&O Reservation that are part of the Uinta Basin Ozone Nonattainment area. While it may seem unnecessary to propose a streamlined construction authorization mechanism in this action when one is already in place permanently, we are doing so to ensure that the requirements (or at least reference to them) for oil and natural gas sources on the Indian country portions of the U&O Reservation that are part of the Uinta Basin Ozone Nonattainment Area are in one place in the CFR. We intend to follow up this rule when final with a proposal to withdraw the amendments to the National O&NG FIP. In Section V.E. below, we explain specifically what parts of the CFR will be affected by today's proposed rule and the subsequent proposed rule withdrawal.

Upon the effective date of the nonattainment designation (August 3, 2018), the EPA was required to issue site-specific permits to true minor oil and natural gas sources. The Ute Indian Tribe and various industry representatives expressed concern that the EPA might not be able to keep pace with the demand for site-specific oil and natural gas-related permits on the U&O Reservation given all that is involved with approving and issuing a site-specific permit. There was concern that a lag in permit issuance could place sources in Indian country at a competitive disadvantage compared to

[59] The control requirements could apply to major oil and natural gas sources because they may include uncontrolled emissions units identical to those at minor sources. And while the major sources have presumably been, or would be, at least partly subject to controls through existing EPA standards and permitting requirements, they could still include individual emissions units for which control requirements are not applicable. Therefore, we have determined that it is appropriate to apply the proposed VOC control requirements of this rule to major oil and natural gas sources as well as minor oil and natural gas sources.

[60] *See* 81 FR 35944, 35963 (June 3, 2016).

[61] ''Meetings and Consultations Held with the Ute Indian Tribe Concerning at Least Partly the Uintah and Ouray Indian Reservation Federal Implementation Plan and the National Oil and Natural Gas Federal Implementation Plan for Indian Country,'' March 1, 2019, Docket No. EPA–R08–OAR–2015–0709, available at *https://www.regulations.gov.*

similar sources located in UDEQ-regulated areas, where minor sources have expedited permitting options available. Extending the National O&NG FIP's permitting approach to the portions of the U&O Reservation designated nonattainment, among other benefits, avoided any such inequity.

There is, however, an important consideration to extending the National O&NG FIP to the U&O Reservation portion of the Uinta Basin Ozone Nonattainment Area. Specifically, this proposed U&O FIP would reduce ozone-forming emissions from existing, new, and modified oil and natural gas sources, in order to ensure that new and modified true minor source growth can occur in the area while protecting air quality. To accomplish those reductions, we are proposing the control requirements described later in Section V.

D. Developing the Proposed Control Requirements

Our objectives in developing proposed requirements to control VOC emissions from existing, new, and modified oil and natural gas sources on the U&O Reservation are to address the Basin's degraded air quality, to provide regulatory consistency across the Uinta Basin, and to allow for continued growth of oil and natural gas resources on the U&O Reservation. To ensure that the regulatory requirements would be the same as or comparable on balance across the Uinta Basin, we focused on using UDEQ regulations and preconstruction permitting requirements being implemented by the UDEQ for new, modified and existing oil and natural gas sources within the Uinta Basin to identify appropriate requirements for controlling VOC emissions from the prominent oil and natural gas emissions sources in the Basin. We consulted existing federal preconstruction permitting and oil and natural gas sector regulations for common emissions sources and determined that to meet our objectives for this rulemaking, it is necessary to propose requirements that are additional to what is required of new and modified sources in existing federal requirements. Extending the National O&NG FIP to the U&O Reservation will ensure an efficient and protective construction authorization mechanism for new and modified true minor sources. The combination of extending the National O&NG FIP to the U&O reservation and promulgating the control requirements in this proposed U&O FIP will reduce ozone-forming emissions from new, and modified and existing oil and natural gas sources. To accomplish those reductions, we are proposing the control requirements described in Section V.

1. Determination of VOC-Producing Equipment/Activities To Regulate

To develop these requirements, we analyzed data submitted by the owners/operators of existing sources under the 2014 Uinta Basin Emissions Inventory. We used this information to determine the equipment and operations that generate the largest portion of VOC emissions from these sources. The inventory shows that 81 percent of VOC emissions from existing oil and natural gas sources in the Uinta Basin occur on Indian country lands within the U&O Reservation. The highest VOC emissions from existing oil and natural gas sources in the Uinta Basin come from (top 6 in order of highest to lowest): [62] (1) Wastewater ponds; (2) fugitive emissions; (3) pneumatic pumps; (4) crude oil and condensate storage tanks; (5) pneumatic controllers; and (6) glycol dehydrators. As noted earlier in Section III.D., we conclude that winter ozone formation in the Basin is more sensitive to changes in VOC emissions than changes in NO_X emissions. Therefore, we expect that reducing VOC emissions from these emissions sources will result in lower ozone levels in the Uinta Basin.

2. Evaluation of Federal Oil and Natural Gas and Permitting-Related Requirements

We do not expect that many of the existing oil and natural gas sources on the U&O Reservation, most of which are minor sources, are currently subject to federal VOC emissions control requirements under the CAA, including the New Source Performance Standards (NSPS) for the Oil and Natural Gas Sector at 40 CFR part 60, subpart OOOO (NSPS OOOO), and subpart OOOOa (NSPS OOOOa),[63] the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Oil and Production Facilities at 40 CFR part 63, subpart HH (NESHAP HH),[64] the Prevention of Significant Deterioration (PSD) Permit Program at 40 CFR part 52, and the Federal Indian Country Minor NSR Permit Program at 40 CFR part 49,[65] because they do not meet the respective applicability criteria. As we assembled a set of requirements for this proposed U&O FIP, we considered CAA regulatory requirements in place for oil and natural gas sources nationwide, in the Uinta Basin on the Indian country lands within the U&O Reservation and on lands regulated by the UDEQ.

VOC emissions at existing major oil and natural gas sources on the U&O Reservation (far fewer in number than minor sources) should be controlled through federal emissions control requirements under the CAA, including the EPA's major source preconstruction permitting program in Indian country; the synthetic minor permit provisions of the Federal Indian Country Minor NSR rule; the NSPS OOOO or OOOOa; and other EPA emissions standards in place for the oil and natural gas sector.

We do acknowledge, however, that there may be individual emissions units or processes at such major sources that are uncontrolled because they are not subject to any emissions control requirements in a major source permit and/or are not otherwise subject to a federal emissions standard. For example, such units or processes may not be subject to the EPA regulation because they do not meet the applicability criteria in any NSPS or NESHAP.[66] Another example concerns oil and natural gas wastewater disposal facilities that rely on evaporation from ponds. The 2014 Uinta Basin Emissions Inventory shows that these types of

[62] These six sources represent 93 percent of oil and natural VOC emissions on the U&O Reservation.

[63] NSPS OOOO was originally published in the **Federal Register** on August 16, 2012 at 77 FR 49490, with revisions on September 23, 2013, July 17, 2014, December 31, 2014, and July 31, 2015. Additional revisions, including the addition of subpart OOOOa, were signed final by the Administrator on April 28, 2016. Information on these rulemakings is available at *https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry,* accessed August 19, 2019.

[64] National Emission Standards for Hazardous Air Pollutants: Oil and Natural Gas Production and Natural Gas Transmission and Storage, originally published in the **Federal Register** on June 17, 1999 at 64 FR 32609, and revised on June 29, 2001 (66 FR 34548), January 3, 2007 (72 FR 26), and August 16, 2012 (77 FR 49490). Information on these rulemakings is available at: *https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry* and *https://www.epa.gov/stationary-sources-air-pollution/clean-air-act-standards-and-guidelines-oil-and-natural-gas-industry,* accessed August 16, 2019.

[65] Review of New Sources and Modifications in Indian Country, published in the **Federal Register** on July 1, 2011 (76 FR 38748), available at *http://www.gpo.gov/fdsys/pkg/FR-2011-07-01/pdf/2011-14981.pdf,* accessed August 19, 2019 (Federal Indian Country Minor NSR Program). Program includes the ''Federal Implementation Plan for True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector; Amendments to the Federal Minor New Source Review Program in Indian Country to Address Requirements for True Minor Sources in the Oil and Natural Gas Sector,'' Final Rule, U.S. Environmental Protection Agency, Signed April 28, 2016 and available at *https://www.epa.gov/tribal-air/oil-and-natural-gas-sources-federal-implementation-plan-rule-indian-country,* accessed August 16, 2019 (Indian Country Oil and Natural Gas True Minor Source FIP).

[66] EPA has several NESHAP and NSPS in place that regulate equipment and processes at oil and natural gas sources.

wastewater disposal facilities are the largest source of VOC emissions at existing oil and natural gas operations on Indian country lands within the U&O Reservation, emitting approximately 33 percent of the VOC emissions for these areas.[67] The majority of the VOC emissions from these types of wastewater disposal facilities occur upstream of the evaporation ponds, where wastewater is received and handled before being discharged to the evaporation ponds—namely from vaults and skim ponds, and to a lesser extent, from onsite storage tanks. The inventory also indicates that certain individual wastewater disposal facilities on Indian country lands within the U&O Reservation are estimated to emit VOC emissions at major source levels (*i.e.,* greater than 100 tpy). While emissions from storage tanks at certain wastewater disposal facilities may be considered point sources, the evaporation emissions from vaults, skim ponds and evaporation ponds could be considered fugitive and the oil and natural gas sector is not one of the industry source categories listed in major source preconstruction permitting programs that are required to include fugitive emissions when determining whether or not the source is major.[68] Fugitive emissions may, however, be considered when determining whether or not a source is major for HAP, which requires compliance with the Title V Operating Permit Program requirements and may require compliance with NESHAP requirements. The NESHAP for Offsite Waste and Recovery Operations at 40 CFR part 63, subpart DD, imposes control requirements on certain wastewater disposal facilities, but these existing facilities on the Indian country lands within the U&O Reservation may not meet any of the very specific applicability criteria in subpart DD.[69]

In contrast to existing major sources, most existing minor oil and natural gas sources on the U&O Reservation are uncontrolled, although some may be subject to NSPS OOOO or OOOOa. For example, the 2014 Uinta Basin Emissions Inventory indicates that only 15 percent of the oil and natural gas sources present in 2014 on Indian country lands within the U&O Reservation were reported to be operating VOC emissions control devices on their storage tanks, a significant source of oil and natural gas VOC emissions. NSPS OOOO and OOOOa only apply to sources constructed after the relative applicability dates and that meet the other applicability criteria. Storage tanks at sources associated with oil and natural gas production wells that began production after the effective dates of NSPS OOOO or OOOOa may have low enough VOC emissions that owners/operators are not required to control VOC emissions from storage vessels.

In addition, some VOC emissions that are also HAP from certain emissions units at existing minor sources, such as glycol dehydrators and storage tanks with the potential for flash emissions, may be regulated under the NESHAP for Oil and Natural Gas Production Facilities at 40 CFR part 63, subpart HH (NESHAP HH).[70] However, the NESHAP does not require emission controls for lower-emitting glycol dehydrators or storage tanks with throughputs below a certain level on rural and remote Indian country lands within the U&O Reservation because the units would not meet subpart HH's urban-based glycol dehydrator applicability criteria or tank throughput applicability threshold. The 2014 inventory, which indicates that 99 percent of the glycol dehydrators operated at oil and natural gas sources on the Indian country lands within the U&O Reservation are reported as uncontrolled,[71] supports the conclusion that most glycol dehydrators on the U&O Reservation may not be subject to NESHAP HH. Therefore, using the applicability criteria of relevant EPA regulations and analyzing available emissions and other data, allows the EPA to conclude that the majority of existing oil and natural gas minor sources on the U&O Reservation have not been controlled under the CAA's programs.

Further, the federal preconstruction minor source permitting requirements in the Federal Indian Country Minor NSR rule did not start to impose requirements on new and modified true minor oil and natural gas sources until after October 3, 2016. Through application of the Federal Indian Country Minor NSR rule, new and modified true minor oil and natural gas sources constructed before October 3, 2016, were required only to register as existing sources, with no additional emissions limits or operational requirements. As of December 2014,[72] operators of 5,169 existing minor oil and natural gas sources on the U&O Reservation had registered under the rule as existing sources.[73] This number is 77 percent of the 6,739 total existing oil and natural gas sources on the Indian country lands within the U&O Reservation), according to the 2014 Uinta Basin Emissions Inventory. The 6,739 oil and natural gas sources are in turn 79% of the total number of reported oil and natural gas sources in the Uinta Basin.[74] Therefore, the majority of the existing minor sources are not controlled under existing CAA requirements.

3. Evaluation of State Oil and Natural Gas and Permitting-Related Requirements

The federal CAA regulation of existing oil and natural gas operations on the Indian country lands within the U&O Reservation contrasts with UDEQ's regulation of existing oil and natural gas operations on non-Indian-country lands in the Uinta Basin. As discussed in Section III.E., higher percentages of existing tanks and glycol dehydrators are controlled in UDEQ-regulated areas than on the U&O Reservation. In areas within the Uinta Basin that are under the UDEQ's CAA jurisdiction, owners/operators of new and modified minor oil

[67] 2014 Uinta Basin Emissions Inventory. The inventory and supporting analysis can be viewed in the docket for this NPRM (Docket ID No. EPA–R08–OAR–2015–0709), Microsoft Excel spreadsheet titled ''2014 UB EI summary data_U&O FIP NPRM.''

[68] *See* 40 CFR 52.21(b)(1)(iii).

[69] See the NESHAP for Offsite Waste and Recovery Operations at 40 CFR part 63, subpart DD. The NESHAP applies to sources that meet ALL of the following criteria: (1) Meet the definition of a ''centralized waste treatment'' facility (CWT); (2) are a major HAP source; (3) discharge effluent subject to CWA section 402 or 307(b) permitting; AND (4) treatment of wastewater is the predominant activity at the CWT.

[70] National Emission Standards for Hazardous Air Pollutants: Oil and Natural Gas Production and Natural Gas Transmission and Storage, originally published at *See* 64 FR 32609 (June 17, 1999), and revised at *See* 66 FR 34548 (June 29, 2001), *See* 72 FR 26 (January 3, 2007), and *See* 77 FR 49490 (August 16, 2012). Information on these rulemakings is available at: *https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry* and *https://www.epa.gov/stationary-sources-air-pollution/clean-air-act-standards-and-guidelines-oil-and-natural-gas-industry,* accessed August 16, 2019.

[71] 2014 Uinta Basin Emissions Inventory. The inventory and supporting analysis can be viewed in the docket for this rule (Docket ID No. EPA–R08–OAR–2015–0709), Microsoft Excel spreadsheet titled ''2014 UB EI summary data_U&O FIP NPRM''.

[72] The Minor Source Registration Data used was a snapshot in time for the purposes of consistent analyses, though we note that we have continued to receive new registrations for existing, new, and modified true minor sources since that date, the overwhelming majority of which have been for oil and natural gas sources.

[73] New and modified true minor oil and natural gas sources constructed on or after October 3, 2016, must meet the requirements of the Federal Indian Country Minor NSR rule (unless the source obtains a site-specific permit) by registering under the Indian Country True Minor Oil and Natural Gas Source FIP, which contains requirements to comply with a set of NSPS and NESHAP requirements, as applicable, for various oil and natural gas activities.

[74] 2014 Uinta Basin Emissions Inventory. The inventory and supporting analysis can be viewed in the docket for this NPRM (Docket ID No. EPA–R08–OAR–2015–0709), Microsoft Excel spreadsheet titled ''2014 UB EI summary data_U&O FIP NPRM''.

and natural gas operations are subject to the preconstruction permitting requirements in Utah's federally enforceable rules for permitting of new and modified sources (Utah Permit Requirements).[75] These requirements are triggered whenever uncontrolled actual emissions are greater than or equal to the minor source preconstruction permitting thresholds of five tpy per pollutant regulated under the Federal Indian Country Minor NSR rule (NSR-regulated pollutant). Utah has had a minor new source review program (preconstruction permits) in place since November 1969. The five tpy VOC threshold was implemented in 1997 to clarify which minor sources should be permitted. Before 1997, there was no size threshold, and any minor source was required to obtain a permit. The permits are called Approval Orders, which identify site-specific requirements, or General Approval Orders (GAO), which identify a standard set of requirements for similar sources. There is a GAO available for new and modified crude oil and natural gas well sites and tank batteries. These two types of orders require installation, operation, and maintenance of the best available control technologies for minor sources. What constitutes best available control technologies for oil and natural gas sources changes over time as new technologies and practices are introduced and become readily available and economically feasible. Based on the requirements in issued site-specific approval orders, the UDEQ most recently considered minor source Best Available Control Technology (BACT) for controlling VOC emissions from oil and natural gas operations to include: (1) Capture of emissions from crude oil, condensate and produced water storage tanks (working, standing, breathing, and flashing losses), glycol dehydrator still vents, and pneumatic pumps, if combined source-wide VOC emissions from that equipment are greater than or equal to 4 tpy; and (2) routing all of those emissions either (1) to a process unit where the emissions are recycled or incorporated into a product (*e.g.,* a sales gathering line); or (2) to an operational combustor with a minimum VOC control efficiency of 98.0 percent and operated with no visible emissions. For sources required to control emissions from crude oil, condensate and produced water storage tanks, glycol dehydrator still vents, and pneumatic pumps, the UDEQ issued approval orders also require: (1) At least annual onsite inspections of fugitive emission components using either EPA Method 21[76] or an optical gas imaging instrument, and (2) repair of all identified leaking components.

As mentioned earlier, the UDEQ has adopted and made effective revisions to the existing Utah Permit Requirements that include a permit by rule. The permit by rule replaces the requirement for certain minor oil and natural gas sources[77] to obtain an approval order. Those minor oil and natural gas sources are required to register with the UDEQ and to comply with a suite of existing revised and additional new oil and natural gas requirements source requirements (Utah Oil and Gas Rules)[78] in lieu of obtaining a site-specific approval order or approval under the GAO. The Utah Oil and Gas Rules are consistent with the minor source BACT that was previously required under the site-specific Approval Orders and GAO, with some exceptions. The adopted new requirements include: (1) At well sites and centralized tank batteries with site-wide throughput greater than or equal to 8,000 barrels (bbl) of crude oil or 2,000 bbl of condensate on a 12-month rolling basis from the collection of storage vessels, a requirement to either route all VOC emissions to a process unit to be recycled, incorporated into a product and/or recovered, or to a VOC control device (including associated monitoring and recordkeeping);[79] (2) at well sites and centralized tank batteries where storage vessel controls are required, a requirement to capture and control VOC emissions during truck loading and unloading operations; (3) at well sites and centralized tank batteries with combined VOC emissions from dehydrators and the collection of storage vessels greater than or equal to 4 tpy, a requirement to either route all VOC emissions from dehydrators to a process unit to be recycled, incorporated into a product, and/or recovered, or to a VOC control device (including associated monitoring and recordkeeping); (4) at each well site or centralized tank battery that is required to control storage vessel and/or dehydrator VOC emissions, a requirement to implement a leak detection and repair (LDAR) program that includes semiannual onsite monitoring of each fugitive emissions component (with exceptions for difficult or unsafe to monitor components) using optical gas imaging (OGI) or EPA Method 21 at 40 CFR part 60, Appendix A; (5) at oil well sites, a requirement to manage associated gas from a completed oil well by either routing it to a process unit for combustion, routing it to a sales pipeline, or routing it to a VOC control device, except for emergency release situations;[80] and (6) for natural gas-fired engines at new or modified well sites or centralized tank batteries after January 1, 2016, requirement compliance upon installation or modification with the Standards of Performance for Stationary Spark Ignition Internal Combustion Engines at 40 CFR part 60, subpart JJJJ. All storage vessels and dehydrators located at a well site are exempt from the control requirements, if combined VOC emissions are demonstrated to be less than four tpy of uncontrolled emissions on a rolling 12-month basis. Additionally, sources that are subject to issued site-specific approval orders or approval for coverage under the GAO are exempt from the permit by rule and new Utah Oil and Gas Rules. The UDEQ also adopted a new requirement that oil and natural gas sources with emissions of NSR-regulated pollutants greater than or equal to 1 tpy are to submit an

[75] Utah Administrative Code Chapter R307–401 (*Permits: New and Modified Sources*), available at *https://rules.utah.gov/publicat/code/r307/r307-401.htm,* accessed August 21, 2019; *See* 40 CFR part 52, subpart TT.

[76] The docket for this NPRM (Docket ID No. EPA–R08–OAR–2015–0709) contains several examples of UDEQ site-specific minor source NSR permits (aka approval orders) for Crude Oil and Natural Gas Well Sites and/or Tank Batteries (DAQE–AN151010001–15, DAQE–AN149250001–14, and DAQE–AN143640003–15), as well as an approval for coverage under the GAO for a Crude Oil and Natural Gas Well Site and/or Tank Battery (DAQE–MN149250001–14). LDAR inspection frequency ranges from annual to quarterly.

[77] The permit by rule applies to well sites, as defined in 40 CFR 60.5430a, including centralized tank batteries, and exempts sources that have already been issued approval orders. New and modified minor compressor stations are still required to obtain an approval order.

[78] Utah Administrative Code Chapter R307–500 Series (Oil and Gas), available at *https://rules.utah.gov/publicat/code/r307/r307.htm,* accessed August 21, 2019. These rules are state-only rules and the UDEQ has not submitted them to the EPA for approval in the Utah SIP.

[79] The EPA submitted comments on the UDEQ's proposed action on November 14, 2017, in which we questioned the use of 8,000 barrels of crude oil per year as a surrogate for four tpy of VOC. The UDEQ responded to those comments in the package it submitted to the Air Quality Board for recommended adoption of the proposal. The UDEQ revised the proposal to add the applicability threshold of 2,000 bbl of condensate. The comments and UDEQ's responses are available in the docket for this proposed rule (Docket ID No. EPA–R08–OAR–2015–0709).

[80] This is a requirement the EPA recently became aware is specified in individual Approval Orders for oil well sites, which was not previously apparent in the example approval orders we reviewed. On January 3, 2019, the Utah Air Quality Board approved an additional rule in the Utah Administrative Code Chapter R307–500 Series (Oil and Gas) at R307–511 to manage associated gas from a completed oil well by either routing it to a process unit for combustion, routing it to a sales pipeline, or routing it to a VOC control device, except for emergency release situations.

emissions inventory every 3rd year, beginning with calendar year 2017.

Additionally, owners/operators of all existing, new, and modified oil and natural gas sources are subject to certain requirements in the Utah Oil and Gas Rules that apply regardless of emissions levels. These regulations impose: (1) Basic operational requirements for all existing pneumatic controllers (must be low or no bleed), existing flares (must be equipped with an automatic ignition device), and tanker truck loading and unloading (must use bottom filling or submerged fill pipe), regardless of source-wide emissions; and (2) general duty provisions to operate all process and control equipment in a manner consistent with good air pollution control practices.

As a result of Utah's oil and natural gas regulations and permitting programs, the UDEQ has mechanisms available through which it requires owners/operators of existing, new, and modified oil and natural gas sources in its jurisdiction to implement legally and practicably enforceable control requirements that reduce VOC emissions beyond what is required by applicable federal standards and permit programs, protecting air quality and providing regulatory certainty to owners/operators of oil and natural gas operations. As discussed earlier in this section, no equivalent federal regulatory counterpart to these requirements is currently available that applies to the existing minor oil and natural gas sources on the U&O Reservation.

As discussed earlier, oil and natural gas wastewater disposal facilities that reply on evaporation constitute approximately 33 percent of the VOC emissions in the Uinta Basin. The UDEQ is permitting new and modified wastewater disposal facilities that rely on evaporation through site-specific Approval Orders [81] that: Require monthly water sampling from the first discharge point of wastewater to open air used to estimate emissions; (2) place limits on VOC and HAP concentrations in that discharge point; and (3) require that limits on wastewater throughput, or controls on the pretreatment, be in place before the discharge. The permits for such wastewater disposal facilities have been requested by the operators and issued by the UDEQ to establish the sources as synthetic minor HAP sources to avoid major HAP source status, which would require the sources to obtain an operating permit under Title V of the CAA. Other oil and natural gas-producing states regulate wastewater disposal facilities that rely on evaporation through minor NSR permits as well. All of the wastewater disposal facilities the EPA has identified that are within Indian country on the U&O Reservation existed before the requirement to obtain a preconstruction permit under the Federal Indian Country Minor NSR Rule was effective. The federal NSR regulations at 40 CFR 52.21 (major sources) and 40 CFR 49.153 specify that sources in the oil and natural gas sector are not required to account for fugitive emissions when determining applicability to permitting requirements.[82] Such wastewater disposal facilities rarely have non-fugitive emissions units, which means they are typically considered true minor sources with respect to NSR. However, fugitive HAP emissions must be considered when determining whether a source is a major HAP source under the NESHAP at 40 CFR part 60, and, therefore, subject to the permitting requirements of the Title V Operating Permit Program at 40 CFR part 71.[83] We are looking into whether the existing wastewater disposal sources on the U&O Reservation may be subject to operating permit requirements and whether the operators may be interested in obtaining permits to establish synthetic minor sources with respect to Title V. Such a path would currently be the only authority for the EPA to control emissions from these sources on the U&O Reservation.

The EPA is not proposing to require emissions reductions at such wastewater disposal facilities on Indian country in this action. We are interested in information from operators of existing wastewater disposal facilities on the U&O Reservation that rely on evaporation to better understand and characterize emissions from such sources, and the particular processes being used, in order to determine the CAA permitting requirements that may apply.[84] However, we currently lack sufficient information on the efficacy and cost-effectiveness of the various wastewater management and control technologies to determine cost-effective emission control requirements that could be applied broadly on the U&O Reservation. We are seeking comment on whether to regulate wastewater disposal facility emissions in a possible future amendment to a U&O FIP. We are also soliciting input regarding feasible and cost-effective options for reducing emissions from the handling of wastewater generated in the course of oil and gas production, including information on technologies for treatment and reuse in oil and natural gas production operations or other applications.

Regarding the UDEQ's recently adopted requirements for management of associated gas from oil well sites in their permit-by-rule, the rule was approved after we drafted and evaluated the emissions reductions and costs of this proposed U&O FIP proposed provisions; therefore, we are not proposing equivalent requirements for associated gas at this time. We intend to evaluate and consider incorporating equivalent associated gas requirements in a final U&O FIP.

4. Developing a Consistent Set of VOC Emissions Requirements

As discussed earlier, to avoid disproportionately burdening sources seeking to develop oil and natural gas resources on the U&O Reservation, in this proposed U&O FIP we seek to establish VOC emissions control requirements consistent with those applicable to sources off the U&O Reservation. We determined that UDEQ requirements for oil and natural gas sources in the Uinta Basin are the most relevant requirements with which to seek consistency for new, modified and existing oil and natural gas equipment and activities. We also reviewed other state oil and natural gas-related regulations for areas in the region that are like the Uinta Basin in terms of industrial operations, characteristic meteorology, and air quality concerns. Specifically, we reviewed state-only rules and guidance from the Wyoming Department of Environmental Quality (WDEQ) [85] that apply statewide to oil and natural gas sources, and those that

[81] The UDEQ issues these site-specific permits to establish synthetic minor sources of HAP emissions using the authority in Rule R307–401. Permit: New and Modified Sources. R307–401–8 (1) The director will issue an approval order if the following conditions have been met: (a) The degree of pollution control for emissions, to include fugitive emissions and fugitive dust, is at least best available control technology.

[82] *See* definition of *major stationary source* at 40 CFR 52.21(b)(1)(i)(c)(iii), definition of *true minor source* at 40 CFR 49.152, and Applicability at 49.153(a)(1)(i)(B).

[83] *See* 40 CFR 63.2 definition of *fugitive emissions.*

[84] Information we are interested in obtaining, so as to improve our understanding of these existing facilities on the U&O Reservation, includes quarterly sampling and analysis of oilfield wastewater processed through facilities over a one-year period at specific locations in the process at each facility and following specific sampling protocols and analysis methods.

[85] ''Oil and Gas Production Facilities, Chapter 6, Section 2 Permitting Guidance,'' WDEQ (available at *http://deq.wyoming.gov/aqd/new-source-review/resources/guidance-documents,* accessed August 19, 2019); Wyoming Nonattainment Area Regulations, Chapter 8, section 6; 020–020–008 Wyo. Code R. § 6 (2016).

apply in the Upper Green River Basin ozone nonattainment area and the requirements of the Colorado Department of Public Health and Environment (CDPHE) [86] that apply statewide to oil and natural gas sources, and those that apply in the Denver Metro and North Front Range ozone nonattainment area. The Upper Green River Basin ozone nonattainment area and the Denver Metro and North Front Range ozone nonattainment area are two areas that have experienced ozone issues like those in the Uinta Basin where oil and natural gas activities have contributed to ozone nonattainment and have been addressed through state and local rules that apply to the same emission units covered by this proposed rule.

In reviewing these other state regulations, we considered whether the technologies are being commonly used and required at oil and natural gas sources in other states, so as to ensure that this proposed U&O FIP requirements are legally and practicably enforceable, as well as reasonably achievable. Based on this review, we developed requirements in this proposed U&O FIP reflecting the most relevant aspects of Utah-implemented rules and permit requirements applicable to new, modified and existing oil and natural gas sources in the Uinta Basin. However, the proposed rule's requirements are also like Colorado's and Wyoming's requirements for crude oil, condensate, and produced water storage tanks; glycol dehydrators; pneumatic pumps; closed-vent systems; enclosed combustors and utility flares; pneumatic controllers; tank truck loading and unloading; and fugitive emissions detection and repair.

In summary, a primary objective of this proposed U&O FIP is to protect air quality on the U&O Reservation. We are seeking to do so in a manner that achieves the same or consistent proposed requirements with the UDEQ's requirements for new, modified and existing sources, including for certain equipment or activities that the EPA does not regulate under its standards but which the UDEQ does regulate at existing sources. These are equipment and activities that we have identified as significant sources of VOC emissions on the U&O Reservation. For those equipment or activities, we are proposing requirements for existing sources that are the same as or consistent with the UDEQ's established requirements for existing sources. In addition, as needed, we have consulted the EPA's standards for new and modified oil and natural gas sources, where we are proposing to regulate the same equipment at existing sources that is regulated nationally at new and modified sources. Overall, this approach, for many requirements in this proposed U&O FIP, meets our goal of regulatory consistency across the Uinta Basin. In addition, we must follow the minimum criteria in 40 CFR part 51, the CAA, and the TAR for approval of rules in either a SIP or a TIP,[87] which include adequate monitoring, recordkeeping and reporting requirements to ensure the requirements are federally enforceable as a practical matter. The RIA for this proposal contains a detailed comparison of the proposed rule requirements to the relevant state requirements reviewed.

Included in the docket for this rulemaking are copies of the UDEQ rules and other state and federal rules that we considered in this process, as well as an RIA containing a discussion comparing the requirements of those rules to the requirements in this proposed U&O FIP.

5. Consideration of Non-CAA Oil and Natural Gas Requirements

During development of this proposed U&O FIP requirements, we were mindful that some oil and natural gas sources that will be subject to the requirements of this proposed U&O FIP, if finalized as proposed, may also be subject to requirements of the Department of Interior's Bureau of Land Management (BLM) recent rule covering production of oil and natural gas on federal and Indian lands.[88] The final rule, hereinafter referred to as the ''2018 BLM Venting and Flaring Rule,'' revised a 2016 rule,[89] hereinafter referred to as the ''2016 BLM Venting and Flaring Rule,'' in a manner that reduced compliance burdens, reinstated interpretations of existing statutory authorities, and re-established longstanding requirements that had been replaced by the 2016 BLM Venting and Flaring Rule. We have reviewed the 2018 BLM Venting and Flaring Rule [90] and considered potentially overlapping requirements in development of this proposed U&O FIP. The final 2018 BLM Venting and Flaring Rule contains a general requirement that operators flare, rather than vent, gas that is not captured, requires persons conducting manual well purging to remain onsite in order to end the venting event as soon as practical, and clarifies what does and does not constitute an emergency for the purposes of royalty assessment. The 2018 BLM Venting and Flaring Rule removed in their entirety the following requirements from the 2016 BLM Venting and Flaring Rule: Waste minimization plans; well drilling and completion requirements; pneumatic controller and diaphragm pump requirements; storage vessel requirements; and LDAR requirements. The 2018 BLM Venting and Flaring Rule modified and/or replaced the following requirements from the 2016 BLM Venting and Flaring Rule: Gas-capture requirement—the BLM now defers to State or Tribal regulations in determining when the flaring of associated gas from oil wells will be royalty-free; downhole well maintenance and liquids unloading requirements; and measuring and reporting volumes of gas vented and flared.

Since the 2018 BLM Venting and Flaring Rule removed requirements on existing activities and equipment, such as storage tanks, pneumatic pumps, pneumatic controllers, and LDAR, we do not expect the proposed FIP will overlap with the BLM rule. However, we note that if a final U&O FIP is promulgated that includes requirements for managing associated gas, as intended, we would expect that final FIP would overlap with the 2018 BLM Venting and Flaring Rule. Specifically, we would expect that oil and natural gas sources on the U&O Reservation would face some overlapping requirements if the sources are also subject to federal or Indian onshore oil and natural gas leases, or to leases and business agreements entered into by the Tribe. There would be no overlap for oil and natural gas sources on the U&O Reservation that are not subject to federal or Indian onshore oil and gas leases or tribal leases and business agreements—EPA's proposed FIP would apply and BLM's rule would not. Because some facilities that will be subject to a final U&O FIP may also be

[86] Statewide Controls for Oil and Gas Operations and Natural Gas-Fired Reciprocating Internal Combustion Engines, 5 Code Colo. Regs. § 1001–9 (2016).

[87] EPA has used the planning requirements applicable to states as a guide in developing this proposed U&O FIP.

[88] *See* 83 FR 49184 (September 28, 2018). Department of the Interior, BLM, Final Rule, ''Waste Prevention, Production Subject to Royalties, and Resource Conservation; Rescission or Revision of Certain Requirements,'' (hereinafter ''2018 BLM Venting and Flaring Rule'').

[89] *See* 81 FR 83008 (November 18, 2016). Department of the Interior, BLM, Final Rule, ''Waste Prevention, Production Subject to Royalties, and Resource Conservation'' (hereinafter, ''2016 BLM Venting and Flaring Rule'').

[90] The RIA contains additional details on our review of BLM's rules and is available in the docket for this rule (Docket ID No. EPA–R08–OAR–2015–0709).

subject to this BLM rule, we will consider the requirements of the BLM rule in developing the final FIP. While our goal will be to avoid conflicts between the EPA requirements and BLM requirements, it is important to recognize that the EPA and the BLM are each operating under different statutory authorities and mandates in developing their rules. We expect sources subject to and in compliance with the control requirements in this proposed U&O FIP, that are also subject to the BLM Venting and Flaring Rule, will be able to demonstrate compliance with BLM's rule by demonstrating compliance with this proposed U&O FIP, as both were developed by consulting other applicable federal requirements.

E. Effect on Determining Site-Specific Permitting Requirements

As explained in Section IV.C., this rule is being proposed in combination with a separate action amending the National O&NG FIP to extend its construction authorization mechanism to apply on Indian country lands within the U&O Reservation that are included in the Uinta Basin Ozone Nonattainment Area until such time that this proposed U&O FIP is finalized. The National O&NG FIP provides an alternative compliance option for the requirement in the Federal Indian Country Minor NSR rule for new and modified true minor oil and natural gas sources to obtain a site-specific nonattainment permit before construction. Sources covered by the streamlined construction authorizations in the amended National O&NG FIP would not be subject to, or exempt from, other federal CAA permitting requirements, such as the Title V Operating Permit Program at 40 CFR part 71 or this proposed U&O FIP. Sources complying with the amended O&NG FIP will be able to take into account any VOC emission reductions from any required controls under this proposed U&O FIP when calculating their PTE for determining applicability of the particular permitting requirements to new, modified and existing sources. Some sources' PTE for VOC, or any other regulated NSR and/or Title V pollutant, may exceed the applicability thresholds for PSD, Federal Indian Country Minor NSR rule, or Title V permitting requirements even after complying with this proposed rule (when finalized). In such cases, the owners or operators of these sources will be required to apply for and obtain appropriate permits before construction.

F. Evaluation of Emissions Impacts of the Proposed Rule

The EPA has reviewed and quantified the estimated emissions impacts from the emissions control measures proposed in this proposed U&O FIP using the 2014 Uinta Basin Emission Inventory. We expect that the VOC reductions achieved by this proposed U&O FIP will be beneficial for reducing ambient ozone and HAP levels and the severity of any exceedances of the 8-hour ozone NAAQS that may occur at any time of the year. We are proposing a requirement for owners/operators to submit emissions inventories on a triennial basis and will monitor changes in the inventory along with monitoring ozone concentrations. Supporting air quality information is discussed in the RIA for this rule.[91]

In our existing source emissions data review, we have determined that a proposed requirement to at least a 95.0 percent VOC control efficiency continuously for emissions from existing storage tanks, glycol dehydrators and pneumatic pumps, and a proposed fugitive emissions monitoring program at existing oil and natural gas sources, will result in a reduction of VOC emissions of approximately 20,000 tpy. This number represents a 28 percent reduction of oil and natural gas-related VOC emissions on the U&O Reservation (relative to the total oil and natural gas-related VOC emissions for the Uinta Basin of more than 71,000 tpy per the 2014 Uinta Basin Emissions Inventory). In addition, this proposed U&O FIP represents an overall 26 percent reduction in total oil and natural gas sector VOC emissions relative to the inventory for the entire Uinta Basin. Relative to the 2014 NEI, the proposed VOC reductions represent a 15 percent reduction in total VOC emissions for all source sectors for the Basin, but a 25 percent reduction during winter (excluding biogenic sources—*see* Section III.E) for the Basin.

The EPA estimates that the proposed rule will result in a reduction of approximately 2,200 tpy of HAP and 59,000 tpy of methane as ''co-benefits,'' [92] as the emission reduction requirements to reduce VOC emissions also reduce HAP and methane concentrations in the gases routed to them at proportional rates, and in some cases conserve that gas stream for market rather than burn it in a control device. Estimates of how much gas would be conserved are discussed later in Section IV.G. and in the RIA.

The use of combustors or flares to control VOC emissions generates associated, unintended emissions of NO_X and CO as part of the combustion process. The EPA estimates that there would be an associated increase of 93 tpy of NO_X and 427 tpy of CO from the use of combustion devices.[93] When these emissions are distributed across the sources that would be required to install a combustion device, the emissions per source are very low. The estimated emissions per source for both pollutants are substantially lower than the 10 tpy threshold that triggers the requirement for minor sources to obtain a permit under the Federal Indian Country Minor NSR rule.[94] Therefore, we are not concerned that the increases in NO_X and CO emissions would adversely impact the NO_2 or CO NAAQS.

G. Costs and Benefits of the Proposed Rule

To estimate the total cost of the proposed rule, as well as dollar-per-ton VOC control cost effectiveness, the EPA relied on existing cost analyses completed to support the 2015 NSPS OOOO revisions and NSPS OOOOa,[95] and the 2012 Colorado Regulation 7.[96] To estimate the number of sources and equipment impacted by this proposed U&O FIP, the EPA relied on the 2014 Uinta Basin Emissions Inventory. An operator's existing fleet of sources, site-specific conditions, and existing control equipment will affect the annual cost impact on a given operator and is expected to be variable. Additionally, the strategies and controls required by this proposed U&O FIP will result in the recovery and sale of gas that would otherwise be vented to the atmosphere. These savings are included in the cost

[91] The RIA includes a more detailed explanation of the air quality impacts of the proposed rule. It can be found in the docket for this rule (Docket ID No. EPA–R08–OAR–2015–0709).

[92] The RIA includes a more detailed explanation of the air quality and climate benefits of the proposed rule. It can be found in the docket for this rule (Docket ID No. EPA–R08–OAR–2015–0709).

[93] The RIA includes a more detailed explanation of the air quality impacts of the proposed rule. It can be found in the docket for this rule (Docket ID No. EPA–R08–OAR–2015–0709).

[94] The RIA, accessible in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709), contains additional discussion regarding NO_X and CO emissions resulting from combustion in relation to the NO_2 and CO NAAQS.

[95] RIA of the Proposed Emission Standards for New and Modified Sources in the Oil and Natural Gas Sector, Docket ID No. EPA–HQ–OAR–2010–0505, accessible at *http://www.regulations.gov* or *https://www3.epa.gov/ttnecas1/regdata/RIAs/egughgnspsproposalria0326.pdf,* accessed August 19, 2019.

[96] Final Economic Impact Analysis per § 25–7–110.5(4), C.R.S. For Proposed revisions to Colorado Air Quality Control Commission Regulation Number 7 (5 CCR 1001–9), January 30, 2014, available in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709).

analysis and will increase the cost effectiveness of the rule. The complete cost analysis by the EPA to support this proposed U&O FIP is included in the RIA for this rule.[97]

Based on the 2014 Uinta Basin Emissions Inventory, 2,524 of the estimated 6,739 total existing sources on Indian country lands within the U&O Reservation are likely to be impacted at least in part by the requirements in this rulemaking for existing sources. A breakdown of the estimated number of sources impacted by this proposed U&O FIP and how they are affected is presented in Table 2.

TABLE 2—EXISTING SOURCES AFFECTED BY PROPOSED RULE

Proposed rule requirement:	Estimated sources affected
Add a combustor to comply with FIP	2,064.
Retrofit existing flare with auto igniter to comply with FIP	460.
Conduct LDAR at well sites to comply with FIP	2,079.
Conduct LDAR at compressor stations to comply	8.
Retrofit existing high-bleed pneumatic controllers to low-bleed (1,503 units) to comply with FIP	1,503 units.[98]
Comply with one or more requirements of the rule	2,524.

Using the EPA and Colorado control cost estimates, the EPA estimates the total capital cost of this proposed U&O FIP will be $280 million (incurred during the first three years of compliance, 2019–2021) and the total annualized engineering costs of implementing all of the controls outlined in this proposed U&O FIP is estimated to be $68 million in 2021[99] when using a 7 percent discount rate and $60 million when using a 3 percent discount rate.[100] All costs and benefits are in 2016 US dollars unless stated otherwise. Revenues from additional recovered natural gas are estimated at $3.5 million in 2021, assuming a wellhead natural gas price of $4.00 per thousand cubic feet, as the EPA estimates that approximately 885 million cubic feet of natural gas will be recovered in 2021 by implementing this proposed U&O FIP. When estimated revenues from additional natural gas recovery are included, the annualized engineering costs of this proposed U&O FIP are estimated to be $64 million in 2021 when using a 7 percent discount rate and $56 million when using a 3 percent discount rate.

As mentioned earlier, the total emissions reductions expected under the proposed control requirements for existing sources are estimated to be approximately 20,000 tpy[101] of VOC: About 6,100 tpy from controlling emissions from storage tanks, about 3,400 tpy from controlling emissions from glycol dehydrators, and about 6,700 tpy from controlling emissions from pneumatic pumps. We assume that all emissions will be routed to a combustor that will be designed and operated to continuously to meet at least a 95.0 percent VOC control efficiency. For the remainder of the emission reductions, approximately 1,400 tpy of VOC emissions are achieved by implementing an LDAR program and about 2,000 tpy of VOC emissions by retrofitting or replacing high-bleed pneumatic controllers with low-bleed. It should be noted that the 2014 Uinta Basin Emissions Inventory has not included a methodology to account for the phenomenon of ''super-emitters'' or fat-tail emission distribution that is typically a result of abnormal process conditions. Emissions resulting from this phenomenon are discussed in more detail later in Section V.F. Implementing an LDAR program would result in emissions reductions that include these emissions.

Using the total annualized cost of $68 million and applying a 7 percent discount rate, the cost of control is estimated to be $3,400 per ton of VOC reduced without accounting for product recovery savings. Using $64 million at a 7 percent discount rate, the control cost is estimated to be $3,300 per ton of VOC reduced when additional revenue from product recovery is included. Using the total annualized cost of $60 million at 3 percent discount rate, the cost of control is estimated to be $3,000 per ton of VOC reduced without accounting for product recovery savings; using $56 million at a 3 percent discount rate, it is estimated to be $2,900 per ton of VOC reduced.

We predict that there will be ozone and $PM_{2.5}$ health benefits from VOC reductions, as well as co-benefits for climate from methane reductions and co-benefits for human health and ozone from HAP reductions. These ''co-benefits'' would occur because the control techniques to meet the standards simultaneously reduce VOC, methane, and HAP emissions at proportional rates. As mentioned earlier, this proposed U&O FIP is anticipated to reduce 59,000 tons of methane and 2,200 tons of HAP per year starting in the first year of full compliance (2021). The annual CO_2-equivalent (CO_2 Eq.) methane emission reductions are estimated to be 1.3 million metric tons by 2021. These pollutants are associated with substantial health, welfare, and climate effects, which these emissions reductions will help mitigate. Climate-related benefits from methane emission

[97] The RIA, accessible in the docket for this rulemaking includes a more detailed explanation of costs and benefits (Docket ID No. EPA–R08–OAR–2015–0709).

[98] This is the count of the total number of high-bleed pneumatic controllers in the 2014 Uinta Basin Emissions Inventory, which is what the total annualized cost to retrofit to low-bleed controllers is based on. We elected to not determine how the controllers are distributed across the sources on the U&O Reservation, because it was not necessary for calculating costs.

[99] This estimate includes the costs of necessary recordkeeping and reporting for compliance with the proposed requirements. It is expected that maximum cost impacts to industry will occur during the first calendar year of full compliance following the effective date of the rule and will decrease in future years. Assuming the final rule is promulgated and effective by the end of 2018, full compliance under this proposed U&O FIP would be required by 2021 in the worst-case scenario, taking into account the maximum extension of the compliance deadline that the EPA anticipates might be granted with sufficient justification from an operator. Therefore, the cost year analyzed was 2021 for this proposed U&O FIP. The RIA, accessible in the docket for this rulemaking includes a more detailed explanation of benefits and costs (Docket ID No. EPA–R08–OAR–2015–0709).

[100] Estimated costs are for retrofitting existing sources only. We did not calculate costs for new or modified sources, because we presumed those sources would be required to implement the proposed controls if they were required to obtain a site-specific permit, rather than the streamlined construction authorization mechanism of the amended National O&NG FIP that is being extended to the portions of the Uinta Basin Ozone Nonattainment Area that include Indian country within the U&O Reservation.

[101] The numbers do not sum to exactly 20,000 due to rounding. All values have been individually rounded to two significant figures.

reductions are monetized using an interim estimate of the domestic social cost of methane, developed under Executive Order 13783.[102] By 2021, the annual domestic climate-related benefits of the proposed action are estimated to be $10 million using a 3 percent discount rate and $2.9 million using a 7 percent discount rate.[103] The HAP reduced as a result of reducing VOC emissions come primarily from the reductions in glycol dehydrator emissions. Reduction of these HAP are particularly effective for two reasons: (1) Reduced exposure will result in air toxics-related health benefits; and (2) those HAP are highly reactive VOC that more readily form ozone, so reductions of those HAP are expected to proportionately have a greater influence on reducing ozone than reductions in other VOC. The specific control techniques for this proposed U&O FIP are anticipated to have minor emissions disbenefits (*e.g.,* increases in emissions of NO_X and CO related to combustion of VOC).

The RIA[104] for the recently revised ozone NAAQS contains a detailed discussion of the current state of knowledge on the health benefits associated with reducing ambient levels of ozone air pollution. When we describe ozone health benefits, we generally group them in two categories: (1) Reduced incidence of premature mortality from exposure to ozone; and (2) reduced incidence of morbidity from exposure to ozone. Reductions in premature mortality can occur either as a result of reductions in short term exposures to ozone, which can benefit people of all ages, or as a result of reductions in lifetime exposures to ozone (age 30 to 99). Reduced morbidity from reduced exposure can occur through reduced: (1) Hospital admissions for respiratory reasons (age >65); (2) emergency department visits for asthma (all ages); (3) asthma exacerbation (age 6–18); (4) minor restricted-activity days (age 18–65); and (5) school absence days (age 5–17).

We have not quantified the monetary benefits of the VOC emissions reductions in the proposed rule and are including only a qualitative discussion of the benefits of the expected reductions in ozone and $PM_{2.5}$ levels, for the reasons in the following discussion. In other ozone-related rulemakings, when adequate data have been available, the EPA has quantified several health effects and monetized benefits of VOC reductions associated with exposure to ozone and $PM_{2.5}$. Including only a qualitative discussion of benefits does not imply that these benefits do not exist, but merely that the agency does not have enough data to quantitatively support such a discussion. However, we expect that significant reductions in VOC emissions will result in corresponding reductions in ozone formation and the health and welfare effects associated with exposure to ozone.

As explained previously, research studies have shown that ozone levels in the Uinta Basin are most significantly influenced by VOC emissions from the accumulation of existing minor oil and natural gas production operations. However, although we expect significant VOC emissions reductions, which will result in improvements in air quality and will reduce the health and welfare effects that are associated with exposure to ozone, fine particulate matter ($PM_{2.5}$), and HAP, we have determined that the VOC-related health benefits cannot be quantified (and thus, monetized) for the elevated winter ozone observed in the Uinta Basin, because current modeling tools using the NEI are not sufficient to properly characterize ozone and $PM_{2.5}$ formation for these winter ozone episodes due to uncertainties in quantifying the local emissions from oil and gas operations. Existing air quality modeling and measurement studies specific to the Uinta Basin indicate that air quality models that use the 2011 NEI underestimate the monitored elevated winter VOC and ozone concentrations. Air quality model sensitivity simulations for the Uinta Basin have shown that models can reproduce monitored ozone levels when oil and gas emissions are increased to match monitored VOC levels; thus, it is believed that models using the 2011 NEI fail to simulate observed VOC and ozone levels because of ongoing uncertainties in quantifying the local emissions from oil and natural gas operations.[105] But regardless of the quantitative uncertainties, we expect that reductions in ambient VOC emissions will result in reductions in winter ozone.[106] Any reductions in ambient ozone levels in the Uinta Basin are expected to lead to reductions in related adverse public health and welfare effects associated with exposure to ozone and is expected to meaningfully aid in compliance with the ozone NAAQS for the Uinta Basin.[107]

To improve our ability to quantify these benefits in the future, work is in progress to enhance emissions inventories in the Basin using improved activity data, additional sources such as wastewater evaporation ponds, and updated estimates of speciation from storage tank emissions. Most recently, inventories were developed from operator supplied activity and emissions information for 2014 and 2017. Additionally, the EPA will continue to work with the Utah DAQ, the Ute Tribe, and industry to collect comprehensive oil and natural gas emissions inventories for the Uinta Basin. Future EPA work will focus on improving the emissions factors and speciation profiles used in the development of emissions inventories—efforts that will help improve air quality model performance.

Considering all the quantified costs and benefits of this rule, including the revenues from recovered natural gas that would otherwise be vented, the quantified equivalent annualized costs (the difference between the monetized benefits and compliance costs) are estimated to be negative $39 million in 2021 using a 3 percent interest rate and

[102] See the RIA for more detailed information.

[103] The RIA, accessible in the docket for this rulemaking includes a more detailed explanation of the climate-related benefits (Docket ID No. EPA–R08–OAR–2015–0709)

[104] ''Regulatory Impact Analysis of the Final Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone,'' U.S. Environmental Protection Agency, EPA–452/R–15–007, September 2015, *https://www.regulations.gov/document?D=EPA-HQ-OAR-2013-0169-0057,* accessed August 16, 2019.

[105] Matichuk, R., Tonnesen, G., Luecken, D., Gilliam, R., Napelenok, S.L., Baker, K.R., Schwede, D., Murphy, B., Helmig, D., Lyman, S.N., Roselle, S. (2017). Evaluation of the Community Multiscale Air Quality Model for simulating winter ozone formation in the Uinta Basin. Journal of Geophysical Research: Atmospheres, *122,* available in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709). Like the Uinta Basin Ozone Studies discussed earlier, the EPA study found that modeled ozone was strongly sensitive to changes in VOC emissions, and that when oil and gas VOC emissions were increased sufficiently such that the model matched the measured VOC concentrations, the model also reproduced the observed peak ozone concentrations. For oil and natural gas sources in the Uinta Basin we are confident that the 2011 NEI underestimates VOC and HAP emissions. We are also confident that the 2014 NEI, though it was not used in the EPA study, underestimates VOC and HAP emissions. For this and other reasons that are discussed in more detail in the RIA, we are unable to conduct photochemical modeling to quantify the impacts of this rule's proposed VOC emissions reductions on winter ozone air quality in the Uinta Basin.

[106] The RIA includes a more detailed discussion of the expected air quality benefits and impacts (Docket ID No. EPA–R08–OAR–2015–0709).

[107] The EPA discussed this position in detail when promulgating the NSPS OOOO revisions and NSPS OOOOa, as well as when promulgating the final revised ozone NAAQS, concluding that the available VOC benefit-per-ton estimates are not appropriate to calculate monetized benefits of those rules, even as a bounding exercise. The dockets for both proposed rulemakings are available at *http://www.regulations.gov,* Docket ID No. EPA–HQ–OAR–2010–0505–4776 and Docket ID No. EPA–HQ–OAR–2008–0699–4458.

negative $46 million in 2021 using a 7 percent interest rate.[108] In light of the many unquantified but real and meaningful benefits noted above, the actual equivalent annualized costs are expected to be much less. We cannot estimate these costs with any confidence.

We are soliciting comment on all assumptions used to calculate costs and effectiveness of proposed control requirements, and benefits of the emissions reductions, all of which are detailed in the RIA and other supporting documentation available in the docket for this proposed U&O FIP.

V. Summary of FIP Provisions

This proposed rule would apply to owners or operators of oil and natural gas sources that either produce oil and natural gas or process natural gas and that are located on Indian country lands within the U&O Reservation that meet the applicability criteria specified for each set of requirements.

This proposed U&O FIP includes the following provisions:

49.4169 Introduction
49.4170 Delegation of authority of administration to the tribe
49.4171 General provisions
49.4172 Emissions Inventory
49.4173 Nonattainment Requirements for New or Modified True Minor Oil and Natural Gas Sources
49.4174 VOC emission control requirements for storage tanks
49.4175 VOC emission control requirements for dehydrators
49.4176 VOC emission control requirements for pneumatic pumps
49.4177 VOC emission control requirements for covers and closed-vent systems
49.4178 VOC emission control devices
49.4179 VOC emission control requirements for fugitive emissions
49.4180 VOC emission control requirements for Tank Truck Loading
49.4181 VOC emission control requirements for pneumatic controllers
49.4182 Other combustion devices
49.4183 Monitoring requirements
49.4184 Recordkeeping requirements
49.4185 Notification and reporting requirements

We do not expect a substantial number of oil and natural gas sources subject to this proposed U&O FIP's requirements to also be subject to NSPS OOOO or OOOOa, or NESHAP HH. However, to alleviate some of the regulatory burden of this proposed U&O FIP, we are proposing that any equipment or activities affected by any requirement in this proposed U&O FIP that are subject to the substantive emissions control requirements in the EPA standards, as appropriate, will not be subject to this proposed U&O FIP's substantive emissions control requirements for such equipment and activities. As an example, given the proposed exemptions, as a practical matter, a new or modified oil and natural gas source on the U&O Reservation that has storage tanks, glycol dehydrators, pneumatic pumps and fugitive emissions components and the storage tanks, pneumatic pumps and fugitive emissions components are subject to the emissions control requirements of NSPS OOOOa, then that source would be subject to the substantive emissions control requirements for glycol dehydrators in the FIP, but not to the FIP's substantive emissions control requirements for storage tanks, pneumatic pumps or fugitive emissions components.

A. Introduction

We are proposing in § 49.4169 (Introduction) to specify: (1) The purpose of this proposed U&O FIP; (2) the general applicability to the provisions of this proposed U&O FIP; and (3) the compliance schedule for this proposed U&O FIP.

We are proposing text that: (1) Establishes provisions for delegation of authority to allow the Ute Indian Tribe to assist the EPA with administration of this proposed U&O FIP in § 49.4170; (2) establishes general provisions and definitions applicable to oil and natural gas sources in § 49.4171; (3) establishes a requirement for oil and natural gas sources to submit emissions inventories on a triennial basis, beginning with an inventory for calendar year 2017 in § 49.4172; (4) establishes in § 49.4173 enforceable requirements to control emissions of VOC and other pollutants from new and modified true minor oil and natural gas sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector that commence construction on or after the effective date of this proposed U&O FIP, unless the source obtains a site-specific construction permit, or is otherwise required to obtain a site-specific permit by the Reviewing Authority, in accordance with 40 CFR 49.151 through 49.161; and (5) establishes in §§ 49.4174 through 49.4185, enforceable requirements to control and reduce VOC emissions from oil and natural gas well production and storage operations, natural gas processing, and gathering and boosting operations at oil and natural gas sources that are located on Indian country lands within the U&O Reservation.

We may issue a final action based on this proposal as soon as the date of publication of a final U&O FIP. We believe that there may be ''good cause,'' within the meaning of 5 U.S.C. 553(d)(3), to make the final rule effective as soon as it is published, if that is needed to ensure that this rule begins to provide emission reductions before the next winter ozone season. As discussed above in section II.D., winter ozone in the Uinta Basin is a serious public health problem, which this proposed rule is intended to help address.

In addition, the reductions provided by this rule are an integral part of the Agency's strategy to address the air quality problem on the U&O Reservation while maintaining a permitting mechanism that allows appropriate continued oil and natural gas production. The primary other component of that strategy is a separate action to amend the National O&NG FIP to extend its geographic coverage to the Indian country portions of the U&O Reservation that are part of the Uinta Basin Ozone Nonattainment Area. Over the long term, we are relying on the VOC emissions reductions in this action to support this extension of the scope of the National O&NG FIP. Accordingly, if making this rule effective on publication is necessary to begin effecting VOC emission reductions before the next winter ozone season, then doing so will help ensure that the amendment to the National O&NG FIP is compatible with air quality improvement on the U&O Reservation.

Accordingly, the EPA proposes to find that there is good cause to make the final action based on this proposal effective on the date of publication of the final rule. We invite comment on this proposed approach.

We are proposing that compliance with the rule for oil and natural gas sources that commence construction on or after the effective date of the final rule would be required upon startup. Compliance for sources that are existing as of the effective date of the final rule would be required no later than 18 months after the effective date of the final rule. We concluded that it is important to allow owners/operators of existing sources a reasonable period of time to conduct any necessary retrofit-related activities, such as (1) acquiring control devices, (2) conducting manufacturer-recommended testing to be compliant with the proposed

[108] The RIA in the docket for this rulemaking discusses this calculation in detail.

requirements, and (3) securing the necessary trained personnel to install compliant devices and associated piping and instrumentation. We expect that there will be about 2,100 existing oil and natural gas sources that may require equipment retrofit and installation of VOC emission control equipment (combustor controls) under the proposed rule. Additionally, we estimate that a total of approximately 1,500 high-bleed pneumatic controllers will need to be retrofitted to low- or no-bleed. We have determined that providing 18 months from the effective date of the final rule to install retrofits at existing sources is a reasonable amount of time for efficient, cost-effective project planning that accounts for a level, sustained equipment and labor resource demand that can be supported by the vendor community.[109]

This assessment is supported by what we have learned about the time needed for sources in Utah-regulated areas to comply with Utah's requirements for oil and natural gas sources. In particular, we have been informed by UDEQ compliance staff that the majority of existing oil and natural gas sources that have been required to install VOC emission control retrofits in State of Utah jurisdictions have completed the required retrofits within 9 months of the effective dates of their minor source approval orders, ahead of the 18-month deadline in UDEQ approval orders for operators to notify the UDEQ of the status of retrofit construction.[110] However, there are many more existing oil and natural gas sources on the U&O Reservation that would be required to install retrofits to control emissions from storage tanks, glycol dehydrators, and pneumatic pumps under this proposed U&O FIP than are estimated to be subject to equivalent requirements in UDEQ jurisdiction. The UDEQ estimates that approximately 1,600 existing sources have been required to control emissions from storage tanks, glycol dehydrator, and/or pneumatic pumps on non-Indian country lands in the Uinta Basin, while we estimate there are approximately 2,100 sources on Indian country lands within the U&O Reservation that would be subject to such requirements in this proposed U&O FIP. Therefore, it is likely owners/operators may need longer than 9 months to complete the necessary retrofits to the greater number of Indian country sources. The 18-month compliance schedule in this proposed U&O FIP will allow time for operators to conduct the necessary retrofits, while at the same time starting to achieve VOC emissions reductions as soon as practicable, so that the reductions will have a timely, beneficial impact on air quality and human health and progress toward attaining the ozone NAAQS.

We are also proposing to allow an owner or operator to submit a written request to the EPA for an extension of the compliance deadline for existing sources, which must include a detailed explanation of the reason for the request. Any approval or denial of an extension request, including the length of any approved extension, will be based upon the merits of each case. Factors that the EPA will consider in deciding whether to grant an extension request under the proposed provision include the economic and technical feasibility of meeting this proposed U&O FIP's control requirements in the timeframe prescribed in it. We are seeking comment on the proposed compliance schedules, or alternative compliance schedules that may be more appropriate, including information that supports the proposed time period or a different time period, such as data on average times to acquire, install, and test or obtain manufacturer certification of compliant control devices.

B. Provisions for Delegation of Administration to the Tribe

We are proposing in § 49.4170 (Delegation of Authority of Administration to the Tribe) to establish the steps by which the Ute Indian Tribe may request delegation to assist us with the administration of this rule and the process by which the Regional Administrator of EPA Region 8 may delegate to the Ute Indian Tribe the authority to assist with such administration. As described in the regulatory provisions, any such delegation will be accomplished through a delegation of authority agreement between the Regional Administrator and the Tribe. This section would provide for administrative delegation of this federal rule and does not affect the eligibility criteria under CAA section 301(d) and 40 CFR 49.6 for TAS should the Ute Indian Tribe decide to seek such treatment for the purpose of administering their own EPA-approved TIP under tribal law. Administrative delegation is a separate process from TAS under the TAR. Under the TAR, Indian tribes seek the EPA's approval of their eligibility to implement CAA programs under their own laws. The Ute Indian Tribe will not need to seek TAS under the TAR for purposes of requesting to assist us with administration of this rule through a delegation of authority agreement. If delegation does occur, the rule would continue to operate under federal authority on Indian country lands within the U&O Reservation, and the Ute Indian Tribe would assist us with administration of the rule to the extent specified in the agreement.

C. General Provisions

We are proposing in § 49.4171 (General Provisions): (1) A requirement to design, operate, and maintain all equipment used for hydrocarbon liquid and gas collection, storage, processing, and handling operations covered under this rule, in a manner consistent with good air pollution control practices and that minimizes leakage of VOC emissions to the atmosphere; (2) definitions; (3) assurances that, in order to ensure compliance, we will maintain our authority to require testing, monitoring, recordkeeping, and reporting in addition to that already required by an applicable requirement in a permit to construct or permit to operate; and (4) assurance that nothing in the rule will preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed.

D. Emissions Inventory Requirements

We are proposing in § 49.4172 a requirement for owners/operators of oil and natural gas sources with the potential to emit one or more NSR-regulated pollutants at levels greater than one tpy to submit an annual emissions inventory once every three years, that covers emissions from the previous calendar year, beginning with calendar year 2017. This requirement will suffice for the purpose of continued

[109] We recognize that 18 months is a tighter compliance timeframe than is required in NESHAP regulations, which is typically 3 years. The purpose of this proposed U&O FIP, though, is to address air quality in a timely fashion. Moreover, the proposal allows sources to request extensions of the compliance date beyond the 18 months as needed.

[110] Email correspondence with UDEQ staff regarding their source inventory and experiences regulating existing oil and natural gas sources in State of Utah jurisdiction is included in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709). UDEQ compliance staff target each new approval order for inspection within 18 months of the date it is issued. They document the status of construction at the time of inspection and note whether the permitted source has provided a notification of construction status, which is required within 18 months of the date the approval order is issued. UDEQ compliance staff have inspected hundreds of such existing oil and natural gas sources without observing any compliance issues with the 18-month notification requirement. While UDEQ compliance staff do not compile this information into any readily available summary format, details about the status of construction are included in the inspection report for each source.

updates to the comprehensive Uinta Basin oil and natural gas emissions inventory effort by the UDEQ, Ute Indian Tribe and the EPA. Owners/operators will be required to submit actual emissions for each emissions unit at each oil and natural gas source covered by the requirement in a standard format specified by the Regional Office and available on our website by the effective date of the final rule. The format will be consistent with the format used by the UDEQ to collect information from sources outside of Indian country lands within the U&O Reservation.

E. Compliance With the National Indian Country Oil and Natural Gas Federal Implementation Plan for New and Modified True Minor Oil and Natural Gas Sources in the Uinta Basin Ozone Nonattainment Area

From a regulatory standpoint, the effect of this action is to shift the requirement for compliance with the National O&NG FIP from one part of the CFR to another. Currently, new and modified true minor oil and natural gas sources proposing to locate or expand on Indian country lands within the U&O Reservation that are part of the Uinta Basin Ozone Nonattainment Area must comply with the National O&NG FIP, as a result of the recent action we took amending that FIP. The provisions of the National O&NG FIP that the recent action requires compliance with concern 40 CFR 49.101 through 49.105. This proposed action merely shifts these requirements located at 40 CFR part 49, subpart C, to 40 CFR part 49, subpart K, as part of this proposed U&O FIP, for the reasons stated previously. Additionally, these sources are also subject to applicable requirements in the Federal Indian Country Minor NSR Rule also found in subpart C at 40 CFR 49.151 through 49.161, including the 2-part registration requirement.

In § 49.4173 (Compliance with the National Indian Country Oil and Natural Gas Federal Implementation Plan for New and Modified True Minor Oil and Natural Gas Sources in the Uinta Basin Ozone Nonattainment Area), we are proposing that new and modified true minor oil and natural gas sources proposing to locate or expand on Indian country lands within the U&O Reservation that are part of the Uinta Basin Ozone Nonattainment Area continue to permanently comply with the National O&NG FIP (excluding § 49.101(d), which indicates that the National O&NG FIP does not apply in nonattainment areas), unless the owner or operator of a source opts out of the National O&NG FIP's permitting approach or is otherwise required by the EPA to obtain a site-specific minor source permit according to the Federal Indian Country Minor NSR Program at 40 CFR part 49. For the purposes of this proposed rule, a new or modified true minor oil and natural gas source is one constructed or modified on or after the effective date of this proposed U&O FIP. This continued permanent application of the National O&NG FIP to the Indian country lands within the U&O Reservation that are included in the Uinta Basin Ozone Nonattainment Area covers only new and modified true minor oil and natural gas sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector.

Applying the requirements of the National O&NG FIP to the Uinta Basin Ozone Nonattainment Area fulfills the EPA's obligation under the Federal Indian Country Minor NSR rule to issue minor source NSR pre-construction permits when combined with the existing source emissions reductions that would be required by this proposed U&O FIP. The EPA is seeking comment only on the proposal to continue to permanently apply the National O&NG FIP to sources on Indian country lands within the U&O Reservation that are part of the Uinta Basin Ozone Nonattainment Area; we are not re-proposing for comment the requirements of the National O&NG FIP.

The National O&NG FIP provides an efficient and effective, alternative approach that fulfills the minor NSR permitting requirement, while also ensuring air quality protection through requirements that are unambiguous and legally and practicably enforceable. The National O&NG FIP approach is also transparent to the public; it is clear to the public what requirements apply. The National O&NG FIP reduces burden for sources and the Reviewing Authority and minimizes potential delays in new construction due to compliance with the minor NSR permitting obligation.

Upon application of the National O&NG FIP to the Indian country lands within the U&O Reservation that are part of the Uinta Basin Ozone Nonattainment Area, new and modified true minor sources will have to address three sets of requirements.

First, under the National O&NG FIP that applies to new and modified true minor sources on the Indian country portions of the U&O Reservation that are part of the Uinta Basin Ozone Nonattainment Area, compliance with eight federal standards is required for the following equipment in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector: Compression ignition and spark ignition engines; process heaters; combustion turbines; fuel storage tanks; glycol dehydrators; completion of hydraulically fractured oil and natural gas wells; reciprocating and centrifugal compressors (except those at well sites); pneumatic controllers; pneumatic pumps; storage vessels; and fugitive emissions from well sites, compressor stations, and natural gas processing plants.

Sources must comply with all of the provisions of the eight federal standards (unless a provision is specifically excluded), as applicable to oil and natural gas sources under each standard: (1) 40 CFR part 63, subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters; (2) 40 CFR part 63, subpart ZZZZ, National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines; (3) 40 CFR part 60, subpart IIII, Standards of Performance for Stationary Compression Ignition Internal Combustion Engines; (4) 40 CFR part 60, subpart JJJJ, Standards of Performance for Stationary Spark Ignition Internal Combustion Engines; (5) 40 CFR part 60, subpart Kb, Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984; (6) 40 CFR part 60, subpart OOOOa, Standards of Performance for Crude Oil and Natural Gas Facilities for which Construction, Modification, or Reconstruction Commenced after September 18, 2015; (7) 40 CFR part 63, subpart HH, National Emission Standards for Hazardous Air Pollutants from Oil and Natural Gas Production Facilities; and (8) 40 CFR part 60, subpart KKKK, Standards of Performance for New Stationary Combustion Turbines.

Under the National O&NG FIP, true minor sources must comply with these standards, as they currently exist or as amended in the future, except for those provisions specifically excluded under the National O&NG FIP (and unless the source opts out of the FIP and obtains a site-specific permit or is otherwise required to obtain a site-specific permit by the Reviewing Authority). New and modified sources subject to the National O&NG FIP would be subject to any future changes to the eight underlying EPA standards only if they undergo a future minor modification as a true minor source and would otherwise be subject to those future changes. To help

understand the requirements of the National O&NG FIP, you may wish to review the provisions for each of the eight federal rules (*i.e.,* five NSPS and three NESHAP) identified in the National O&NG FIP. (The National O&NG FIP does not change the applicability of the specified standards, nor does it relieve sources subject to the standards from complying with them, independently of that FIP.)

It is important to note that compliance with these eight standards in the National O&NG FIP would not relieve the owners/operators of oil and natural gas sources from the obligation to comply with the proposed requirements of §§ 49.4169 through 49.4171 and 49.4174 through 49.4185, as applicable. Those proposed U&O Reservation-specific requirements would apply to sources regardless of whether they are existing, new or modified. Because the proposed U&O Reservation-specific requirements would exempt affected emissions units or activities that are subject to and controlled according to equivalent NSPS requirements, we expect that duplicative requirements will be avoided. Further we expect that the emissions reductions achieved from existing sources complying with those proposed U&O Reservation-specific requirements will provide justification for the proposed approval of new or modified true minor oil and natural gas sources on the U&O Reservation through the National O&NG FIP.

Second, under the Indian Country Minor NSR rule (§ 49.160(c)), new and modified sources subject to the National O&NG FIP must satisfy the requirement for two-part registration by using the two registration forms provided by the EPA [111] rather than a permit application (as mentioned earlier in Section IV.C). The registration forms contain the information required in § 49.160(c)(2). True minor sources complying with the National O&NG FIP must submit the Part 1 Registration Form, with the information required by § 49.160(c)(2), at least 30 days before beginning construction. The Part 2 Registration Form must be submitted within 60 days after the ''startup of production'' as defined in § 49.152(d). The source must determine the potential for emissions within 30 days after startup of production. The combination of the Part 1 and Part 2 Registration Forms submittal satisfies the requirements in § 49.160(c)(2). The forms are submitted instead of the application form otherwise required in § 49.160(c)(1)(iii). After being reviewed by the permitting authority, completed registration forms will be available online on the appropriate EPA Regional Office website.

Finally, under the National O&NG FIP, before beginning construction new and modified sources must document that potential impacts on threatened and endangered species and historic properties (collectively referred to as ''protected resources'') have been assessed. 40 CFR 49.104. The section provides two options for documenting this assessment: (1) Submittal of documentation to the EPA Regional Office (and to the relevant tribe for the area where the source is located or locating) that a site-specific assessment conducted by another federal agency has been completed for the specific oil and natural gas activity, and that the owner/operator meets all air quality-related requirements as specified within all documents/approvals obtained through that assessment (these requirements are typically implemented and enforced as conditions of an approved Surface Use Plan of Operations and/or Application for Permit to Drill); [112] or (2) submittal of documentation to the EPA Regional Office (and to the relevant tribe for the area where the source is located or locating) demonstrating that the source has completed the screening processes specified by the EPA for consideration of threatened and endangered species and historic properties and received a written determination from the EPA stating that it has satisfactorily completed these processes.[113]

We are taking comment on this approach of shifting compliance with the National O&NG FIP for new and modified true minor oil and natural gas sources on the U&O Reservation portions of the Uinta Basin Ozone Nonattainment Area from 40 CFR part 49, subpart C to 40 CFR part 49, subpart K as part of this proposed U&O FIP, in addition to the proposed VOC emissions reduction requirements in the proposed U&O FIP.

F. VOC Emissions Control Requirements

The discussion in this subsection details the proposed VOC emissions control requirements and how they compare to existing state and federal requirements for the equipment and activities listed in Table 3. The most notable difference between the proposed VOC emissions control requirements for this FIP and the Utah Oil and Gas Rules and Utah Permit Requirements is that the 4 tpy combined VOC emissions threshold requiring controls in the Utah permit by rule does not include pneumatic pump emissions. The reason for this difference is that we have identified that emissions from pneumatic pumps are a large source of VOC emissions on the U&O Reservation, but a negligible source of VOC emissions in the Utah jurisdiction in the Basin, because the majority of natural gas production occurs on the Reservation. This difference is explained in more detail later in this section.

[111] The registration forms are available at: *https://www.epa.gov/tribal-air/tribal-minor-new-source-review* (accessed August 16, 2019) or from the EPA Regional Offices.

[112] This assessment will typically be conducted through the National Environmental Policy Act process and result in either a Record of Decision or a Finding of No Significant Impact document.

[113] This process of source documentation submittal and the EPA's confirmation that it has satisfactorily completed the procedures must occur before the source submits its Part 1 Registration Form pursuant to § 49.160(c)(1)(iv). These processes are contained in ''Procedures to Address Threatened and Endangered Species and Historic Properties for the Federal Implementation Plan for Managing Air Emissions from True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector,'' available at *https://www.epa.gov/tribal-air/tribal-minor-new-source-review.*

TABLE 3—PROPOSED VOC EMISSIONS CONTROL REQUIREMENTS FOR NEW, MODIFIED AND EXISTING OIL AND NATURAL GAS SOURCES VERSUS UDEQ AND FEDERAL [114] CONTROL REQUIREMENTS

Proposed VOC emissions controls			Utah oil and gas rules and Utah ermit requirements	NSPS OOOO	NSPS OOOOa	NESHAP HH
Proposed requirements (section)	TPY threshold	Control efficiency (percent)				
Storage Tank VOC Emission Control Requirements (49.4174).	Source-wide uncontrolled VOC emissions from storage tanks, dehydrators and pneumatic pumps ≥4 tpy. Or for storage tanks-only sources, throughput of 8,000 barrels (bbl) of crude oil or 2,000 bbl condensate on rolling 12-month basis—unless ≤4 tpy source-wide VOC from storage tanks.	See VOC emission control devices later in this table (49.4178).	Issued Utah Permit Requirements (BACT for site-specific & general approval orders)—Same as proposed FIP. Utah Oil and Gas Rules—Control storage tanks if source throughput ≥8,000 bbl crude oil or 2,000 bbl condensate, on rolling 12-month basis—unless ≤4 tpy source-wide VOC from storage tanks (does not include pneumatic pump emissions).	Control individual tanks with PTE ≥6 tpy per tank constructed after August 23, 2011 (alternatively no control required if uncontrolled VOC emissions maintained <4 tpy).	Control individual tanks with PTE ≥6 tpy per tank constructed after September 18, 2015 (alternatively no control required if uncontrolled VOC emissions maintained <4 tpy).	Control individual tanks with potential for flash emissions and actual annual average hydrocarbon liquid throughput ≥79,500 liters/day.
Dehydrators VOC Emission Control Requirements (49.4175).		See VOC emission control devices later in this table (49.4178).	Issued Utah Permit Requirements (BACT for site-specific & general approval orders)—Same as proposed FIP. Utah Oil and Gas Rules—Control dehydrators if combined emissions from dehydrators and storage tanks ≥4 tpy VOC (does not include pneumatic pump emissions).	Not covered	Not covered	Units at non-urban area sources with actual annual average flowrate of natural gas <85,000 standard m^3/day not covered—this is majority of units on U&O Reservation.
Pneumatic Pumps VOC Emission Control Requirements (49.4176).		See VOC emission control devices later in this table (49.4178).	Issued Utah Permit Requirements (BACT for site-specific & general approval orders)—Same as proposed FIP—. Utah Oil and Gas Rules does not require control of pneumatic pump emissions.	Not covered	For well sites, hook up to control device if already on site and constructed after September 18, 2015. For natural gas processing plants, zero natural gas emissions.	Not covered.
Covers and Closed-Vent System VOC Emission Control Requirements (49.4177).	Source-wide uncontrolled VOC emissions from storage tanks, dehydrators and pneumatic pumps ≥4 tpy. Or for storage tanks-only sources, throughput of 8,000 bbl of crude oil or 2,000 bbl condensate on rolling 12-month basis—unless ≤4 tpy source-wide VOC from storage tanks.	100%	100% in issued Utah Permit Requirements and Rules (BACT for site-specific & general approval orders). Utah Oil and Gas Rules—Like proposed FIP (except Utah Oil and Gas Rules do not include pneumatic pump emissions).	100 percent of storage tank emissions, if constructed after August 23, 2011.	100 percent of storage tank emissions, if constructed after September 18, 2015.	100 percent If required to control glycol dehydrators and/or storage vessel HAP emissions.
VOC Emission Control Devices (49.4178).	Source-wide uncontrolled VOC emissions from storage tanks, dehydrators and pneumatic pumps ≥4 tpy. Or for storage tanks-only sources, throughput of 8,000 bbl of crude oil or 2,000 bbl condensate on rolling 12-month basis—unless ≤4 tpy source-wide VOC from storage tanks.	95.0 percent continuously.	98.0 percent continuous VOC control efficiency for Issued Utah Permit Requirements (BACT for site-specific & general approval orders). Same as proposed FIP for Utah Oil and Gas Rules.	95.0 percent continuous VOC control efficiency, for use on tanks with PTE ≥6 tpy per tank if constructed after August 23, 2011.	95.0 percent continuous VOC control efficiency, for use on tanks with PTE ≥6 tpy per tank, if constructed after September 18, 2015.	If required to control glycol dehydrator or storage vessel HAP emissions, must reduce HAP by 95.0 percent, or maintain <20 ppmv or 1 tpy benzene.
Fugitive Emissions VOC Emission Control Requirements (49.4179).	Sources required to control storage vessel, dehydrator and/or pneumatic pump emissions (per 49.4174 through 49.4178).	NA—Semi-annual surveys.	Utah Oil and Gas Rules—Same as Proposed FIP for well sites. Issued Utah Permit Requirements (sources exempt from Utah Oil and Gas Rules) require LDAR, ranging from annual to quarterly for oil and natural gas sources, including compressor stations.	Only for natural gas processing plants—At least annual surveys.	At least quarterly surveys for natural gas processing plants, quarterly surveys for compressor stations and semi-annual surveys for well sites, if constructed or modified after September 18, 2015.	Ensure closed-vent system operates with no detectable emissions if required to control glycol dehydrator or storage vessel HAP emissions.

TABLE 3—PROPOSED VOC EMISSIONS CONTROL REQUIREMENTS FOR NEW, MODIFIED AND EXISTING OIL AND NATURAL GAS SOURCES VERSUS UDEQ AND FEDERAL [114] CONTROL REQUIREMENTS—Continued

Proposed VOC emissions controls			Utah oil and gas rules and Utah ermit requirements	NSPS OOOO	NSPS OOOOa	NESHAP HH
Proposed requirements (section)	TPY threshold	Control efficiency (percent)				
Tank Truck Loading VOC Emission Control Requirements (49.4180).	None—applies to all existing sources.	NA—Bottom filling or submerged fill pipe.	Utah Oil and Gas Rules—more stringent, as capture and control of VOC emissions required at sources required to control storage vessel and glycol dehydrator emissions.	Not covered	Not covered	Not covered.
Pneumatic Controllers VOC Emission Control Requirements (49.4181).		NA—meet the standards of NSPS OOOO.	Utah Oil and Gas Rules—Same as Proposed FIP—.	Zero-bleed for processing plants and low-bleed (<6 scfh) elsewhere, if constructed after October 15, 2013.	Zero-bleed for processing plants and low-bleed (<6 scfh) elsewhere, if constructed after September 18, 2015.	Not covered.
Other combustion devices (49.4182).		NA—must have automatic ignition device.	Utah Oil and Gas Rules—Same as proposed FIP.	Not covered	Not covered	Not covered.

1. Storage Tanks, Glycol Dehydrators, and Pneumatic Pumps

For new, modified and existing sources, we are proposing in §§ 49.4174 (Storage Tank VOC Emission Control Requirements), 49.4175 (Dehydrators VOC Emission Control Requirements), and 49.4176 (Pneumatic Pumps VOC Emission Control Requirements) to require that owners and operators of affected storage tanks, glycol dehydrators and natural gas-driven pneumatic pumps either: (1) Reduce VOC emissions from working, standing, breathing, and flashing losses from crude oil, condensate, and produced water storage tanks, glycol dehydrator process vents (glycol dehydrator regenerator or still vent and the vent from the dehydrator flash tank, if present), and pneumatic pumps, by at least 95.0 percent on a continuous basis; or (2) maintain the source-wide uncontrolled actual VOC emissions from all storage tanks, glycol dehydrators, and pneumatic pumps at a rate of less than 4 tpy, or at a source that contains only storage tanks and does not contain glycol dehydrators or pneumatic pumps, maintain the source-wide throughput at less than 8,000 barrels (bbl) of crude oil or 2,000 bbl of condensate in any consecutive 12-month period. We are proposing that applicability for the VOC emissions control requirements be determined specifically according to the following criteria. For oil and natural gas sources that began operation before the effective date of the final rule, we are proposing that applicability be determined using uncontrolled actual emissions or actual throughput based on 12 consecutive months of data. For oil and natural gas sources that begin operation or modification after the effective date of the final rule, we are proposing that applicability for glycol dehydrators and pneumatic pumps be determined using potential to emit and we are proposing that emissions from all storage tanks be controlled upon startup for a minimum of 12 consecutive months. This requirement for new and modified storage tanks is being proposed because of the uncertainty of well production levels before operation begins. After a minimum of 12 consecutive months of operation, controls may be removed if source-wide uncontrolled actual VOC emissions from all storage tanks, glycol dehydrators, and pneumatic pumps are demonstrated to be less than 4 tpy, or, at a source containing only storage tanks, source-wide throughput is demonstrated to be less than 8,000 bbl of crude or 2,000 bbl of condensate.

We are proposing that owners or operators must demonstrate that the source-wide uncontrolled actual VOC emissions from crude oil, condensate, and produced water storage tanks, glycol dehydrator process vents, and pneumatic pumps have been maintained below 4 tpy using records of monthly determinations of uncontrolled actual VOC emission rates for the 12 consecutive months immediately preceding the demonstration. The uncontrolled actual VOC emissions rate must be calculated using a generally accepted model or calculation methodology.

The proposal would require that the owner or operator re-evaluate the source-wide uncontrolled actual VOC emissions or the source-wide throughput of crude oil or condensate on a monthly basis. If the results of the monthly determination show that the uncontrolled actual VOC emission rate is greater than or equal to 4 tpy or the throughput of crude oil or condensate is greater than 8,000 bbl or 2,000 bbl, respectively, the owner or operator will have 30 days to switch to the first option specified and control VOC emissions by at least 95 percent continuously. We are proposing an exemption to the VOC emissions control requirements for each emergency storage tank, provided the tank meets the following requirements: (1) The tank is not used as an active storage tank; (2) the owner or operator empties the tank no later than 15 days after receiving fluids; and (3) the tank is equipped with a liquid level gauge or equivalent device.

The proposed VOC emissions control applicability and requirements are the same as or comparable on balance with the requirements in the Utah Permitting Requirements and/or Utah Oil and Gas Rules. The proposed methods for determining applicability to the control requirements are the same as those determined to be cost-effective in site-specific minor source BACT analyses in the Utah Permit Requirements. In site-specific approval orders that have been issued, the UDEQ requires VOC emissions controls for source-wide emissions from storage tanks, glycol dehydrators, and pneumatic pumps at oil and natural gas sources [115] when the

[114] The National O&NG FIP incorporates the requirements of the eight standards, as they apply to a source. To make emissions control requirements across the Basin consistent, this proposed U&O FIP goes beyond the eight federal standards to regulate certain equipment and activities that are not regulated by established EPA standards (or are regulated differently) but are regulated in UDEQ standards. The EPA is in the process of reviewing certain provisions of NSPS OOOOa. The requirements summarized in this table are the requirements effective at the time of publication of this NPRM.

[115] The docket for this rule contains several examples of UDEQ site-specific minor source NSR permits (approval orders) for Crude Oil and Natural Gas Well Sites and/or Tank Batteries (DAQE–AN151010001–15, DAQE–AN149250001–14, and

source-wide uncontrolled actual emissions from that equipment are greater than or equal to 4 tpy. We have also determined that controlling emissions above the 4 tpy VOC level is cost-effective and will achieve meaningful emissions reductions on the U&O Reservation.[116] The proposed methods for determining applicability to the control requirements are comparable on balance with the UDEQ's recently adopted Utah Oil and Gas Rules, with the exception that those rules do not consider emissions from or control of pneumatic pumps.[117] The reason for this difference is discussed later when describing requirements for pneumatic pumps. The Utah Oil and Gas Rules require all storage vessels located at a well site that are in operation as of January 1, 2018, with a site-wide throughput of 8,000 bbl or greater of crude oil or 2,000 bbl or greater of condensate per year on a rolling 12-month basis to control emissions unless an exemption applies that combined VOC emissions from storage vessels are demonstrated to be less than 4 tpy of uncontrolled emissions (defined as actual emissions or the potential to emit without considering controls) on a rolling 12-month basis. Emissions to meet the exemption must be calculated using direct site-specific sampling data and any software program or calculation methodology in use by industry that is based on AP–42 Chapter 7. The Utah Oil and Gas Rules require all new and modified storage vessels (that begin operation on or after January 1, 2018) to control emissions upon startup of operation for a minimum of one year. A separate provision allows controls to be removed after a minimum of one year of operation if source-wide throughput is less than 8,000 bbl crude oil or 2,000 bbl condensate on a rolling 12-month basis or uncontrolled VOC emissions are demonstrated to be less than 4 tons per year. For sources that operate only storage tanks and not glycol dehydrators or pneumatic pumps, the 8,000 bbl of crude oil/2,000 bbl of condensate throughput applicability threshold for control of storage tank emissions is the same as the control applicability threshold for storage vessels in the UDEQ's recently adopted Utah Oil and Gas Rules. The proposed requirement to control emissions from all new and modified storage tanks for at least 12 consecutive months, the proposed exemption for emergency storage tanks, and the provision allowing removal of controls from storage tanks, glycol dehydrators and pneumatic pumps are also the same as the requirements in the recently adopted Utah Oil and Gas Rules, with the exception of pneumatic pump emissions and control mentioned earlier that will be discussed in more detail later.

We are proposing to specify the option that the owner or operator capture and route all subject emissions through a closed-vent system to an enclosed combustor or utility flare that is designed and operated to reduce the mass content of VOC in the emissions vented to it, by at least 95.0 percent. Requirements for closed-vent systems are proposed under conditions specified in § 49.4176 (VOC emission control requirements for covers and closed-vent systems) and requirements for operation and monitoring of control devices are proposed under conditions specified in §§ 49.4177 (VOC Emission Control Devices) and 49.4182 (Monitoring Requirements), all of which are discussed in detail later in the summaries of Covers, Closed-Vent Systems, and VOC Emission Control Devices and Monitoring Requirements.

We are proposing the alternative option that the owner or operator design their operations to recover 100 percent of the emissions and recycle them for use in a process unit or incorporate them into a product. These proposed control options are the same as the Utah Permit Requirements and the Utah Oil and Gas Rules.

This proposed U&O FIP approach for controlling pneumatic pumps by routing emissions to the same control device that controls emissions from storage tanks and glycol dehydrators is the same as the UDEQ's approach for controlling pneumatic pumps in site-specific approval orders issued under Utah Permit Requirements. As described earlier, regulating pneumatic pumps in this proposed U&O FIP is not comparable to the UDEQ's recently adopted new Utah Oil and Gas Rules because those rules do not include requirements for pneumatic pumps.[118] However, we are confident that this approach will help achieve ozone air quality improvements through this proposed U&O FIP, as the 2014 Uinta Basin Emissions Inventory shows that VOC emissions from pneumatic pumps constitute 15 percent of the total oil and natural gas-related VOC emissions on the U&O Reservation.[119] We are taking comment on whether and how to control emissions from pneumatic pumps at oil and natural gas sources.

We do not expect that a substantial number of oil and natural gas sources that would meet the applicability criteria of this proposed U&O FIP will also be subject to NSPS OOOO or OOOOa, or to NESHAP HH. However, to address any potential regulatory overlap, we are proposing that any affected crude oil, condensate and produced water storage tanks, glycol dehydrators and pneumatic pumps that are subject to the emissions control requirements in the EPA standards, would not be subject to this proposed U&O FIP requirements for such equipment and activities, including monitoring, recordkeeping and reporting requirements associated with such equipment and activities.

We are seeking comment on these proposed requirements, including information supporting alternative VOC emission reduction and control efficiency requirements and specific operating condition requirements that would provide equivalent protection of air quality in the Uinta Basin and regulatory consistency across the Uinta Basin. We noted previously that in January 2019, the Utah Air Quality Board approved an additional rule in the Utah Administrative Code Chapter R307–500 Series (Oil and Gas) at R307–

DAQE–AN143640003–15). UDEQ site-specific approval order requirements are based on BACT analyses for oil and natural gas sources concluding that combustion of VOC emissions from crude oil and condensate storage tanks, glycol dehydrators, and pneumatic pumps is economically and technically feasible when the source-wide uncontrolled VOC emissions from those emissions sources is equal to or greater than 4 tpy. The analyses rely in part on the EPA's analysis in the April 12, 2013 NSPS OOOO reconsideration, and the finding that emissions from those three emissions sources at a single source can feasibly be routed to the same combustor. Though the 4 tpy threshold is not specifically stated in the approval orders, if a source applying for a site-specific approval order has source-wide storage tank, glycol dehydrator, and pneumatic pump VOC emissions equal to or greater than 4 tpy, the order contains requirements to control those emissions.

[116] The RIA in the docket for this proposed U&O FIP contains more detailed information on our analyses.

[117] In response to an EPA comment on UDEQ's proposal questioning why issued approval orders and the GAO cover pneumatic pumps, but the new Utah Oil and Gas Rules do not, the UDEQ stated that the 2014 Uinta Basin Emissions Inventory indicated that pneumatic pump emissions constitute an insignificant portion of the total VOC emissions at Utah-regulated sources in the Basin. The comments and UDEQ's responses are available in the docket for this proposed rule (Docket ID No. EPA–R08–OAR–2015–0709).

[118] We note that the recently adopted new Utah Oil and Gas Rules do not contain requirements for pneumatic pumps. We are proposing requirements for pneumatic pumps requirements, as we have identified emissions from existing pneumatic pumps as being a significant source of VOC emissions on the Indian country lands within the U&O Reservation.

[119] By contrast, the 2014 Uinta Basin Emissions Inventory shows that there are a very low number of pneumatic pumps installed and operating on lands in the Uinta Basin that are regulated by the UDEQ and the UDEQ has stated that this fact is the reason the Utah Oil and Gas Rules do not have control requirements for pneumatic pumps (see the response to comments on the UDEQ's proposed rules in the docket for this rulemaking).

511 to manage associated gas from a completed oil well by either routing it to a process unit for combustion, routing it to a sales pipeline, or routing it to a VOC control device, except for emergency release situations. This rule was approved after we drafted and evaluated the emissions reductions and costs of the provisions in this proposed U&O FIP. We intend to evaluate and incorporate equivalent requirements for associated gas from oil wells in a final U&O FIP.

2. Covers, Closed-Vent Systems

For affected new, modified, and existing sources that are required to control emissions from storage tanks, glycol dehydrators and pneumatic pumps, we are proposing in § 49.4177 (VOC emission control requirements for covers and closed-vent systems) to require the use of covers on all crude oil, condensate, and produced water storage tanks and the use of closed-vent systems with all equipment that captures and routes VOC emissions to the respective vapor recovery or VOC emission control devices. Because closed-vent systems would be common to control requirements for storage tanks, glycol dehydrators and pneumatic pumps, we are proposing these requirements in a separate section to avoid redundancy. Proposed § 49.4178 also specifies construction and operational requirements for the covers and closed-vent systems. The construction and operational requirements for the covers and closed-vent systems are intended to provide legal and practical enforceability to ensure that all captured VOC emissions are routed to the respective vapor recovery or VOC emission control devices. In addition, for affected new, modified, and existing sources that are required to control emissions from storage tanks, glycol dehydrators and pneumatic pumps, § 49.4178 (VOC emission control devices) we are proposing specific legally and practicably enforceable construction and operational requirements for enclosed combustors and utility flares.

We are proposing in § 49.4177 (VOC emission control requirements for covers and closed-vent systems) to require that each owner or operator equip the openings on each subject crude oil, condensate, and produced water storage tank with a cover that ensures that working, standing, breathing, and flashing losses are efficiently routed through a closed-vent system to a vapor recovery system, an enclosed combustor, or a utility flare. We are proposing that each cover and all openings on the cover (*e.g.,* access hatches, sampling ports, and gauge wells) must form a continuous barrier over the entire surface area of the crude oil, condensate, or produced water in the storage tank. Each cover opening must be secured in a closed, sealed position (*i.e.,* covered by a gasketed lid or cap) whenever material is in the tank on which the cover is installed, except when it is necessary to use an opening to: (1) Add material to, or remove material from the unit (this includes openings necessary to equalize or balance the internal pressure of the unit following changes in the level of the material in the unit); (2) inspect or sample the material in the unit; or (3) inspect, maintain, repair, or replace equipment inside the unit.

We are proposing to require that each owner or operator subject to this requirement to control VOC emissions from working, standing, breathing, and flashing losses from crude oil, condensate, and produced water storage tanks, glycol dehydrator still vents, and pneumatic pumps must use closed-vent systems to collect and route the emissions to the respective vapor recovery or VOC emission control devices. We are proposing that all vent lines, connections, fittings, valves, relief valves, and any other appurtenance employed to contain and collect emissions and transport them to the vapor recovery or VOC control equipment, must be maintained and operated properly during any time the control equipment is operating and must be designed to operate with no detectable emissions. If a closed-vent system contains one or more bypass devices that could be used to divert all or a portion of the emissions from entering the vapor recovery or VOC control devices, we are proposing that the owner or operator must meet one of the following options for each bypass device: (1) At the inlet to the bypass device, properly install, calibrate, maintain, and operate a flow indicator capable of taking periodic readings and sounding an alarm when the bypass device is open such that the emissions are being, or could be, diverted away from the control device and into the atmosphere; or (2) secure the bypass device valve in the non-diverting position using a car-seal or a lock-and-key type configuration.

The proposed cover and closed-vent system requirements are comparable on balance with UDEQ requirements for storage vessels in both the issued site-specific approval orders and the Utah Oil and Gas Rules. The site-specific approval orders require storage tank thief hatches to be closed and latched except during tank unloading or other maintenance activities. They also require that thief hatches be inspected once every three months to ensure thief hatches are closed, latched, and the associated gaskets, if any, are in good working condition. Similarly, the Utah Oil and Gas Rules for storage vessels require thief hatches to be kept closed and latched except during unloading or maintenance. This proposed U&O FIP requirements for covers and closed-vent systems, including the associated monitoring requirements proposed in § 49.4183 and discussed later, were developed by consulting the covers and closed-vent system requirements of EPA standards, such as OOOO and NESHAP HH. For ease of implementation, these requirements provide more detail than the UDEQ requirements in both the issued site-specific approval orders and the Utah Oil and Gas Rules but are comparable on balance with the UDEQ requirements for storage vessels and closed-vent systems.

3. VOC Emission Control Devices

For new, modified and existing sources that are required to control emissions from storage tanks, glycol dehydrators and pneumatic pumps, we are proposing to require in § 49.4178 (VOC emission control devices) that each owner or operator follow the manufacturer's written operating instructions, procedures and maintenance schedules to ensure the use of good air pollution control practices for minimizing emissions from each enclosed combustor and utility flare. Each utility flare must be designed and operated according to the requirements of 40 CFR 60.18(b). Each enclosed combustor must be designed and operated to reduce the mass content of the VOC in the natural gas routed to it by at least 95 percent continuously. The proposed control efficiency required for each VOC emissions control device is the same as the recently adopted Utah Oil and Gas Rules.

We recognize that the site-specific approval orders issued to existing sources under the Utah Permit Requirements require control devices to meet 98 percent VOC control efficiency. But we have concluded that the differences between this proposed U&O FIP and the Utah Oil and Gas Rules and the Utah Permit Requirements are minimal, and all were designed to achieve a consistent result. The UDEQ requires permittees of minor oil and natural gas sources to show compliance with 98.0 percent VOC control device control efficiency by routing all exhaust gas/vapors (from the storage tanks, glycol dehydrators or pneumatic pumps) to the operating combustor,

operating the device according to the manufacturer's written instructions when gases/vapors are routed to it, operating the device with no visible emissions, and by performing tests to visually determine smoke emissions according to EPA Method 22 at 40 CFR part 60, appendix A. The recently adopted new Utah Oil and Gas Rules require at least 95.0 percent VOC control efficiency and do not specify methods to ensure no visible emissions but refer to NSPS OOOOa for demonstrating compliance with the control efficiency requirements. We note that combustion devices can be designed to meet 98.0 percent control efficiencies, and can control emissions by 98.0 percent or more, on average, in practice when properly operated.[120] Combustion devices designed to meet 98.0 percent control efficiency may not, however, be able continuously to meet this efficiency in practice, due to factors such as the variability of field conditions and downtime.

During development of NSPS OOOO and OOOOa, 95.0 percent control efficiency was determined to be the best system of emission reduction (BSER) and able to be continuously achieved by affected facilities (*e.g.,* storage vessels, centrifugal compressors) nationwide, although the EPA is aware that combustors and utility flares may be capable of achieving instantaneous control efficiencies greater than 95.0 percent.[121] In determining BSER, the EPA must be confident that the control efficiency can be achieved continuously by every affected facility nationwide to which it applies. We are confident that combustors and utility flares can meet at least 95.0 percent VOC control efficiency on a continuous basis. While the EPA is aware that combustion devices commonly used to control VOC-containing gas streams are capable of demonstrating greater than 98.0 percent continuous VOC control efficiency in a controlled performance testing environment, under ideal conditions, based on widespread and readily available manufacturer test data,[122] we are not confident that the devices can meet 98.0 percent continuous VOC control efficiency in the field.

We are proposing to require that all utility flares and enclosed combustors installed per this rule are models that: (1) Have been tested by the manufacturer in accordance with specific requirements in NSPS OOOO; (2) are devices that are designed and operated in accordance with applicable requirements in 40 CFR 60.18(b), or (3) are devices for which the owner or operator has conducted performance testing according to the specific requirements in NSPS OOOO. The Utah Oil and Gas Rules require that compliance for VOC control devices be demonstrated by meeting the performance test methods and procedures specified in NSPS OOOO. The Utah Oil and Gas Rules do not distinguish between utility flares and enclosed combustors. We determined it was important to propose specific requirements for the different types of control devices that may be present at oil and natural gas sources on the U&O Reservation, because EPA standards, such as NSPS OOOO and OOOOa and NESHAP HH make such distinctions for legal and practical enforceability. Therefore, although the proposed requirements for VOC control devices to demonstrate compliance with the proposed control efficiency requirements are more detailed for ease implementation, they are comparable on balance with the Utah Oil and Gas Rules that reference such requirements in NSPS OOOO.

We have determined that certain work practice and operational requirements are also necessary for the practical enforceability of the proposed VOC emission reduction requirements for utility flares or enclosed combustors. We are proposing that utility flares and enclosed combustors must be operated within specific parameters to ensure the effective control of VOC emissions. (This necessity was discussed in detail in the preamble and Technical Support Documents to the proposed and final NSPS OOOO).[123] Specifically, we are proposing that each owner or operator must ensure that each enclosed combustor or utility flare is: (1) Operated at all times that emissions are routed to it; (2) equipped and operated with a liquid knock-out system to collect any condensable vapors (to prevent liquids from going through the control device); (3) equipped and operated with a flash-back flame arrestor; (4) equipped and operated with a continuous burning pilot flame, or an electronically controlled automatic ignition device; (5) equipped with a monitoring system for continuous recording of the parameters that indicate proper operation of each continuous burning pilot flame or electronically controlled automatic ignition device, such as a chart recorder, data logger or similar device, or connected to a Supervisory Control and Data Acquisition (SCADA) system, to monitor and document proper operation of the enclosed combustor or utility flare; (6) maintained in a leak-free condition; and (7) operated with no visible smoke emissions. These proposed work practice and operational requirements are the same as the Utah Oil and Gas Rules with respect to operation of the control devices with no visible emissions. Other proposed work practice and operational requirements are different or more prescriptive than the Utah Oil and Gas Rules in several areas, to provide legal and practical enforceability. For example, the Utah Oil and Gas Rules require all VOC emissions control devices to simply be equipped and operated with an operational auto igniter. This proposed U&O FIP requires each enclosed combustor or utility flare to be equipped and operated with either: (1) A continuous burning pilot flame; or (2) an electronically controlled automatic ignition device. All enclosed combustors or utility flares must be equipped with a monitoring system for continuous measurement and recording of the parameters that indicate proper operation of each continuous burning pilot flame or electronically controlled automatic ignition device, such as a chart recorder, data logger or similar device, or connected to a SCADA system to monitor and document proper operation of the device. The work practice and operational requirements for VOC control devices in this proposed U&O FIP were developed by considering the UDEQ requirements for VOC control devices in combination with consulting the work practice and operational requirements for control devices in EPA standards, including NSPS OOOO and OOOOa and NESHAP HH. Specifically regarding the proposed requirement to equip enclosed combustors and utility flares with either

[120] The EPA has currently reviewed performance tests submitted for 19 different makes/models of combustor control devices and confirmed they meet the performance requirements in NSPS subpart OOOO and NESHAP subparts HH and HHH. All reported control efficiencies were above 99.9 percent at tested conditions. EPA notes that the control efficiency achieved in the field is likely to be lower than the control efficiency achieved at a bench test site under controlled conditions, but these units should have no problem meeting 95.0 percent control continuously. See Combustion Device Performance Testing Summary Table in the docket for this rule.

[121] See "Oil and Natural Gas Sector New Source Performance Standards and National Emissions Standards for Hazardous Air Pollutants reviews, Parts 60 and 63, Response to Public Comments on Proposed Rule, *See* 76 FR 52738 (August 23, 2011), available at *http://www.regulations.gov* (Docket ID EPA–HQ–OAR–2010–0505 (Section 2.5.4, pages 127–128; Section 3.4.1, pages 294–295; and Section 3.5.1, pages 302–303)).

[122] See Combustion Device Performance Testing Summary Table in the docket for this rule.

[123] These documents can be found in the docket for the NSPS OOOO rulemaking, Docket ID EPA–HQ–OAR–2010–0505, available at *http://www.regulations.gov.*

a continuous burning pilot flame or an electronically controlled automatic ignition device, provided there is a monitoring system to indicate proper operation of the device, the EPA has maintained our position as recently as 2016 that without a continuous ignition sources, there may be periods of uncontrolled emissions and continuous ignition sources are designed to combust the flammable portion of the gas stream, even if the gas stream has a low BTU content.[124] Therefore, we have maintained that automatic ignition devices may not be reliable in the field to ensure that there is an ignition source at all times gas is flowing to a control device, and EPA standards, such as NSPS OOOO and OOOOa have commonly required that enclosed combustors be equipped with continuous burning pilot flames and continuous parameter monitoring systems to ensure the presence of a flame at all times a gas stream is routed to the control device. Additionally, since § 60.18(b)(2) of the General Provisions for 40 CFR part 60 is required for design and operation if an operator uses a utility flare under this proposed U&O FIP, a continuous pilot flame is required in that provision, and we believe an equivalent requirement should be applicable to the enclosed combustion control devices typically used for controlling emissions from storage vessels and other equipment at oil and natural gas sources. We recognize that the UDEQ requires auto igniters on all combustion devices. In the interest of establishing regulations on the U&O Reservation that are comparable on balance with the UDEQ requirements, we are proposing a hybrid approach that provides owners and operators required to control of VOC emissions from storage tanks, glycol dehydrators and pneumatic pumps the option to use devices that comply with EPA standards (continuous burning pilot), or to use electronically controlled automatic ignition devices if the control device is also equipped with a system that can indicate to the owner and operator that the automatic ignition device is not operating properly while gas is being routed to the control device. We expect that these proposed requirements for control devices would achieve a comparable result as the requirements for VOC control devices in the Utah Oil and Gas Rules, ensuring the control device is operated properly to achieve the required control efficiency, while providing consistency with EPA policy regarding flares and combustors.

Section 49.4178 proposes to allow owners or operators of oil and natural gas sources, upon receiving written approval, to use control devices other than an enclosed combustor or utility flare, provided they achieve at least 95.0 percent VOC control efficiency continuously. This provision will allow for owners or operators to take advantage of technological advances in VOC emission control for the oil and natural gas industry and will provide us with valuable information on any new control technologies.

We are seeking comment on the covers, closed-vent systems, and VOC emission control devices provisions in this proposed U&O FIP, including information supporting more or less stringent requirements that would provide legal and practical enforceability of the proposed requirement to reduce VOC emissions from storage tanks, glycol dehydrators, and pneumatic pumps by 95.0 percent continuously.

4. Fugitive Emissions Control

For new, modified and existing sources, we are proposing LDAR requirements in § 49.4179 (Fugitive Emissions VOC Emission Control Requirements) that each owner or operator of an oil and natural gas source that is required to control VOC emissions from storage tanks, glycol dehydrators, and pneumatic pumps per §§ 49.4174 through 49.4178 conduct periodic inspections of the source to detect leaks from fugitive emission components and repair them. We are proposing to define fugitive emissions components in § 49.4171 to include, among other things: Valves, connectors, open-ended lines, pressure relief devices, flanges, covers, closed-vent systems, and thief hatches or other openings on controlled tanks. Each affected owner or operator will be required to develop and implement a Reservation-wide fugitive emissions monitoring plan for all of its oil and natural gas sources on the U&O Reservation that must include the following requirements: (1) Conduct an initial monitoring of fugitive emissions components at each affected source within 18 months of the effective date of the rule; (2) conduct subsequent monitoring once every 6 months after the initial monitoring for fugitive emissions components at oil and natural gas sources; (3) describe the fugitive emissions detection monitoring method to be used, which is limited to onsite optical gas imaging instruments, EPA Reference Method 21, with a leak defined as any visible emissions using an optical gas imaging instrument, or an instrument reading of 500 parts per million volume (ppmv) VOC using EPA Reference Method 21, or another method approved by the EPA other than optical gas imaging or EPA Reference Method 21; (4) identification of manufacturer and model number of any leak detection equipment to be used; (5) procedures and timeframes for identifying and repairing components from which leaks are detected, including a requirement to repair any identified leaks from components that are safe to repair and that do not require source shutdown within 30 days of identifying a leak; (6) identification of timeframes to repair leaks that are technically infeasible to repair (*i.e.,* are unsafe to repair[125] or require source shutdown), but no later than 2 years after discovering such a leak; (7) procedures for verifying effective repair of leaking components, no later than 30 days after repairing a leak; (8) specific training and experience needed to perform inspections; (9) description of procedures for calibration and maintenance of monitoring equipment to be used; and (10) standard monitoring protocol for a typical affected source, including a general list of component types that will be inspected and what supporting data will be recorded (*e.g.,* wind speed, detection method device-specific operational parameters, date, time, and duration of inspection). We are proposing in § 49.4179 to exempt source owners/operators from having to monitor certain components for various reasons, such as: (1) The monitoring could not occur without elevating the monitoring personnel which expose the personnel to other immediate danger; or (2) the component to be inspected is buried, insulated, or otherwise obstructed in a manner that prevents access by a monitor probe or optical gas imaging device.

In drafting the proposed LDAR requirements, we reviewed the UDEQ requirements. For new and modified oil and natural gas sources that may have obtained coverage under the UDEQ's GAO, we have concluded that the UDEQ's LDAR inspection frequency requirement is different than the LDAR inspection frequency requirements for

[124] EPA's Response to Public Comments on the EPA's Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources. 40 CFR part 60, subpart OOOOa. May 2016. Chapter 11—Compliance. Comment Excerpt Number: 17. Pages 188–191. Available at *https://www.regulations.gov* (Docket ID EPA–HQ–OAR–2010–0505–7632), Accessed August 16, 2019.

[125] *Unsafe to repair* is defined in the proposed rule as meaning that operator personnel would be exposed to an imminent or potential danger as a consequence of the attempt to repair the leak during normal operation of the source.

oil and natural gas sources under this proposed U&O FIP. For new and modified sources under the GAO, the UDEQ requires an inspection frequency based on production levels and number of leaks detected, which may require monitoring frequencies for only certain sources that are equivalent to this proposed U&O FIP. For existing sources covered under site-specific approval orders, we have concluded that the UDEQ's LDAR frequency requirements (a range of annual to quarterly) to be different than those in proposed FIP. For new, modified and existing sources subject to the recently adopted new Utah Oil and Gas Rules, the LDAR frequency requirements of this proposed U&O FIP are the same. The LDAR requirements in the Utah Oil and Gas Rules were designed procedurally to be consistent with NSPS OOOOa, though the applicability threshold is different. The UDEQ's site-specific approval orders, the GAO, and the recently adopted new Utah Oil and Gas Rules all require implementation of an LDAR program at facilities that are required to control storage vessel, dehydrator and/or pneumatic pump emissions, which is consistent with this proposed U&O FIP. We determined that, particularly for existing sources, in order to provide consistent requirements across the Uinta Basin, the LDAR requirements in this proposed U&O FIP should be consistent with the LDAR requirements for new, modified and existing sources in the Utah Oil and Gas Rules, as those rules apply prospectively to all oil and natural gas well sites on non-reservation Indian country lands in the Uinta Basin that are not already subject to site-specific approval orders. If the sources in the Uinta Basin that are regulated by the UDEQ are also subject to the LDAR requirements of the NSPS OOOOa, the NSPS requirements supersede the UDEQ requirements. Similarly, if the sources in the Uinta Basin that would be regulated by the EPA on the U&O Reservation are subject to the LDAR requirements of the NSPS OOOOa, those sources would be exempt from complying with the LDAR requirements in this proposed U&O FIP. The fugitive emissions LDAR procedural requirements proposed in this proposed U&O FIP are consistent with the Utah Oil and Gas Rules. We are proposing applicability criteria for implementing an LDAR program, and LDAR inspection frequency requirements, that are consistent with requirements in the Utah Oil and Gas Rules, which meets our goal of regulatory consistency across the Uinta Basin. We expect that the proposed LDAR requirements will result in meaningful reductions in VOC emissions and ground-level ozone production, significantly furthering our main objective for this proposed U&O FIP. We are seeking comment on the fugitive emissions control requirements in this proposed U&O FIP, including information supporting more or less stringent inspection requirements.

We are proposing a provision allowing for the use of alternative methods of leak detection, other than EPA Reference Method 21 or optical gas imaging instrument, to demonstrate compliance with the fugitive emissions monitoring requirements, provided the method is approved by the EPA. The Uinta Basin generally encompasses an area of over 6,800 square miles with hundreds of miles of dirt roads connecting over 10,000 oil and natural gas wells. According to the 2014 Uinta Basin Emissions Inventory,[126] the average number of wells per well pad is 1.3. The inventory shows that fugitive emissions are the second highest VOC emissions source on the U&O Reservation, at about 13,900 tpy. The total does not account for emissions due to abnormal process operations, which is discussed in the following paragraphs. Recognizing that technology used to detect, measure, and mitigate emissions is rapidly developing, on July 18, 2016, the EPA issued a request for information, (RFI) [127] inviting all parties to provide information on innovative technologies to accurately detect, measure, and mitigate emissions from the oil and natural gas industry. The intent of this notice was to solicit data supporting alternative approaches to limit emissions from this sector.

Studies have been conducted specific to the Uinta Basin that investigated the viability of leak detection from an aerial platform. One study [128] employed a helicopter-based infrared camera, at an elevation of approximately 50 meters above ground level, to survey more than 8,000 oil and natural gas well pads in seven U.S. basins to assess the prevalence and distribution of hydrocarbon sources whose fugitive emissions were high enough to be labeled high-emitters. At each site with detected emissions, the survey team reported the site's location and the number and equipment type of each observed emission source. Survey results indicated the prevalence of high-emitting sites was four percent of all the sites surveyed across the seven basins examined. In the Uinta Basin, 1,389 well pad facilities were flown over, and high emissions were observed at 6.6 percent of those well pads.

The high emitting sources, or ''super-emitters,'' are likely due to abnormal process conditions.[129] Examples of abnormal process conditions, which could be persistent or episodic, include: Failures of tank control systems, malfunctions upstream of the point of emissions (for example, stuck separator dump valve resulting in produced gas venting from tanks), design failures (for example, vortexing or gas entrainment during separator liquid dumps) and equipment or process issues (for example, over-pressured separators, malfunctioning or improperly operated dehydrators or compressors).[130]

We are seeking information on alternative methods of leak detection (*e.g.,* aerial) that could potentially achieve meaningful and more cost-effective reductions in fugitive VOC emissions that contribute to ozone formation. We are seeking input on how these advanced monitoring technologies and platforms could be broadly applied to new, modified and existing sources in the Uinta Basin and whether any of these advanced monitoring technologies would be effective in the Uinta Basin and should be approvable as an alternative leak detection compliance method under a final U&O FIP. We are also seeking input on the criteria that EPA should consider in approving alternative leak detection compliance methods, including appropriate accuracy and quality assurance standards that alternative methods would need to meet to demonstrate equivalency to onsite optical gas imaging instruments or onsite EPA Reference Method 21. Specific descriptions of the approach, frequency of monitoring, detection thresholds, limiting factors in detection, costs and availability for alternative leak detection methods would be helpful.

[126] The complete, detailed dataset for the 2014 Uinta Basin Emission Inventory, including location data of every facility, can be viewed in the docket for this rule (Docket ID No. EPA–R08–OAR–2015–0709), SQLite database titled OGEI_v2.2_2014FINAL.db''.

[127] *See* 81 FR 46670 (July 18, 2016).

[128] ''Aerial Surveys of Elevated Hydrocarbon Emissions from Oil and Gas Production Sites,'' Environmental Science and Technology, 2016, 50 (9), pp 4877–4886, publication date April 5, 2016, available at *http://pubs.acs.org/doi/abs/10.1021/acs.est.6b00705,* accessed August 16, 2019.

[129] Zavala-Araiza, D., Alvarez, R.A., Lyon, D.R., Allen, D.T., Marchese, A.J., Zimmerle, D.J., & Hamburg, S.P. (2017). Super-emitters in natural gas infrastructure are caused by abnormal process conditions. Nature communications, 8, 14012.

[130] The 2014 Uinta Basin Emissions Inventory has not accounted for the phenomenon of ''super-emitters.''

5. VOC Emissions Control Requirements for All Sources

Sections 49.4180 (VOC emission control requirements for Tank Truck Loading), 49.4180 (VOC emission control requirements for pneumatic controllers) and 49.4184 (Other combustion devices) contain proposed requirements for all new, modified and existing oil and natural gas sources, regardless of source-wide or emission unit specific emissions. Like the requirements in Utah's Oil and Gas Rules for oil and natural gas sources in UDEQ's jurisdiction, this proposed U&O FIP's requirements are as follows: (1) Tank trucks used for transporting intermediate crude oil, condensate, or produced water must be loaded using bottom filling or submerged fill pipes; (2) all existing pneumatic controllers must meet the pneumatic controller standards in NSPS OOOO at 40 CFR 60.5390(b)(2) and (c)(2) and NSPS OOOOa at 40 CFR 60.5390a(b)(2) and (c)(2); and (3) all existing enclosed combustors, utility flares, or other open flares present at sources on a voluntary basis that are not required to control storage tank, glycol and dehydrator and pneumatic pump emissions (per §§ 49.4174 through 49.4178), and are voluntarily operated, must be equipped with an electronically controlled automatic ignition device.

Our proposed requirements for truck loading/unloading diverge in one respect from what the UDEQ is requiring in their recently adopted rulemaking. The UDEQ requires that VOC emissions from tank truck loading and unloading at sources required to control storage tank emissions be captured using a vapor capture line and routed to the onsite combustor or a separate combustor for VOC control. We are not proposing an equivalent requirement, as we have determined that it may not be cost effective presently given limited estimated emissions for truck loading/unloading on the U&O Reservation, based on the 2014 Uinta Basin Emissions Inventory. Assuming that the annualized cost to install a vapor capture line to an existing combustor is similar to that of routing pneumatic pumps to a combustor (approximately $1,627 per source) and assuming there are approximately 2,100 sources that would be required to add a combustor, such a requirement would result in high costs relative to the VOC emissions reductions that would be achieved.

Concerning pneumatic controllers, this proposed U&O FIP requirements for pneumatic controllers require owners/operators of affected pneumatic controllers to meet the standards established for pneumatic controllers in NSPS OOOO and OOOOa. We are proposing that owners/operators of affected controllers meet the tagging requirements in 40 CFR 60.5390(b)(2), 60.5390(c)(2) and 60.5390a(b)(2) and (c)(2), except that the month and year of installation, reconstruction or modification is not required. This exception is consistent with the Utah Oil and Gas Rules.

Lastly, for existing enclosed combustors, utility flares, or other open flares present at sources that would not be required to comply with the substantive VOC emissions control requirements of proposed sections §§ 49.4174 through 49.4178, we are proposing to require that those voluntarily operated control devices be equipped with an electronically controlled automatic ignition device. This approach is the same as the requirements of the Utah Oil and Gas Rules, which require automatic igniters on all existing combustion devices. Contrary to the proposed requirements in Section 49.4179 (VOC Emission Control Devices) for devices used to comply with the substantive VOC emissions control requirements of this proposed U&O FIP, we determined that requiring a system to monitor proper operation of devices used to ensure the presence of a flame at all times a gas stream is routed to the device was unreasonable for voluntarily operated devices and would result in requirements for such sources on the U&O Reservation that are not comparable to requirements for such sources on lands regulated by the UDEQ.

G. Monitoring Requirements

For new, modified, and existing sources, we are proposing in § 49.4183 (Monitoring Requirements) to require each owner or operator to conduct source monitoring necessary for the practical enforceability of all of this proposed U&O FIP's VOC emission reduction requirements, including: (1) Monthly inspections of each closed-vent system, including storage tank openings, thief hatches, and bypass devices, for defects that can result in air emissions according to the procedures in 40 CFR 60.5416(c) [NSPS OOOO]; (2) monthly auditory, visual, olfactory (AVO) inspections of each VOC emissions control device, tank thief hatch, cover, seal, pressure relief valve, and closed-vent system to ensure proper condition and functioning, performed while the storage tanks are being filled, and corrective action within 5 days of discovering the device is not operational; and (3) monitoring of each enclosed combustor or utility flare to confirm proper operation as follows: By checking the system for proper operation whenever an operator is onsite and responding to any indication of pilot flame failure and to ensure the pilot flame is relit as soon as practically and safely possible; and (4) monitoring of visible emissions according to the requirements in 40 CFR 60.5412(d)(i)(iii) [NSPS OOOO, which requires EPA Method 22 visual emissions testing].

These proposed monitoring requirements are comparable on balance with those in the Utah Permit Requirements and Utah Oil and Gas Rules, with some exceptions made to ensure legally and practicably enforceable control of VOC emissions.

For example, the Utah Permit Requirements and Utah Oil and Gas Rules require installation and operation of an automatic ignition device and operations with no visible emissions for all VOC control devices, but there are no corresponding monitoring requirements to demonstrate compliance with those requirements. We expect that the proposed monitoring requirements for ensuring there is a constant ignition source when gas is flowing to the control device and for visible emissions testing will provide legal and practical enforceability.

We are seeking comment on the monitoring requirements in this proposed U&O FIP, including information supporting more or less stringent monitoring requirements that would provide legal and practical enforceability of the proposed VOC emission control requirements.

H. Recordkeeping Requirements

For new, modified and existing sources, we are proposing in § 49.4184 (Recordkeeping Requirements) to require that each owner or operator of an affected oil and natural gas source keep specific records to be made available upon request, in lieu of voluminous reporting requirements. The records that must be kept include all required measurements, monitoring results, emissions calculations, and deviations or exceedances of rule requirements and corrective actions taken, as well as any manufacturer specifications and guarantees or engineering analyses. These recordkeeping requirements provide legal and practical enforceability for the control and emission reduction requirements of this rule.

We are seeking comment on the recordkeeping requirements in this proposed U&O FIP, including

information supporting more or less stringent recordkeeping requirements that would provide legal and practical enforceability of the proposed VOC emission control requirements.

I. Notification and Reporting Requirements

For new, modified, and existing sources, we are proposing in § 49.4185 (Reporting Requirements) to require that each owner or operator of an affected oil and natural gas source prepare and submit an annual compliance report, beginning 90 days after the end of the first compliance reporting period, which is one year after this rule becomes effective and covers the period for the previous calendar year. The report must include a summary of required records and a summary of deviations or exceedances of any requirements of the final FIP and the corrective measures taken. Additionally, a report of results must be submitted for any performance test we require. These reporting requirements provide legal and practical enforceability for the control and emission reduction requirements of this rule. We are seeking comments on the reporting frequency in this proposed U&O FIP, including information supporting a more or less frequent reporting schedule.

VI. Statutory and Executive Order Reviews

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

This proposed action is an economically significant regulatory action and was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to the OMB recommendations have been documented in the docket. The EPA prepared an analysis of the potential costs and benefits associated with this proposed action. This analysis, ''Regulatory Impact Analysis of for the Proposed Federal Implementation Plan for Managing Emissions from Oil and Natural Gas Sources on Indian Country Lands Within the Uintah and Ouray Indian Reservation in Utah'' (Ref. EPA–908/Z–16–001), is available in the docket, and is summarized in *Section IV.I. Benefits and Costs of the Proposed Rule.*

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

This action is expected to be an Executive Order 13771 regulatory action. Details on the estimated costs of this proposed rule can be found in the EPA's analysis of the potential costs and benefits associated with this action.

C. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted to the Office of Management and Budget (OMB) for approval under the PRA. The Information Collection Request (ICR) document that the EPA is preparing for this proposed U&O FIP has been assigned EPA ICR number 2539.01. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

This proposed action imposes a new information collection burden under the PRA. The ICR covers information collection necessary to meet the requirements in this proposed U&O FIP. In general, owners or operators are required to maintain records of all required monitoring and other rule compliance. This proposed U&O FIP also requires annual reports containing information for each oil and natural gas source, including a summary of all required records during the reporting period, and a summary of all instances where operation was not performed in compliance with the requirements of this proposed U&O FIP during the reporting period. Additionally, a summary emissions inventory is required for each source covered under this rulemaking once every three years. These reports and records are essential in determining compliance and are required of all sources subject to this proposed U&O FIP. The information collected will be used by the EPA or the Ute Indian Tribe to determine the compliance status of sources subject to the rule.

Respondents/affected entities: The potential respondents are owners or operators of existing, new, and modified oil and natural gas sources on Indian country lands within the U&O Reservation.

Respondent's obligation to respond: Mandatory. The EPA is charged under sections 301(a) and 301(d)(4) of the CAA to promulgate regulations as necessary to protect tribal air resources. Promulgating this proposed U&O FIP would address winter ozone air quality concentrations that exceed the NAAQS, and given the recent ozone NAAQS nonattainment designation, when combined with the National O&NG FIP amendments, would provide justification to allow continued streamlined construction authorization of new or modified true minor oil and natural gas sources, all in a manner that seeks to provide regulatory consistency between state and federal requirements with regard to controlling VOC emissions from existing, new, and modified oil and natural gas operations on the U&O Reservation. There is no other federal rule, including the recently finalized NSPS and NESHAP for the Oil and Natural Gas Sector (NSPS OOOO, NSPS OOOOa, and NESHAP HH), that establishes air pollution control regulations for the particular oil and natural gas operations that exist on the U&O Reservation that are appropriate to address the issues identified for this area. This is in contrast to oil and natural gas operations on non-Indian-country lands under the State of Utah's jurisdiction, which are governed by the UDEQ regulations and Utah Division of Oil, Gas, and Mining regulations. Consistent with the regulatory structure that exists on non-Indian country lands, this proposed U&O FIP has requirements for VOC emissions control and reductions, monitoring, recordkeeping, and reporting.

In addition, section 114(a) states that the Administrator may require any owner or operator subject to any requirement of this Act to:

- Establish and maintain such records;
- Make such reports;
- Install, use, and maintain such monitoring equipment, and use such audit procedures, or methods;
- Sample such emissions (in accordance with such procedures or methods, at such locations, at such intervals, during such periods, and in such manner as the Administrator shall prescribe);
- Keep records on control equipment parameters, production variables or other indirect data when direct monitoring of emissions is impractical;
- Submit compliance certifications in accordance with section 114(a)(3); and
- Provide such other information as the Administrator may reasonably require.

Estimated number of respondents: We estimate that 4,894 oil and natural gas sources will be subject to one or more requirements in this proposed U&O FIP over the next three years.

Frequency of response: Annual reports are required. Respondents must monitor all specified criteria at each affected source and maintain these records for five years.

Total estimated burden: 123,000 hours per year (3-year average), for all operators subject to this proposed U&O FIP.

Total estimated cost: $21.6 million per year; includes labor cost of $6.4 million, annualized capital cost of $6.4 million, and $8.7 million in operation and maintenance costs for all of the

operators that would subject to this proposed U&O FIP.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments to the EPA on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden, using the docket identified at the beginning of this proposed rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *oria_submissions@omb.eop.gov,* Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than 30 days after publication of the ICR in the **Federal Register**. The EPA will respond to any ICR-related comments in the final rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities subject to the requirements of this action are owners/operators of oil and natural gas sources on the U&O Reservation. They were identified through a review of existing minor source registrations submitted by owners/operators on the U&O Reservation under the Federal Indian Country Minor NSR rule. The Agency has determined that two out of eleven total small entities, or 18%, may experience an impact of 0% to 3% of revenues.[131]

E. Unfunded Mandates Reform Act (UMRA)

This proposed action does not contain an unfunded mandate of $100 million of more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments, and the action contains a federal private sector mandate that may result in the expenditures of less than $100 million for the private sector in any one year.

1. Statutory Authority

The legal authority for this rule stems from sections 301(a) and 301(d)(4) of the CAA and 40 CFR 49.11(a). See section III.B of this preamble for more information.

2. Costs and Benefits

As discussed in *Section IV.I. Benefits and Costs of the Proposed Rule,* the estimated total annualized engineering costs of this proposed rule in 2021, accounting for the recovered natural gas, are $64 million in 2016 dollars using a 7 percent discount rate and $56 million in 2021 in 2016 dollars using a 3 percent discount rate.[132] The EPA estimates that the proposed rule will lead to annual monetized benefits of about $10 million in 2021 using a 3 percent discount rate and $2.9 million at a 7 percent discount rate. Including the resources from recovered natural gas that would otherwise be vented, the quantified annualized net benefits of the regulation (the difference between the monetized benefits and total annualized compliance costs) are estimated to be −$39 million in 2021 in 2016 dollars using a 3 percent interest rate and −$46 million using a 7 percent interest rate.[133] More in-depth information on costs and benefits, including non-monetized or quantified benefits, of the final regulation can be found in the RIA.[134] We are seeking comment on the cost assumptions used in our RIA, including comments and information supporting higher or lower cost estimates. Specifically, the EPA is requesting comment on the capital costs of routing a glycol dehydrator and/or pneumatic pump to an existing combustor.

3. Effects on National Economy

The EPA estimated the labor impacts due to compliance with the proposed rule for affected entities within the oil and natural gas sector, including the installation, operation, and maintenance of control equipment and control activities, as well as the labor associated with new reporting and recordkeeping requirements. We did not estimate any potential changes in labor outside of the affected sector, and due to data and methodology limitations we did not estimate net employment impacts for the affected sector, apart from the partial estimate of the labor requirements related to control strategies. The labor requirements analysis used a bottom-up engineering-based methodology to estimate employment impacts. The engineering cost analysis of the RIA includes estimates of the labor requirement costs associated with implementing the regulations. Each of these labor changes may be required as part of an initial effort to comply with the new regulation.

4. Regulatory Alternatives

Alternate regulatory options examined in the RIA include a low-impact option (Option 1) and a high-impact option (Option 3). The Option 1 requirements would be like Option 2; however, they would not include control of emissions from glycol dehydrators. Additionally, Option 1 would require implementation of LDAR at sources with a gas-to-oil ratio (GOR) of greater than or equal to 300, that produce on average, greater than 15-barrel equivalents per well per day. This is in contrast to proposed Option 2, which would require implementation of an LDAR program at sources that are required to control storage tank, glycol dehydrator, and pneumatic pump VOC emissions per proposed §§ 49.4173 through 49.4177. The EPA could have considered a range of even less stringent regulatory options than Option 1 to evaluate and propose, including an option that would not require retrofit of existing storage tanks with controls or requires controls less broadly. Retrofitting existing tanks with controls is one of the higher costs evaluated in this proposed rulemaking. Such an option, however, would lead to even greater disparity with the requirements for similar sources in Utah jurisdiction in the Basin than the current Option 1. However, we are seeking comment on whether it is appropriate to consider a less stringent option that does not include retrofitting existing storage tanks for controls, recognizing that if comments support it as a viable regulatory option and if the agency proposes to adopt that option, the EPA may be required to hold an additional public comment period on this rulemaking. Option 3 (high impact) would require implementation of an LDAR program at all existing oil and natural gas sources, regardless of throughput, or tank, dehydrator, and pneumatic pump annual VOC emissions.

This proposed U&O FIP results in estimated annualized costs of $60 million in 2021 using a 3 percent

[131] The RIA includes a more detailed analysis of the impact of the proposed rule to small entities. It can be viewed in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709).

[132] The recordkeeping and reporting costs calculated for the ICR analysis, discussed earlier, are imbedded in the total annualized engineering costs included here.

[133] The RIA in the docket for this rulemaking discusses this calculation in detail.

[134] The RIA includes a more detailed discussion of the potential costs and benefits associated with this rule. It can be viewed in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709).

interest rate, resulting in a cost of control of $3,000 per ton of the estimated 20,000 tons of VOC reduced, and -annualized costs of $68 million using a 7 percent interest rate, resulting in a cost of control of $3,400 per ton of the estimated 20,000 tons of VOC reduced.

The annualized costs of the first option (Option 1) would be $43 million in 2021 using a 7 percent discount rate, resulting in a cost of control of $3,300 per ton of the estimated 13,000 tons of VOC reduced, and $38 million in 2021 using a 3 percent discount rate, resulting in a cost of control of $2,900 per ton of VOC reduced. Option 1 was analyzed to reduce burden on small entities, while still achieving VOC emissions reductions. Although this option would cost less overall than proposed Option 2, it would achieve significantly less benefits in the form of VOC emissions reductions (13,000 tons versus 20,000 tons for proposed Option 2), because emissions from glycol dehydrators would not be controlled and a smaller number of storage tanks would be controlled, because the VOC emissions threshold triggering control would be different than Option 2.[135] Additionally, by not controlling glycol dehydrator emissions in Option 1, there would also be significantly less benefits from the associated reductions in HAP emissions that are more reactive in forming ozone than the lighter-end VOC emissions resulting from storage tanks, pneumatic pumps and fugitive emissions. Implementation of Option 1 would also lead to regulatory requirements that are inconsistent with the requirements for equivalent sources in UDEQ jurisdiction, thus not meeting our goal of regulatory consistency across the Uinta Basin.

The annualized costs of Option 3 would be $79 million in 2021 using a 7 percent discount rate, resulting in a cost of control of $3,500 per ton of the estimated 23,000 tons of VOC reduced, and $71 million in 2021 using a 3 percent discount rate, resulting in a cost of control of $3,100 per ton of VOC reduced. Option 3 was analyzed to achieve a greater level of VOC emissions reductions. Although this option would achieve about 3,000 more tons of VOC emissions reductions than proposed Option 2, it would also result in increases in costs. Additionally, Option 3 would lead to regulatory requirements that are inconsistent with the requirements for equivalent sources in UDEQ jurisdiction, thus not meeting our goal of regulatory consistency across the Uinta Basin.

For a more in-depth analysis of these options, see the RIA for this proposed U&O FIP.

F. Executive Order 13132: Federalism

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

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

This proposed action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. The EPA has conducted outreach on this proposed rule consistent with the *EPA Policy on Consultation and Coordination with Indian Tribes* (May 4, 2011) via ongoing monthly meetings with tribal environmental professionals[136] before and during the development of this proposed action, and further as follows: (1) Via Tribal consultation with the Ute Indian Tribe Business Committee regarding options that the EPA could consider to address the Uinta Basin air quality concerns; (2) via stakeholder meetings where the Tribe was included and participated in emissions contributions discussions specific to the EPA's strategy for addressing the Uinta Basin air quality concerns; and (3) via ongoing stakeholder working group meetings convened by the Ute Indian Tribe Business Committee where the EPA participated in discussions with the Tribe and industrial operators on strategies to reduce existing ozone-related emissions and provide a streamlined construction authorization mechanism for new and modified minor oil and natural gas sources given the recent nonattainment designation for the 2015 ozone NAAQS.

The EPA held consultations with elected officials of the Ute Indian Tribe Business Committee on the following dates: July 22, 2015; December 17, 2016; November 13, 2017; March 22, 2018, August 17, 2018; November 14, 2018; and February 28, 2019. The EPA has also participated in tribally convened stakeholder meetings on March 22, 2017 and June 1–2, 2017.

During the consultation discussions on this proposed U&O FIP, the Tribe expressed concerns regarding their economic needs to develop and generate revenue from Tribal oil and natural gas resources; to consider air quality effects on the health, safety, and welfare concerns of their tribal membership living within the exterior boundaries of the U&O Reservation and the Uinta Basin; and to balance regulatory requirements for an even economic and regulatory playing field.[137] We addressed questions the Tribe had regarding the controls being considered, the ability for owners or operators to take credit for the controls for purposes such as permitting and NAAQS attainment, the estimated costs of proposed controls, the characterization of Indian country, and the breadth of oil and natural gas source category types proposed to be regulated. The Ute-Tribe-convened stakeholder meetings involved discussions on appropriate ways to expedite nonattainment permitting for new and modified minor oil and natural gas sources on the U&O Reservation. Ute Indian Tribe and industry participants recognized that existing source emissions reductions would likely be necessary in order for the EPA to demonstrate that construction authorization for new and modified sources would not cause or contribute to NAAQS violations in the nonattainment area.

Enacting a FIP for the U&O Reservation is directly responsive to the Ute Indian Tribe's air quality concerns in that we are proposing to implement our CAA authority to protect air quality on and surrounding Indian country lands within the U&O Reservation in a manner that provides regulatory consistency with respect to requirements for oil and natural gas sources on adjacent lands regulated by the state in the Basin. We are committed to supporting tribes' right to self-governance and to protecting their inherent sovereignty. We will continue to provide outreach to tribal environmental professionals and continue consultation with tribal leadership on this proposed action.

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

This action is subject to Executive Order 13045 because it is an

[135] Under Option 1, the EPA would determine the four tpy threshold triggering control with combined source-wide VOC emissions from storage tanks and pneumatic pumps only.

[136] These monthly meetings are general in nature, dealing with many air-related topics, and are not specific to this proposed U&O FIP.

[137] The records of communication for all consultations and preliminary discussions with the Ute Indian Tribe are included in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709).

economically significant regulatory action as defined by Executive Order 12866 and the EPA has concluded that the environmental health or safety risks addressed by this proposed action have a disproportionate effect on children. This action's health and risk assessments are contained in the Purpose, Air Quality Review, Benefits and Costs, and Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations sections in this preamble (sections II., IV.G., IV.I., and VI.J., respectively), with more detailed information contained in the RIA for this rulemaking.[138] In fact, this proposed U&O FIP should have a positive effect on the health of the residents of the U&O Reservation, including children, as it is expected to result in a reduction in ambient ozone concentrations, which disproportionately impact children, elderly, and those with respiratory ailments.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211,[139] because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The basis for these determinations follows.

This proposed action was determined to be a significant regulatory action that was submitted to the OMB for review under Executive Order 12866. Any changes made in response to the OMB recommendations have been documented in the docket. The EPA prepared an analysis of the potential costs and benefits associated with this proposed action, which is included in the RIA,[140] and is summarized in *Section IV.I. Benefits and Costs of the Proposed Rule.*

We have concluded that, while this action may have some effects on the supply, distribution, or use of energy, it is not likely to have significant adverse energy effects. Most owners/operators of existing oil and natural gas production sources on the U&O Reservation also operate sources on non-Indian country lands within and outside of the U&O Reservation, where they are already required to employ the emissions control technologies required by this proposed U&O FIP. Additionally, we expect that these owners/operators will also operate new and modified sources in the Uinta Basin that are subject to similar NSPS OOOO and OOOOa, NESHAP HH, and other oil and natural gas sector-related control requirements within the Uinta Basin. Therefore, it is expected that the owners/operators will continue to procure necessary control equipment and supplies from the same suppliers they currently use for non-Indian country existing, new or modified sources. Further, only the higher-producing sources are expected to be subject to the more substantive emission control requirements in this proposed U&O FIP, and those sources are more likely to be able to accommodate the additional costs, so it is not expected that the new requirements alone would factor significantly into decisions to slow or halt production and thereby cause a shortfall in supply. Rather, the prices of oil and natural gas are likely to be a more significant factor in decisions on reducing production from existing sources, and prices are not expected to change appreciably over from 2020 to 2025.[141]

Additionally, this proposed U&O FIP establishes several emissions control standards that give regulated entities flexibility in determining how to best comply with the regulation. Even within the geographically and economically homogeneous affected area within the Uinta Basin, this flexibility is an important factor in reducing regulatory burden. For more information on the estimated energy effects of the proposed rule, please see the RIA, which is in the docket for this proposed rule.

J. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272 note, directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards, which include materials specifications, test methods, sampling protocols, business practices and management systems developed or adopted by voluntary consensus standards bodies (VCSB), both domestic and international. These bodies plan, develop, establish or coordinate voluntary consensus standards using agreed-upon procedures.

This action involves technical standards. Therefore, the EPA conducted a search to identify potentially applicable VCS. However, the Agency identified no such standards.[142] Therefore, the EPA has decided to use EPA Methods 21 and 22 of 40 CFR part 60, appendix A–7 and part 63, appendix A.[143]

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

The EPA concludes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898.[144]

The documentation for this decision is contained in the RIA [145] for this proposed rule. Our objective in developing this proposed rule is to protect the communities in and near Indian country lands within the U&O Reservation, where existing oil and natural gas operations have been shown to contribute to exceedances of the ozone NAAQS. The impacts of this proposed rule are expected to be beneficial, rather than adverse, and its benefits are expected to accrue to communities in and near Indian country lands within the U&O Reservation. As explained in Section IV.F., the EPA has quantified the expected emissions impacts from this proposed action and found that the proposed action will result in large reductions of VOC emissions.

This proposed action will also provide regulatory certainty to owners/operators, by imposing, to the extent

[138] The RIA includes more detailed discussions of the health and risk assessments for this rule and can be viewed in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709).

[139] *See* 66 FR 28355 (May 22, 2001).

[140] The RIA includes a more detailed discussion of the potential costs and benefits associated with this rule. It can be viewed in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709).

[141] The RIA includes more detailed information on oil and natural gas prices. It can be viewed in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709).

[142] ''Voluntary Consensus Standard Results for Federal Implementation Plan for Managing Emissions from Oil and Natural Gas Sources on the Uintah and Ouray Indian Reservation in Utah,'' Memorandum from Steffan Johnson, Group Leader, U.S. EPA, Measurement Technology Group, to Deirdre Rothery, Unit Chief Air Permitting and Monitoring Unit, U.S. EPA Region 8 Air Program, dated December 22, 2017, available in the Docket for this proposed rule (Docket ID No. EPA–R08–OAR–2015–0709).

[143] The EPA Reference Methods 21 and 22 can be accessed at *https://www.ecfr.gov/cgi-bin/ECFR?page=browse* (Search Title 40, Part 60 and Part 63, accessed August 21, 2019.

[144] *See* 59 FR 7629 (February 16, 1994).

[145] The RIA includes a more detailed discussion of the environmental justice analysis for this rule. It can be viewed in the docket for this rulemaking (Docket ID No. EPA–R08–OAR–2015–0709).

appropriate, requirements that are the same as or consistent with those applicable to such existing sources that are regulated by the UDEQ in the Uinta Basin because they are not on Indian country lands within the Reservation. This will ensure that air quality is protected consistently across the Uinta Basin and our Environmental Justice (EJ) analysis that can be found in the RIA for this rulemaking supports the conclusion that this action will not result in disproportionate impacts.

List of Subjects in 40 CFR Part 49

Environmental protection, Administrative practice and procedure, Air pollution control, Indians, Indians-law, Indians-tribal government, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 16, 2019.

Gregory Sopkin,

Regional Administrator, Region 8.

For reasons set forth in the preamble, part 49 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 49—INDIAN COUNTRY: AIR QUALITY PLANNING AND MANAGEMENT

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

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

■ 2. Add the undesignated center heading ''Federal Implementation Plan for Managing Emissions from Oil and Natural Gas Sources on the Indian Country Lands Within the Uintah and Ouray Indian Reservation in Utah'' and §§ 49.4169 through 49.4185 to subpart K to read as follows:

Subpart K—Implementation Plans for Tribes—Region VIII

* * * * *

Federal Implementation Plan for Managing Emissions From Oil and Natural Gas Sources on the Indian Country Lands Within the Uintah and Ouray Indian Reservation in Utah

Sec.

49.4169 Introduction.
49.4170 Delegation of authority of administration to the tribe.
49.4171 General provisions.
49.4172 Emissions inventory.
49.4173 Nonattainment requirements for new or modified true minor oil and natural gas sources.
49.4174 VOC emissions control requirements for storage tanks.
49.4175 VOC emissions control requirements for dehydrators.
49.4176 VOC emissions control requirements for pneumatic pumps.
49.4177 VOC emissions control requirements for covers and closed-vent system.
49.4178 VOC emissions control devices.
49.4179 VOC emissions control requirements for fugitive emissions.
49.4180 VOC emissions control requirements for tank truck loading.
49.4181 VOC emissions control requirements for pneumatic controllers.
49.4182 Other combustion devices.
49.4183 Monitoring requirements.
49.4184 Recordkeeping requirements.
49.4185 Notification and reporting requirements.

§ 49.4169 Introduction.

(a) *What is the purpose of §§ 49.4169 through 49.4185?* Sections 49.4169 through 49.4185 establish legally and practicably enforceable requirements for oil and natural gas sources to address ozone air quality. Section 49.4170 establishes provisions for delegation of authority to allow the Ute Indian Tribe to assist the EPA with administration of this proposed U&O FIP. Section 49.4171 contains general provisions and definitions applicable to oil and natural gas sources. Section 49.4173 establishes legally and practicably enforceable requirements to control and reduce emissions of volatile organic compounds (VOC), nitrogen oxides, sulfur dioxide, particulate matter (PM, PM_{10} and $PM_{2.5}$), hydrogen sulfide, carbon monoxide and various sulfur compounds from new and modified true minor oil and natural gas sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector that are located on portions of the U&O Reservation that are included in the Uinta Basin ozone nonattainment area and commence construction on or after [30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], unless the source obtains a site-specific construction permit, or is otherwise required to obtain a site-specific permit by the Reviewing Authority, in accordance with 40 CFR 49.151 through 49.161. Sections 49.4174 through 49.4185 establish legally and practicably enforceable requirements to control and reduce VOC emissions from oil and natural gas well production and storage operations, natural gas processing, and gathering and boosting operations at oil and natural gas sources (as defined in § 49.4171(b)) that are located on Indian country lands within the U&O Reservation.

(b) *Am I subject to §§ 49.4169 through 49.4185?* Sections 49.4169 through 49.4185, as appropriate, apply to each owner or operator of an oil and natural gas source located on Indian country lands within the U&O Reservation that has equipment or activities that meet the applicability thresholds specified in each section. Generally, the equipment and activities at oil and natural gas sources that are already subject to and in compliance with VOC emission control requirements under another EPA standard or other federally enforceable requirement, as specified in each appropriate subsection later, are considered to be in compliance with the requirements to control VOC emissions from that same equipment under this proposed U&O FIP.

(c) *When must I comply with §§ 49.4169 through 49.4185?* Compliance with §§ 49.4169 through 49.4171 and 49.4174 through 49.4185, as applicable, is required no later than [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] for oil and natural gas sources that commence construction before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**]. You may submit a written request to the EPA for an extension of the compliance date for existing sources that describes the specific reasons for the requested extension. Any decision to approve or deny the request, including the length of time of an approved request, will be based on the determined merits of case-specific circumstances. Compliance with §§ 49.4169 through 49.4171 and 49.4174 through 49.4185, as applicable, is required upon startup for oil and natural gas sources that commence construction on or after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**]. Compliance with § 49.4173 is required upon commencing construction of any new and modified true minor oil and natural gas source in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector that is located on portions of the U&O Reservation that are included in the Uinta Basin ozone nonattainment area that commences construction on or after [30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**].

§ 49.4170 Delegation of authority of administration to the tribe.

(a) *What is the purpose of this section?* The purpose of this section is to establish the process by which the Regional Administrator may delegate to the Ute Indian Tribe the authority to assist the EPA with administration of this proposed U&O FIP. This section provides for administrative delegation and does not affect the eligibility criteria

under 40 CFR 49.6 for treatment in the same manner as a state.

(b) *How does the Ute Indian Tribe request delegation?* In order to be delegated authority to assist us with administration of this proposed U&O FIP, the authorized representative of the Ute Indian Tribe must submit a written request to the Regional Administrator that:

(1) Identifies the specific provisions for which delegation is requested;

(2) Includes a statement by the Ute Indian Tribe's legal counsel (or equivalent official) that includes the following information:

(i) A statement that the Ute Indian Tribe is an Indian tribe recognized by the Secretary of the Interior;

(ii) A descriptive statement that meets the requirements of § 49.7(a)(2) and demonstrates that the Ute Indian Tribe is currently carrying out substantial governmental duties and powers over a defined area;

(iii) A description of the laws of the Ute Indian Tribe that provide adequate authority to carry out the aspects of the rule for which delegation is requested; and

(3) Demonstrates that the Ute Indian Tribe has, or will have, adequate resources to carry out the aspects of the rule for which delegation is requested.

(c) *How is the delegation of administration accomplished?* (1) A Delegation of Authority Agreement setting forth the terms and conditions of the delegation and specifying the provisions of this rule that the Ute Indian Tribe will be authorized to implement on behalf of the EPA will be entered into by the Regional Administrator and the Ute Indian Tribe. The Agreement will become effective upon the date that both the Regional Administrator and the authorized representative of the Ute Indian Tribe have signed the Agreement. Once the delegation becomes effective, the Ute Indian Tribe will be responsible, to the extent specified in the Agreement, for assisting us with administration of the FIP and will act as the Regional Administrator as that term is used in these regulations. Any Delegation of Authority Agreement will clarify the circumstances in which the term ''Regional Administrator'' found throughout the FIP is to remain the EPA Regional Administrator and when it is intended to refer to the ''Ute Indian Tribe,'' instead.

(2) A Delegation of Authority Agreement may be modified, amended, or revoked, in part or in whole, by the Regional Administrator after consultation with the Ute Indian Tribe.

(d) *How will any Delegation of Authority Agreement be publicized?* The Agency will publish a notice in the **Federal Register** informing the public of any Delegation of Authority Agreement with the Ute Indian Tribe to assist us with administration of all or a portion of the FIP and identifying such delegation in the FIP. The Agency will also publish an announcement of the Delegation of Authority Agreement in local newspapers.

§ 49.4171 General provisions.

(a) At all times, including periods of startup, shutdown, and malfunction, each owner or operator must, to the extent practicable, design, operate, and maintain all equipment used for hydrocarbon liquid and gas collection, storage, processing, and handling operations covered under §§ 49.4171 and 49.4174 through 49.4185, regardless of emissions rate and including associated air pollution control equipment, in a manner that is consistent with good air pollution control practices and that minimizes leakage of VOC emissions to the atmosphere.

(b) *Definitions.* As used in §§ 49.4169 through 49.4185, all terms not defined herein have the meaning given them in the Act, in 40 CFR part 60, 40 CFR part 63, in the Prevention of Significant Deterioration regulations at 40 CFR 52.21, in the Federal Minor New Source Review Program in Indian Country at 40 CFR 49.151, or in the Federal Implementation Plan for Managing Air Emissions from True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector at 40 CFR 49.102. The following terms have the specific meanings given them:

Bottom filling means the filling of a tank through an inlet at or near the bottom of the tank designed to have the opening covered by the liquid after the pipe normally used to withdraw liquid can no longer withdraw any liquid.

Condensate means hydrocarbon liquid separated from produced natural gas that condenses due to changes in temperature, pressure, or both, and that remains liquid at standard conditions.

Crude oil means hydrocarbon liquids that are separated from well-extracted reservoir fluids during oil and natural gas production operations, and that are stored or injected to pipelines as a saleable product. Condensate is not considered crude oil.

Electronically controlled automatic ignition device means an electronic device which generates sparks across an electrode and reaches into a combustible gas stream traveling up a flare stack or entering an enclosed combustor, at the point of the pilot tip, equipped with a temperature monitor that signals the device to attempt to re-light an extinguished pilot flame.

Enclosed combustor means a thermal oxidation system with an enclosed combustion chamber that maintains a limited constant temperature by controlling fuel and combustion air.

Flashing losses means natural gas emissions resulting from the presence of dissolved natural gas in the crude oil, condensate, or produced water, which are under high pressure that occurs as the liquids are transferred to storage tanks that are at atmospheric pressure.

Fugitive emissions component means any component that has the potential to emit fugitive emissions of VOC at an oil and natural gas source, such as valves, connectors, pressure relief devices, open-ended lines, access doors, flanges, closed-vent systems, covers, thief hatches or other openings on a controlled storage vessel, compressors, instruments, and meters. Devices that vent as part of normal operations, such as natural gas-driven pneumatic controllers or natural gas-driven pumps, are not fugitive emissions components, insofar as the natural gas discharged from the device's vent is not considered a fugitive emission. Emissions originating from other than the vent, such as the thief hatch on a controlled storage vessel, would be considered fugitive emissions.

Glycol dehydration unit process vent emissions means VOC-containing emissions from the glycol dehydration unit regenerator or still vent and the vent from the dehydration unit flash tank (if present).

Malfunction alarm and remote notification system means a system connected to an electronically controlled automatic ignition device that sends an alarm through a remote notification system to an owner or operator's central control center, if an attempt to relight the pilot flame is unsuccessful.

Pneumatic pump means a single diaphragm pump powered by pressurized natural gas.

Pneumatic pump emissions means the VOC-containing emissions from pressurized natural gas-driven pneumatic pumps.

Produced natural gas means natural gas that is separated from extracted reservoir fluids during oil and natural gas production operations.

Regional Administrator means the Regional Administrator of EPA Region 8 or an authorized representative of the Regional Administrator of EPA Region

8, except to the extent otherwise specifically specified in a Delegation of Authority Agreement between the Regional Administrator and the Ute Indian Tribe.

Standing and breathing losses means VOC emissions from fixed roof tanks as a result of evaporative losses during storage.

Storage tank means a tank or other vessel that contains an accumulation of crude oil, condensate, intermediate hydrocarbon liquids, or produced water, and that is constructed primarily of non-earthen materials (such as wood, concrete, steel, fiberglass, or plastic), which provide structural support.

Submerged fill pipe means any fill pipe with a discharge opening which is entirely submerged when the liquid level is six inches above the bottom of the tank and the pipe normally used to withdraw liquid from the tank can no longer withdraw any liquid.

Supervisory Control and Data Acquisition (SCADA) system generally refers to industrial control computer systems that monitor and control industrial infrastructure or source-based processes.

Unsafe to repair means (in the context of fugitive emissions monitoring) that operator personnel would be exposed to an imminent or potential danger as a consequence of the attempt to repair the leak during normal operation of the source.

Utility flare means a thermal oxidation system using an open (without enclosure) flame that is designed and operated in accordance with the requirements of 40 CFR 60.18(b). An enclosed combustor is not considered a utility flare. A combustion device is not considered a utility flare when installed horizontally or vertically within an open pit and often used in oil and natural gas operations to combust produced natural gas during initial well completion or temporarily during emergencies when enclosed combustors or utility flares installed at a source are not operational or injection of recovered produced natural gas is unavailable.

Visible smoke emissions mean air pollution generated by thermal oxidation in a flare or enclosed combustor and occurring immediately downstream of the flame present in those units. Visible smoke occurring within, but not downstream of, the flame, does constitute visible smoke emissions.

Working losses means natural gas emissions from fixed roof tanks resulting from evaporative losses during filling and emptying operations.

§ 49.4172 Emissions inventory.

(a) *Applicability.* The emissions inventory requirements of this section apply to each oil and natural gas source as identified in § 49.4169(b), and that has actual emissions of any pollutant identified in paragraph (c) of this section greater than or equal to one ton in any consecutive 12-month period.

(b) Each oil and natural gas source shall submit an inventory for every third year, beginning with the 2017 calendar year, for all emission units at a source.

(c) The inventory shall include the total emissions for PM_{10}, $PM_{2.5}$, oxides of sulfur, oxides of nitrogen, carbon monoxide and volatile organic compounds for each emissions unit at the source. Emissions for the emissions unit at the source shall be calculated using the emissions unit's actual operating hours, product rates and types of materials processed, stored or combusted during the calendar year of the reporting period.

(d) The inventory shall include the type and efficiency of any air pollution control equipment present at the reporting source.

(e) The inventory shall be submitted to the EPA Region 8 Office no later than April 15th of the year following each inventory year, except that the first inventory covering calendar year 2017 shall be submitted no later than October 1, 2018.

(f) The inventory shall be submitted in an electronic format specific to this source category that is available on the EPA Region 8 Office website at *https://www.epa.gov/air-quality-implementation-plans/approved-air-quality-implementation-plans-region-8.*

§ 49.4173 Compliance with the National Indian Country Oil and Natural Gas Federal Implementation Plan for New and Modified True Minor Oil and Natural Gas Sources in the Uinta Basin Ozone Nonattainment Area.

(a) *Applicability.* This section applies to each owner or operator of a new and modified true minor source in the oil and natural production and natural gas processing segments of the oil and natural gas source sector that is located on portions of the U&O Reservation that are included in the Uinta Basin ozone nonattainment area and that commences construction on or after [30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**]. Owners/operators of such sources shall comply with the requirements of the Federal Implementation Plan for Managing Air Emissions from True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector at 49.101 through 49.105, as applicable, except for § 49.101(b)(1)(v), and, applicable requirements of the Federal Minor New Source Review Program in Indian Country at 40 CFR 49.151 through 49.161.

(b) Complying with the requirements of § 49.4173(a) does not relieve the owner/operator from the obligation to comply with the requirements of §§ 49.4169 through 49.4171 and 49.4174 through 49.4185, as applicable.

§ 49.4174 VOC emissions control requirements for storage tanks.

(a) *Applicability.* The VOC emissions control requirements of this section apply to each crude oil, condensate, and/or produced water storage tank located at an oil and natural gas source as identified in § 49.4169(b) that meets the criteria in one of paragraphs (1) through (4):

(1) At an oil and natural gas source that began operations before [30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], the source-wide uncontrolled actual VOC emissions from all storage tanks, glycol dehydrators, and pneumatic pumps is equal to or greater than 4 tpy, as determined according to this section;

(2) At an oil and natural gas source that began operations on or after [30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], upon startup of operation, for a minimum of 12 consecutive calendar months;

(3) At an oil and natural gas source that began operations before [30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], with one or more storage tanks and no glycol dehydrators or pneumatic pumps, the source-wide throughput is equal to or greater than 8,000 barrels of crude oil or 2,000 barrels of condensate in any consecutive 12-month period; or

(4) Modification to an oil and natural gas source shall require a re-evaluation of the source-wide VOC emissions from all storage tanks, glycol dehydrators and pneumatic pumps or the source-wide crude oil or condensate throughput.

(b) *Exemptions.* (1) This section does not apply to crude oil, condensate, and/or produced water storage tanks located at an oil and natural gas source that are subject to the emissions control requirements for storage vessels in 40 CFR part 60, subparts OOOO or OOOOa, or 40 CFR part 63, subpart HH.

(2) This section does not apply to an emergency storage tank located at an oil

and natural gas source, if it meets the following requirements:

(i) The emergency storage tank is not used as an active storage tank;

(ii) The owner or operator empties the emergency storage tank no later than 15 days after receiving fluids; and

(iii) The emergency storage tank is equipped with a liquid level gauge or equivalent device.

(c) *VOC emission control requirements.* For each storage tank, you must comply with the VOC emissions control requirements of paragraphs (1) or (2) of this section.

(1) You must reduce VOC emissions from each storage tank by at least 95.0 percent on a continuous basis according to paragraphs (c)(1)(i) or (ii) of this section. You must route all flashing, working, standing and breathing losses from the crude oil, condensate, and/or produced water storage tanks through a closed-vent system that meets the conditions specified in § 49.4177(d) to:

(i) An operating system designed to recover 100 percent of the emissions and recycle them for use in a process unit or incorporate them into a product; or

(ii) An enclosed combustor or utility flare designed to reduce the mass content of VOC in the natural gas emissions vented to the device by at least 95.0 percent and operated as specified in §§ 49.4177(d) and 49.4178;

(2) You must maintain the source-wide uncontrolled actual VOC emissions from all storage tanks, glycol dehydrators, and pneumatic pumps at an oil and natural gas source at less than 4 tpy. Before using the uncontrolled actual VOC emission rate for compliance purposes, you must demonstrate that the uncontrolled actual VOC emissions have remained at less than 4 tpy, as determined monthly for 12 consecutive months. After such demonstration, you must determine the uncontrolled actual VOC emission rate each month. The uncontrolled actual VOC emissions must be calculated using a generally accepted model or calculation methodology. Monthly calculations must be based on the average throughput of the source for the month. Monthly calculations must be separated by at least 14 days. You must comply with paragraph (c)(1) of this section within 30 days of the monthly emissions determination required in this section if the determination indicates that VOC emissions from all storage tanks, glycol dehydrators, and pneumatic pumps at your oil and natural gas source increased to 4 tpy or greater.

(3) Except as provided in paragraph (c)(4) of this section, if you use a control device to reduce emissions from your storage tanks, you must equip each storage tank with a cover that meets the requirements of § 49.4177(c).

(4) If you use a floating roof to reduce emissions, you must meet the requirements of § 60.112b(a)(1) or (2) and the relevant monitoring, inspection, recordkeeping, and reporting requirements in 40 CFR part 60, subpart Kb.

(5) After a minimum of 12 consecutive months of operation at a source that begins operation on or after [30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], controls may be removed under one of the following conditions:

(i) The source-wide uncontrolled actual VOC emissions from all storage tanks, glycol dehydrators, and pneumatic pumps has been maintained at a rate less than 4 tpy, as determined according to this section; or

(ii) At a source with one or more storage tanks and no glycol dehydrators or pneumatic pumps, the source-wide throughput is less than 8,000 barrels of crude oil or 2,000 barrels of condensate.

§ 49.4175 VOC emissions control requirements for dehydrators.

(a) *Applicability.* The VOC emissions control requirements of this section apply to each glycol dehydration unit located at an oil and natural gas source as identified in § 49.4169(b) where the source-wide uncontrolled actual VOC emissions from all storage tanks, glycol dehydrators, and pneumatic pumps is equal to or greater than 4 tpy, as determined according to § 49.4174. Applicability for glycol dehydrators that began operation before [30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] shall be determined using uncontrolled actual emissions. Applicability for glycol dehydrators that began operation on or after [30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] shall be determined using potential to emit.

(b) *Exemptions.* This section does not apply to glycol dehydration units subject to with the emissions control requirements for glycol dehydration unit process vents in 40 CFR, part 63, subpart HH.

(c) *VOC emissions control requirements.* For each glycol dehydration unit, you must comply with the VOC emissions control requirements of paragraphs (1) or (2) of this paragraph.

(1) You must reduce VOC emissions from each glycol dehydration unit process vent by at least 95.0 percent on a continuous basis according to paragraphs (c)(1)(i) and (ii) of this section. You must route all glycol dehydration unit process vent emissions through a closed-vent system that meets the conditions specified in § 49.4177(d) to:

(i) An operating system designed to recover 100 percent of the emissions and recycle them for use in a process unit or incorporate them into a product; or

(ii) An enclosed combustor or utility flare designed to reduce the mass content of VOC in the emissions vented to the device by at least 95.0 percent and operated as specified in §§ 49.4177(d) and 49.4178; or

(2) You must maintain the source-wide uncontrolled actual VOC emissions from all storage tanks, glycol dehydrators, and pneumatic pumps at an oil and natural gas source at less than 4 tpy for 12 consecutive months in accordance with the procedures specified in § 49.4174(c)(2).

§ 49.4176 VOC emissions control requirements for pneumatic pumps.

(a) *Applicability.* The requirements of this section apply to each pneumatic pump located at an oil and natural gas source as identified in § 49.4169(b) where the potential for source-wide uncontrolled VOC emissions from all storage tanks, glycol dehydrators, and pneumatic pumps is equal to or greater than 4 tpy, as determined according to § 49.4174. You must reevaluate the source-wide VOC emissions from all storage tanks, glycol dehydrators and pneumatic pumps for each modification to an existing source.

(b) *Exemptions.* This section does not apply to pneumatic pumps subject to the emissions control requirements for pneumatic pumps in 40 CFR part 60, subpart OOOOa.

(c) *VOC Emission Control Requirements.* For each pneumatic pump, you must comply with the VOC emissions control requirements of paragraph (1) or (2) of this section.

(1) You must reduce VOC emissions from each pneumatic pump by at least 95.0 percent on a continuous basis according to paragraph (c)(1)(i) or (ii) of this section. You must route all pneumatic pump emissions through a closed-vent system that meets the conditions specified in § 49.4177(d) to:

(i) An operating system designed to recover 100 percent of the emissions and recycle them for use in a process unit or incorporate them into a product; or

(ii) An enclosed combustor or utility flare designed to reduce the mass

content of VOC in the emissions vented to the device by at least 95.0 percent and operated as specified in §§ 49.4177(d) and 49.4178; or

(2) You must maintain the source-wide uncontrolled actual VOC emissions from all storage tanks, glycol dehydrators, and pneumatic pumps at an oil and natural gas source at less than 4 tpy for any 12 consecutive months in accordance with the procedures specified in § 49.4174(c)(2).

§ 49.4177 VOC emissions control requirements for covers and closed-vent systems.

(a) *Applicability.* The VOC emissions control requirements in this section apply to each cover on a crude oil, condensate or produced water storage tank subject to § 49.4174 and each closed-vent system used to convey VOC emissions from storage tanks, glycol dehydration units and pneumatic pumps (to a vapor recovery system or control device) that are subject to §§ 49.4174 through 49.4176.

(b) *Exemptions.* This section does not apply to covers and closed-vent systems subject to the requirements for covers and closed-vent systems in 40 CFR part 60, subparts OOOO or OOOOa, or 40 CFR part 63, subpart HH.

(c) *Covers.* Each owner or operator must equip all openings on each crude oil, condensate, and/or produced water storage tank with a cover to ensure that all flashing, working, standing and breathing emissions are routed through a closed-vent system to a vapor recovery system, an enclosed combustor, or a utility flare.

(1) Each cover and all openings on the cover (*e.g.,* access hatches, sampling ports, pressure relief valves (PRV), and gauge wells) must form a continuous impermeable barrier over the entire surface area of the crude oil, condensate, and/or produced water in the storage tank.

(2) Each cover opening must be secured in a closed, sealed position (*e.g.,* covered by a gasketed lid or cap) whenever material is in the unit on which the cover is installed except when it is necessary to use an opening as follows:

(i) To add fluids to, or remove fluids from the unit (this includes openings necessary to equalize or balance the internal pressure of the unit following changes in the level of the material in the unit);

(ii) To inspect or sample the fluids in the unit; or

(iii) To inspect, maintain, repair, or replace equipment located inside the unit.

(3) Each thief hatch cover must be weighted and properly seated to ensure that flashing, working, standing and breathing emissions are routed through the closed-vent system to the vapor recovery system, the enclosed combustor, or the utility flare under normal operating conditions.

(4) Each PRV must be set to release at a pressure that will ensure that flashing, working, standing and breathing emissions are routed through the closed-vent system to the vapor recovery system, the enclosed combustor, or the utility flare under normal operating conditions.

(d) *Closed-vent systems.* Each owner or operator must meet the following requirements for closed-vent systems:

(1) Each closed-vent system must route all captured storage tank flashing, working, standing and breathing losses, glycol dehydration unit process vent emissions, and pneumatic pump emissions from the oil and natural gas source to a gathering pipeline system for sale, use in a process unit, incorporation into a product, or other beneficial purpose, or to a VOC emission control device, as specified in §§ 49.4174 through 49.4176.

(2) All vent lines, connections, fittings, valves, relief valves, or any other appurtenance employed to contain and collect captured storage tank flashing, working, standing and breathing losses, glycol dehydration unit process vent emissions, and pneumatic pump emissions to transport such emissions to a gathering pipeline system for sale, use in a process unit, incorporation into a product, or other beneficial purpose, or to a VOC emission control device, as specified in §§ 49.4174 through 49.4176, must be maintained and operated properly at all times.

(3) Each closed-vent system must be designed to operate with no detectable emissions, as demonstrated by the fugitive emissions component monitoring requirements in § 49.4179(c).

(4) If any closed-vent system contains one or more bypass devices that could be used to divert all or a portion of the captured storage tank flashing, working, standing and breathing losses, glycol dehydration unit process vent emissions, and pneumatic pump emissions, from entering a gathering pipeline system for sale, use in a process unit, incorporation into a product, or other beneficial purpose, or from being transferred to the VOC emissions control device, the owner or operator must meet one of the requirements in paragraphs (i) or (ii) for each bypass device. Low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and safety devices are not subject to the requirements applicable to bypass devices:

(i) At the inlet to such a bypass device the owner or operator must properly install, calibrate, maintain, and operate a flow indicator that is capable of taking continuous readings and sounding an alarm when the bypass device is open such that emissions are being, or could be, diverted away from a gathering pipeline system for sale, use in a process unit, incorporation into a product, or other beneficial purpose, or the VOC emission control device and into the atmosphere; or

(ii) The owner or operator must secure the bypass device valve installed at the inlet to the bypass device in the non-diverting position using a car-seal or a lock-and-key type configuration.

§ 49.4178 VOC emissions control devices.

(a) *Applicability.* The requirements in this section apply to all utility flares and enclosed combustors used to control VOC emissions at an oil and natural gas source as identified in § 49.4169(b) in order to meet the requirements specified in §§ 49.4174 through 49.4177, as applicable.

(b) *Exemptions.* This section does not apply to VOC emission control devices subject to the requirements for control devices used to comply with the emissions standards in 40 CFR part 60, subparts OOOO or OOOOa; or 40 CFR part 63, subpart HH.

(c) *Enclosed combustors and utility flares.* Each owner or operator must meet the following requirements for enclosed combustors and utility flares:

(1) For each enclosed combustor or utility flare, the owner or operator must follow the manufacturer's written operating instructions, procedures and maintenance schedule to ensure good air pollution control practices for minimizing emissions;

(2) The owner or operator must ensure that each enclosed combustor or utility flare is designed to have sufficient capacity to reduce the mass content of VOC in the captured emissions routed to it by at least 95.0 percent for the minimum and maximum natural gas volumetric flow rate and BTU content routed to the device;

(3) Each enclosed combustor or utility flare must be operated to reduce the mass content of VOC in the captured emissions routed to it by continuously meeting at least 95.0 percent VOC control efficiency;

(4) The owner or operator must ensure that each utility flare is designed and operated in accordance with the

requirements of 40 CFR 60.18(b) for such flares;

(5) The owner or operator must ensure that each enclosed combustor is:

(i) A model demonstrated by a manufacturer to meet the VOC control efficiency requirements of §§ 49.4174 through 49.4177 using the EPA-approved performance test procedures specified in 40 CFR 60.5413 by the due date of the first annual report as specified in § 49.4185(b); and

(ii) Demonstrated by the owner or operator to meet the VOC control efficiency requirements of §§ 49.4174 through 49.4177 using the EPA-approved performance test procedures specified in 40 CFR 60.5413 by the due date of the first annual report as specified in § 49.4183(b); and

(6) The owner or operator must ensure that each enclosed combustor and utility flare is:

(i) Operated properly at all times that captured emissions are routed to it;

(ii) Operated with a liquid knock-out system to collect any condensable vapors (to prevent liquids from going through the control device);

(iii) Equipped and operated with a flash-back flame arrestor;

(iv) Equipped and operated with one of the following:

(A) A continuous burning pilot; or

(B) An operational electronically controlled automatic ignition device;

(v) Equipped with a monitoring system for continuous measuring and recording of the parameters that indicate proper operation of each continuous burning pilot flame or electronically controlled automatic ignition device (such as a chart recorder, data logger or similar device), or connected to a SCADA system, to monitor and document proper operation of the enclosed combustor or utility flare;

(vi) Maintained in a leak-free condition; and

(vii) Operated with no visible smoke emissions.

§ 49.4179 Fugitive emissions VOC emissions control requirements.

(a) *Applicability.* The requirements of this section apply to all owners or operators of the collection of fugitive emissions components, as defined in § 49.4171, at an oil and natural gas source, as identified in § 49.4169(b), that is required to control VOC emissions according to §§ 49.4174 through 49.4178.

(b) *Exemptions.* This section does not apply to owners or operators of the collection of fugitive emission components, as defined in 40 CFR 60.5430a, at an oil and natural gas source subject to the fugitive emissions monitoring requirements in 40 CFR part 60, subpart OOOOa.

(c) *Monitoring requirements.* (1) Each owner or operator must develop and implement a fugitive emissions monitoring plan to reduce emissions from fugitive emissions components at all of their oil and natural gas sources on Indian country lands within the U&O Reservation. This Reservation-wide monitoring plan must include the following elements:

(i) A requirement to perform an initial monitoring of the collection of fugitive emissions components at each oil and natural gas source by [DATE 18 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**];

(ii) A requirement to perform subsequent monitoring of the collection of fugitive emissions components at each oil and natural gas source once every 6 months after the initial monitoring survey, with consecutive monitoring surveys conducted at least five months apart.

(iii) A description of the technique used to identify leaking fugitive emission components, which must be limited to:

(A) Onsite EPA Reference Method 21, 40 CFR part 60, appendix A, where an analyzer reading of 500 parts per million volume (ppmv) VOC or greater is considered a leak in need of repair;

(B) Onsite optical gas imaging instruments, as defined in 40 CFR 60.18(g)(4), where any visible emissions are considered a leak in need of repair, unless the owner or operator evaluates the leak with an analyzer meeting EPA Reference Method 21 at 40 CFR part 60, appendix A and the concentration is less than 500 ppmv. The optical gas imaging instrument must be capable of meeting the optical gas imaging equipment requirements specified in 40 CFR part 60, subpart OOOOa; or

(C) Another method approved by the Administrator other than EPA Reference Method 21 or optical gas imaging instruments to demonstrate compliance with the fugitive emissions monitoring requirements.

(iv) The manufacturer and model number of any fugitive emissions monitoring device to be used;

(v) Procedures and timeframes for identifying and repairing components from which leaks are detected, including:

(A) A requirement to repair any leaks identified from components that are safe to repair and do not require source shutdown as soon as practicable, but no later than 30 calendar days after discovering the leak;

(B) Timeframes for repairing leaking components that are unsafe to repair or require source shutdown, to be no later than the next required monitoring event; and

(C) Procedures for verifying leaking component repairs, no more than 30 calendar days after repairing the leak;

(vi) Training and experience needed before performing surveys;

(vii) Procedures for calibration and maintenance of any fugitive emissions monitoring device to be used; and

(viii) Standard monitoring protocols for each type of typical oil and natural gas source (*e.g.,* well site, tank battery, compressor station), including a general list of component types that will be inspected and what supporting data will be recorded (*e.g.,* wind speed, detection method device-specific operational parameters, date, time, and duration of inspection).

(2) The owner or operator is exempt from inspecting a valve, flange, or other connection, pump or compressor, pressure relief device, process drain, open-ended valve, pump or compressor seal system degassing vent, accumulator vessel vent, agitator seal, or access door seal under any of the following circumstances:

(i) The contacting process stream only contains glycol, amine, methanol, or produced water;

(ii) If using Method 21, the monitoring could not occur without elevating the monitoring personnel to an immediate danger as a consequence of completing monitoring;

(iii) Monitoring could not occur without exposing monitoring personnel to an immediate danger as a consequence of completing monitoring; or

(iv) The item to be inspected is buried, insulated in a manner that prevents access to the components by a monitor probe or optical gas imaging device, or obstructed by equipment or piping that prevents access to the components by a monitor probe or optical gas imaging device.

§ 49.4180 Tank truck loading VOC emissions control requirements.

(a) *Applicability.* The requirements in this section apply to each owner or operator who loads or permits the loading of any intermediate hydrocarbon liquid or produced water at an oil and natural gas source as identified in § 49.4169(b).

(b) *Tank truck loading requirements.* Tank trucks used for transporting intermediate hydrocarbon liquid or produced water must be loaded using bottom filling or a submerged fill pipe, as defined in § 49.4171(b).

§ 49.4181 VOC emissions control requirements for pneumatic controllers.

(a) *Applicability.* The VOC emissions control requirements in this section apply to each owner or operator of any existing pneumatic controller located at an oil and natural gas source as identified in § 49.4169(b).

(b) *Exemptions.* This section does not apply to pneumatic controllers subject to and controlled in accordance with the requirements for pneumatic controllers in 40 CFR part 60, subparts OOOO or OOOOa.

(c) *Retrofit requirements.* All existing pneumatic controllers must meet the standards established for pneumatic controllers that are constructed, modified, or reconstructed on or after October 15, 2013, as specified in 40 CFR part 60, subpart OOOO Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution.

(d) *Documentation requirements.* The owner or operator of any existing pneumatic controllers must meet the tagging requirements in 40 CFR 60.5390(b)(2) and (c)(2) and 40 CFR 60.5390a(b)(2) and (c)(2), except that the month and year of installation, reconstruction or modification is not required.

§ 49.4182 Other combustion devices.

(a) *Applicability.* The VOC emission control requirements in this section apply to each owner or operator of any existing enclosed combustor, utility flare, or other flare located at an oil and natural gas source as identified in § 49.4169(b) that is used to control VOC emissions, but is not required under §§ 49.4174 through 49.4176, and 49.4178 of this rule.

(b) *Retrofit requirements.* All existing enclosed combustors, utility flares, or other open flares must be equipped with an operational electronically controlled automatic ignition device.

§ 49.4183 Monitoring requirements.

(a) *Applicability.* The monitoring requirements in paragraphs (c) through (e) of this section apply, as appropriate, to each oil and natural gas source as identified in § 49.4169(b) with equipment or activities that are subject to §§ 49.4174 through 49.4178.

(b) *Exemptions.* Paragraphs (c) through (e) do not apply to any crude oil, condensate, or produced water storage tanks, glycol dehydration units, pneumatic pumps, covers, closed-vent systems or VOC emission control devices subject to and monitored in accordance with the monitoring requirements for such equipment and activities in 40 CFR part 60, subparts OOOO or OOOOa, or 40 CFR part 63, subpart HH.

(c) Each owner or operator must inspect at least once every calendar month each closed-vent system, including storage tank openings, thief hatches, and bypass devices, for defects that can result in air emissions according to the procedures in 40 CFR 60.5416(c).

Any defects identified must be corrected or repaired within 15 days of identification.

(d) Each owner or operator must perform auditory, visual, and olfactory (AVO) inspections at least once every calendar month of each VOC emissions control device, tank thief hatch, cover, seal, pressure relief valve, and closed-vent system to ensure proper condition and functioning of the equipment. The monthly inspections must be performed while the crude oil, condensate, and produced water storage tanks are being filled. If any of the components are not in good working condition, they must be repaired within 15 days of identification of the deficient condition.

(e) Each owner or operator must monitor the operation of each enclosed combustor and utility flare to confirm proper operation and demonstrate compliance with the requirements of § 49.4178(c)(6)(iv) and (v), as follows:

(1) Check the system for proper operation whenever an operator is on site, at least once per calendar month; and

(2) Respond to any indication of pilot flame failure and ensure that the pilot flame is relit as soon as practically and safely possible after discovery.;

(3) Demonstrate compliance with the requirements of § 49.4178(c)(6)(vii), that each enclosed combustor is operated with no visible smoke emissions, by complying with the requirements in 40 CFR 60.5412(d)(i) through (iii).

(f) Where sufficient to meet the monitoring requirements in this section, the owner or operator may use a SCADA system to monitor and record the required data in paragraphs (c) through (d).

§ 49.4184 Recordkeeping requirements.

(a) Each owner or operator of an oil and natural gas source as identified in § 49.4169(b) must maintain the following records, as applicable:

(1) For each oil and natural gas source as identified in § 49.4169(b):

(i) As applicable, the monthly calculations, as specified in § 49.4174(c)(2), demonstrating that the uncontrolled actual VOC emissions from all storage tanks, glycol dehydrators, and pneumatic pumps at an oil and natural gas source, as identified in § 49.4169(b), has been maintained at less than 4 tpy;

(ii) As applicable, records of monthly and rolling 12-month crude oil or condensate throughput;

(iii) For each enclosed combustor or utility flare at an oil and natural gas source required under §§ 49.4174 through 49.4178:

(A) Manufacturer-written, site-specific designs, operating instructions, operating procedures and maintenance schedules, including those of any operation monitoring systems;

(B) Date of installation;

(C) Records of all required monitoring of operations in § 49.4183;

(D) Records of any instances in which the pilot flame is not present or the monitoring equipment is not functioning in the enclosed combustor or utility flare, the date and times of the occurrence, the corrective actions taken, and any preventative measures adopted to prevent recurrence of the occurrence; and

(E) Records of any time periods in which visible smoke emissions are observed emanating from the enclosed combustor or utility flare.

(iv) For each closed-vent system:

(A) The date of installation; and

(B) Records of any instances in which any closed-vent system or control device was bypassed or down, the reason for each incident, its duration, and the corrective actions taken, and any preventative measures adopted to avoid such bypasses or downtimes; and

(v) Documentation of all storage tank and closed-vent system inspections required in § 49.4183(d) and (e) All inspection records must include the following information:

(A) The date of the inspection;

(B) The findings of the inspection;

(C) Any adjustments or repairs made as a result of the inspection, and the date of the adjustment or repair; and

(D) The inspector's name and signature;

(vi) The Uinta Basin-wide fugitive emissions monitoring plan for the U&O Reservation; and

(vii) Documentation of each fugitive emissions inspection at all oil and natural gas sources. All inspection records must include the following information:

(A) The date of the inspection;

(B) The identification of any component that was determined to be leaking;

(C) The identification of any component not exempt under § 49.4179(b)(2) that is not inspected and the reason it was not inspected;

(D) The date of the first attempt to repair the leaking component;

(E) The identification of any component with a delayed repair and the reason for the delayed repair:

(*1*) For unavailable parts:

(*i*) The date of ordering a replacement component; and

(*ii*) The date the replacement component was received; and

(*2*) For a shutdown:

(*i*) The reason the repair is technically infeasible;

(*ii*) The date of the shutdown;

(*iii*) The date of subsequent startup after a shutdown; and

(*iv*) Emission estimates of the shutdown and the repair if the delay is longer than 6 months;

(F) The date and description of any corrective action taken, including the date the component was verified to no longer be leaking;

(G) The identification of each component exempt under § 49.4179(b)(2), including the type of component and a description of the qualifying exemption; and

(H) The inspector's name and signature.

(2) For each oil and natural gas source as identified in § 49.4169(b):

(i) For each electronically controlled automatic ignition system required under § 49.4182, records demonstrating the date of installation and manufacturer specifications; and

(ii) For each retrofitted pneumatic controller, the records required in 40 CFR 60.5420(c)(4)(i).

(b) Each owner or operator must keep all records required by this section onsite at the source or at the location that has day-to-day operational control over the source and must make the records available to the EPA upon request.

(c) Each owner or operator must retain all records required by this section for a period of at least five years from the date the record was created.

§ 49.4185 Notification and reporting requirements.

(a) Each owner or operator must submit any documents required under this rule to: U.S. EPA Region 8, Enforcement and Compliance Assurance Division, Air Toxics and Enforcement Branch, 8ENF–AT, 1595 Wynkoop St., Denver, CO 80202, or documents may be submitted electronically to *r8airreportenforcement@epa.gov*.

(b) Each owner and operator must submit an annual report containing the information specified in paragraphs (b)(1) through (3) of this section. The annual report must cover the period for the previous calendar year. The initial annual report is due within fifteen months of [DATE 30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**]. Subsequent annual reports are due on the same date each year as the date the initial annual report was submitted. If you own or operate more than one oil and natural gas source, you may submit one report for multiple oil and natural gas sources provided the report contains all of the information required as specified in paragraphs (b)(1) through (3) of this section. Annual reports may coincide with title V reports as long as all the required elements of the annual report are included. An alternative schedule on which the annual must be submitted will be allowed as long as the schedule does not extend the reporting period. The annual report must include:

(1) The owner or operator name, and the name and location (decimal degree latitude and longitude location indicating the datum used in parentheses) of each oil and natural gas source being included in the annual report.

(2) The beginning and ending dates of the reporting period.

(3) For each oil and natural gas source a summary of all required records specified in § 49.4183 as they relate to the source's compliance with the requirements of §§ 49.4174 through 49.4183.

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Part III

The President

Proclamation 9976—Religious Freedom Day, 2020

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Presidential Documents

Title 3—

The President

Proclamation 9976 of January 15, 2020

Religious Freedom Day, 2020

By the President of the United States of America

A Proclamation

From its opening pages, the story of America has been rooted in the truth that all men and women are endowed with the right to follow their conscience, worship freely, and live in accordance with their convictions. On Religious Freedom Day, we honor the foundational link between freedom and faith in our country and reaffirm our commitment to safeguarding the religious liberty of all Americans.

Religious freedom in America, often referred to as our ''first freedom,'' was a driving force behind some of the earliest defining moments of our American identity. The desire for religious freedom impelled the Pilgrims to leave their homes in Europe and journey to a distant land, and it is the reason so many others seeking to live out their faith or change their faith have made America their home.

More than 230 years ago, the Virginia General Assembly passed the Virginia Statute for Religious Freedom, which was authored and championed by Thomas Jefferson. Jefferson famously expounded that ''all men shall be free to profess, and by argument to maintain, their opinions in matters of Religion, and that the same shall in no wise diminish, enlarge or affect their civil capacities.'' This statute served as the catalyst for the First Amendment, which enshrined in law our conviction to prevent government interference in religion. More than 200 years later, thanks to the power of that Amendment, America is one of the most religiously diverse nations in the world.

Since I took office, my Administration has been committed to protecting religious liberty. In May 2017, I signed an Executive Order to advance religious freedom for individuals and institutions, and I stopped the Johnson Amendment from interfering with pastors' right to speak their minds. Over the last 3 years, the Department of Justice has obtained 14 convictions in cases involving attacks or threats against places of worship. To fight the rise of anti-Semitism in our country, I signed an Executive Order last month to ensure that Federal agencies are using nondiscrimination authorities to combat this venomous bigotry. I have also made clear that my Administration will not tolerate the violation of any American's ability to worship freely and openly and to live as his or her faith commands.

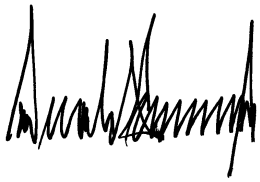
My Administration also remains cognizant of the stark realities for people seeking religious liberty abroad and has made protecting religious minorities a core pillar of my Administration's foreign policy. Repressive governments persecute religious worshipers using high-tech surveillance, mass detention, and torture, while terrorist organizations carry out barbaric violence against innocent victims on account of their religion. To cast a light on these abuses, in July 2019, I welcomed survivors of religious persecution from 16 countries into the Oval Office. These survivors included Christians, Jews, and Muslims, who all shared similar stories of persecution. At the United Nations in September, I called on global leaders to take concrete steps to prevent state and non-state actors from attacking citizens for their beliefs and to help ensure the sanctity and safety of places of worship. And,

last summer, the State Department convened its second Ministerial to Advance Religious Freedom, where our diplomats engaged a broad range of stakeholders in government and civil society, both religious and secular, to identify concrete ways to combat religious persecution and discrimination around the world and ensure greater respect for freedom of religion and belief.

On this Religious Freedom Day, we reaffirm our commitment to protecting the precious and fundamental right of religious freedom, both at home and abroad. Our Founders entrusted the American people with a responsibility to protect religious liberty so that our Nation may stand as a bright beacon for the rest of the world. Today, we remain committed to that sacred endeavor and strive to support those around the world who still struggle under oppressive regimes that impose restrictions on freedom of religion.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 16, 2020, as Religious Freedom Day. I call on all Americans to commemorate this day with events and activities that remind us of our shared heritage of religious liberty and that teach us how to secure this blessing both at home and around the world.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of January, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.



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