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Presidential Documents

Title 3—

The President

Executive Order 13909 of March 18, 2020

Prioritizing and Allocating Health and Medical Resources to Respond to the Spread of COVID–19

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Defense Production Act of 1950, as amended (50 U.S.C. 4501 *et seq.*) (the ''Act''), and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. *Policy and Findings.* On March 13, 2020, I declared a national emergency recognizing the threat that the novel (new) coronavirus known as SARS–CoV–2 poses to our national security. In recognizing the public health risk, I noted that on March 11, 2020, the World Health Organization announced that the outbreak of COVID–19 (the disease caused by SARS–CoV–2) can be characterized as a pandemic. I also noted that while the Federal Government, along with State and local governments, have taken preventive and proactive measures to slow the spread of the virus and to treat those affected, the spread of COVID–19 within our Nation's communities threatens to strain our Nation's healthcare system. To ensure that our healthcare system is able to surge capacity and capability to respond to the spread of COVID–19, it is critical that all health and medical resources needed to respond to the spread of COVID–19 are properly distributed to the Nation's healthcare system and others that need them most at this time.

Accordingly, I find that health and medical resources needed to respond to the spread of COVID–19, including personal protective equipment and ventilators, meet the criteria specified in section 101(b) of the Act (50 U.S.C. 4511(b)). Under the delegation of authority provided in this order, the Secretary of Health and Human Services may identify additional specific health and medical resources that meet the criteria of section 101(b).

Sec. 2. *Priorities and Allocation of Medical Resources.*

(a) Notwithstanding Executive Order 13603 of March 16, 2012 (National Defense Resource Preparedness), the authority of the President conferred by section 101 of the Act to require performance of contracts or orders (other than contracts of employment) to promote the national defense over performance of any other contracts or orders, to allocate materials, services, and facilities as deemed necessary or appropriate to promote the national defense, and to implement the Act in subchapter III of chapter 55 of title 50, United States Code, is delegated to the Secretary of Health and Human Services with respect to all health and medical resources needed to respond to the spread of COVID–19 within the United States.

(b) The Secretary of Health and Human Services may use the authority under section 101 of the Act to determine, in consultation with the Secretary of Commerce and the heads of other executive departments and agencies as appropriate, the proper nationwide priorities and allocation of all health and medical resources, including controlling the distribution of such materials (including applicable services) in the civilian market, for responding to the spread of COVID–19 within the United States.

(c) The Secretary of Health and Human Services shall issue such orders and adopt and revise appropriate rules and regulations as may be necessary to implement this order.

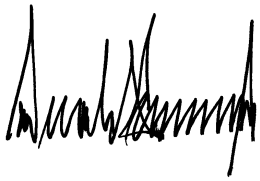
Sec. 3. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
March 18, 2020.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1216

[Document Number AMS–SC–19–0073]

Peanut Promotion, Research, and Information Order; Amendment to Primary Peanut-Producing States and Adjustment of Membership

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule adds the State of Missouri as a primary peanut-producing State under the Peanut Promotion, Research, and Information Order (Order). The Order is administered by the National Peanut Board (Board) with oversight by the U.S. Department of Agriculture (USDA). This rule also adds a producer member and alternate member to the Board to represent the State of Missouri. The Board recommended this action to ensure the Board's representation reflects changes in the geographical distribution of the production of peanuts.

DATES: Effective April 22, 2020.

FOR FURTHER INFORMATION CONTACT: Jeanette Palmer, Marketing Specialist, Promotion and Economics Division, Specialty Crops Program, AMS, USDA, Stop 0244, 1400 Independence Avenue SW, Room 1406–S, Washington, DC 20250–0244; telephone: (202) 720–9915; facsimile: (202) 205–2800; or electronic mail: *Jeanette.Palmer@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule affecting the Order (7 CFR part 1216) is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411–7425).

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules and promoting flexibility. This final rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

Executive Order 13175

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

Executive Order 12988

In addition, this final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

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

Under section 519 of the 1996 Act (7 U.S.C. 7418), a person subject to an order may file a written petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

Background

This final rule adds the State of Missouri as a primary peanut-producing State under the Order. According to the Order, primary peanut-producing states must maintain a 3-year average production of at least 10,000 tons of peanuts to maintain this classification. Missouri's peanut production meets this requirement.

The Order is administered by the Board with oversight by USDA. Primary peanut-producing states have seats on the Board. This final rule adds one producer member and alternate seat to the Board to represent the State of Missouri. Board members and alternates are nominated by producers or producer groups. This final rule ensures that the Board's representation reflects changes in the geographical distribution of the production of peanuts covered by the Order.

The Order became effective on July 30, 1999. Pursuant to the Order, the Board administers a nationally-coordinated program of promotion, research and information designed to strengthen the position of peanuts in the market place and to develop, maintain and expand the demand for peanuts in the United States. Under the program, assessments are levied on all farmers stock peanuts sold. Assessments are levied at a rate of $3.55 per ton for Segregation 1 peanuts and $1.25 per ton for Segregation 2 and 3 peanuts, as those terms are defined in § 996.13(b)–(d) of title 7. The assessments are remitted to the Board by handlers and, for peanuts under loan, by the Commodity Credit Corporation.

The Order distinguishes between the terms ''minor peanut-producing states'' and ''primary peanut-producing states'' for purposes of Board representation

and voting at meetings. Section 1216.21 currently defines primary peanut-producing states as Alabama, Arkansas, Florida, Georgia, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Texas and Virginia. These States must maintain a 3-year average production of at least 10,000 tons of peanuts. All other peanut-producing States are defined as minor peanut-producing States in § 1217.15.

Pursuant to § 1216.40(b), at least once in each five-year period, the Board must review the geographical distribution of peanuts in the United States and make a recommendation to the Secretary of Agriculture (Secretary) to continue the program without change or recommend that changes should be made in the number of representatives on the Board to reflect changes in the geographical distribution of the production of peanuts.

Board Recommendation

As required by the Order, the Board met and reviewed the geographical distribution of peanuts. According to data from the USDA's Federal State Inspection Service, for the years 2016, 2017 and 2018, 9,552, 13,059 and 12,597 tons of peanuts were inspected in Missouri, respectively. Based on this data, the 3-year average annual peanut production for Missouri totals 11,736 tons per year, which exceeds the requirement in the Order of maintaining a 3-year average of 10,000 tons per year to be considered a primary peanut-producing State.

Based on Federal State Inspection Service data, the Board voted unanimously on August 28, 2019, to add Missouri as a primary peanut-producing State under the Order. Accordingly, one producer member and one alternate member will be added to the Board to represent the State of Missouri.

These changes help ensure that the Board's representation reflects changes in the geographical distribution of the production of peanuts. Accordingly, this final rule amends §§ 1216.15 and 1216.21 to add the State of Missouri as a primary peanut-producing State. Prior to the changes made in this rule, the Board could be composed or no more than 12 peanut producers and their alternates. This final rule also revises § 1216.40(a) to specify that the Board can be composed of no more than 13 peanut producer members and their alternates. Further, § 1216.40(a)(1) is revised to provide that 12 Board members and their alternates represent primary peanut-producing states, up from 11.

Final Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS is required to examine the impact of the rule on small entities. Accordingly, AMS has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration (SBA) defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $1 million and small agricultural service firms (handlers) as those having annual receipts of no more than $30 million.

According to the Board, there were approximately 8,126 producers and 34 handlers of peanuts who were subject to the program in 2018.

Most producers would be classified as small agricultural production businesses under the criteria established by the SBA (no more than $1 million in annual sales). USDA's National Agricultural Statistics Service (NASS) reports that the crop values of the peanuts produced in the top 11 peanut-producing states in the years 2016 through 2018 were $1.09 billion, $1.63 billion and $1.16 billion, respectively. The 3-year crop average was $1.29 billion. With a 2018 crop value of $1.16 billion and a total of 8,126 producers, average peanut sales per producer were approximately $142,000. With a 2015–2018 average crop value of $1.29 billion, average sales per producer were approximately $159,000. Both figures are well below the $1 million threshold for a small producer, providing strong evidence that most peanut producers are small businesses.

For the 34 handlers, the average annual peanut crop value per handler from 2016 to 2018 ranged from $32 million to $48 million, with a 3-year average of $38 million. With average sales figures moderately higher than the small business threshold size of $30 million, it appears that a number of handlers are small businesses and there are also a number that are large businesses—no definitive statement can be made.

The pounds of U.S. peanut production from the 11-primary peanut-producing states for 2016 through 2018 are 5.58 billion, 7.12 billion and 5.46 billion, respectively. The 3-year average was 6.05 billion pounds. Computations based on NASS data show that Georgia was the largest producer, with 50.8 percent of the 3-year average quantity, followed by Alabama (10.3 percent), Texas (9.6 percent), Florida (9.3 percent), North Carolina (6.7 percent), South Carolina (6.0 percent), Mississippi (2.3 percent), Arkansas (2.1 percent), Virginia (1.6 percent), with Oklahoma and New Mexico both under one percent.

This final rule amends §§ 1216.15, 1216.21 and 1216.40 to add the State of Missouri as a primary peanut-producing State and to add a member and alternate to the Board to represent Missouri. Pursuant to the Order, primary peanut-producing States must maintain a 3-year average production of at least 10,000 tons of peanuts. Missouri's peanut production meets this requirement. This final rule ensures that the Board's representation reflects changes in the geographical distribution of the production of peanuts covered under the Order. This action is authorized under § 1216.40(b) and section 515(b)(3) of the 1996 Act.

Regarding the economic impact of this rule on affected entities, this rule imposes no costs on producers or handlers. The changes define the State of Missouri as a primary peanut-producing State based on recent production data and add a seat on the Board for the State of Missouri.

With regard to alternatives, the Board reviewed the peanut production for all the minor peanut-producing States and determined that Missouri was the only State so designated that met the Order's requirement for a 3-year average peanut production of at least 10,000 tons in order to qualify to become a primary peanut-producing State.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the background form (AD–755), which represents the information collection and recordkeeping requirements that will be imposed by this rule, was previously approved under OMB control number 0581–0093.

Adding a producer member and alternate to represent the State of Missouri on the Board requires four additional producers to submit background forms (AD–755) to USDA once every three years in order to be considered for appointment to the Board. The Secretary requires two names to be submitted for each open seat on the Board. The public reporting burden is estimated to increase the total burden hours for this information collection by less than one hour. This additional burden will be included in the existing information collection approved for use under OMB control number 0581–0093. In addition, serving on the Board is optional, and the burden

of submitting the background form would be offset by the benefits of additional representation on the Board.

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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

Regarding outreach efforts, the Board discussed Missouri's peanut production level at its December 4–5, 2018 meeting. All the Board's meetings are open to the public and interested persons are invited to participate and express their views. The Board notified the primary peanut-producing States (Georgia, Alabama, Texas, Florida, North Carolina, South Carolina, Mississippi, Arkansas, Virginia, Oklahoma and New Mexico) of Missouri's production numbers by disseminating information through the Board's weekly newsletter, which is titled *News in a Nutshell.* The Board voted on August 28, 2019, to recommend adding the State of Missouri as a primary peanut-producing state.

A proposed rule concerning this action was published in the **Federal Register** on December 2, 2019 (84 FR 65929). A 30-day comment period ending on January 2, 2020, was provided to allow interested persons to respond to the proposal.

Analysis of Comments

Four comments were received in response to the proposed rule. Two comments support the proposal. The other two comments expressed concern about the use of taxpayer dollars to fund the peanut Order.

Both commenters in support of the proposal pointed out that the Board's activities are fully funded by peanut farmers and not by taxpayers. These commenters explained that the Order supports activities that benefit the entire peanut industry, such as research to reduce production costs and improve quality and yield, and research about nutrition. One commenter stated that Missouri served on the Board as the at-large producer member in 2019, and that its average production over the last three years justifies its addition to the list of primary producing States. Both commenters agree that farmers will continue to benefit from Board activities under the Order.

Two commenters expressed concern regarding the use of taxpayer dollars to fund the peanut Order. However, the Order, which is authorized under the 1996 Act and administered by the Board for the benefit of the peanut industry, is funded through assessments paid by peanut producers, as described in the Final Regulatory Flexibility Analysis section of this document. The peanut program does not receive taxpayer funds. Further, AMS charges the Board user fees for administrative oversight of the program.

One commenter suggested that Missouri should not be added to the Board because it produces a small amount of peanuts. However, as described in the proposed rule, Missouri maintained a three-year average production of at least 10,000 tons of peanuts, qualifying it as a primary peanut-producing State under the Order and producer membership on the Board. Therefore, Missouri is being added as a primary peanut-producing State on the Board. USDA has considered all comments received and has not made any changes to the rule as proposed based on those comments.

After consideration of all relevant matters presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, is consistent with and will effectuate the purposes of the 1996 Act.

List of Subjects in 7 CFR Part 1216

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Reporting and recordkeeping requirements, Peanut promotion.

For the reasons set forth in the preamble, amend 7 CFR part 1216 as follows:

PART 1216—PEANUT PROMOTION, RESEARCH, AND INFORMATION ORDER

■ 1. The authority citation for 7 CFR part 1216 continues to read as follows:

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

■ 2. Revise § 1216.15 to read as follows:

§ 1216.15 Minor peanut-producing states.

Minor peanut-producing states means all peanut-producing states with the exception of Alabama, Arkansas, Florida, Georgia, Mississippi, Missouri, New Mexico, North Carolina, Oklahoma, South Carolina, Texas and Virginia.

■ 3. Revise § 1216.21 to read as follows:

§ 1216.21 Primary peanut-producing states.

Primary peanut-producing states means Alabama, Arkansas, Florida, Georgia, Mississippi, Missouri, New Mexico, North Carolina, Oklahoma, South Carolina, Texas and Virginia, *Provided,* these states maintain a 3-year average production of at least 10,000 tons of peanuts.

■ 4. Amend § 1216.40 by revising paragraph (a) introductory text and paragraph (a)(1) to read as follows:

§ 1216.40 Establishment and membership.

(a) *Establishment of a National Peanut Board.* There is hereby established a National Peanut Board, hereinafter called the Board, composed of no more than 13 peanut producers and alternates, appointed by the Secretary from nominations as follows:

(1) *Twelve members and alternates.* One member and one alternate shall be appointed from each primary peanut-producing state, who are producers and whose nominations have been submitted by certified peanut producer organizations within a primary peanut-producing state.

* * * * *

Dated: March 10, 2020.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–05224 Filed 3–20–20; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1412 and 1437

[Docket No. CCC–2019–0005; Docket ID FSA–2019–0008]

RIN 0560–AI45; 0560–AI48

Agriculture Risk Coverage and Price Loss Coverage Programs and Noninsured Crop Assistance Program; Correction

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Correcting amendment.

SUMMARY: This document corrects regulations that were published in the **Federal Register** on September 3, 2019, and March 2, 2020. The rules revised the Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC) Programs and Noninsured Crop Assistance Program (NAP) to implement changes required by the Agriculture

Improvement Act of 2018 (the 2018 Farm Bill). There were errors in three of the definitions in ARC and PLC program rule. The Commodity Credit Corporation (CCC) is also correcting one sentence in the NAP rule.

DATES: Effective March 23, 2020.

FOR FURTHER INFORMATION CONTACT: Mary Ann Ball; telephone: (202) 720–4283, email address: *maryann.ball@usda.gov.* Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice only).

SUPPLEMENTARY INFORMATION:

Correcting Amendment to Regulations

The ARC and PLC final rule was published in the **Federal Register** on September 3, 2019 (84 FR 45877–45895). CCC made an error in the definitions of ''ARC guarantee,'' ''Benchmark revenue for ARC–IC,'' and ''Temperate japonica rice'' in the final rule. In the definition for ARC guarantee, the phrase ''86 percent of the benchmark revenue'' was removed the first time it appeared in the definition, but it should have been specified as the second occurrence in the definition that was no longer needed. In the definition for Benchmark revenue for ARC–IC, there was a typo. In the definition of Temperate japonica rice, paragraph (2) needed to be changed to be consistent with section 1106 of the 2018 Farm Bill. This rule corrects those errors.

The NAP final rule was published in the **Federal Register** on March 2, 2020 (85 FR 12213–12221). The last sentence needs to be revised in § 1437.8(a) in NAP regulation.

List of Subjects

7 CFR Part 1412

Cotton, Feed grains, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

7 CFR Part 1437

Acreage allotments, Agricultural commodities, Crop insurance, Disaster assistance, Fraud, Penalties, Reporting and recordkeeping requirements.

For the reasons discussed above, CCC corrects 7 CFR parts 1412 and 1437 as follows:

PART 1412—AGRICULTURE RISK COVERAGE, PRICE LOSS COVERAGE, AND COTTON TRANSITION ASSISTANCE PROGRAMS

■ 1. The authority citation for part 1412 continues to read as follows:

Authority: 7 U.S.C. 1508b, 7911–7912, 7916, 8702, 8711–8712, 8751–8752, and 15 U.S.C. 714b and 714c.

Subpart D—ARC and PLC Contract Terms and Enrollment Provisions for Covered Commodities

■ 2. Amend § 1412.3 as follows:

■ a. Revise the definition of ''ARC guarantee'';

■ b. In the definition of ''Benchmark revenue for ARC–IC'', remove the word ''allcovered'' and add the words ''all covered'' in its place; and

■ c. In the definition of ''Temperate japonica rice'', revise paragraph (2).

The revisions read as follows:

§ 1412.3 Definitions.

* * * * *

ARC guarantee is calculated for a crop year for a covered commodity, and is equal to 86 percent of the benchmark revenue for ARC–CO and ARC–IC, as defined in this part.

* * * * *

Temperate japonica rice * * *

(2) Establishment of a reference price equal to the medium grain rice reference price multiplied by the ratio obtained by dividing:

(i) The simple average of the marketing year average price of medium grain rice from the 2012 through 2016 crop years, by

(ii) The simple average of the marketing year average price of all rice from the 2012 through 2016 crop years; and

* * * * *

PART 1437—NONINSURED CROP DISASTER ASSISTANCE PROGRAM

■ 3. The authority citation for part 1437 continues to read as follows:

Authority: 7 U.S.C. 1501–1508 and 7333; 15 U.S.C. 714–714m; 19 U.S.C. 2497, and 48 U.S.C. 1469a.

Subpart A—General Provisions

■ 4. Amend § 1437.8 by revising the last sentence in paragraph (a) introductory text to read as follows:

§ 1437.8 Records.

(a) * * * Certifications must be accompanied by a record of production; records of production acceptable to FSA may include:

* * * * *

Robert Stephenson,

Executive Vice President, Commodity Credit Corporation.

In accordance:

Richard Fordyce,

Administrator, Farm Service Agency.

[FR Doc. 2020–05399 Filed 3–20–20; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. OCC–2020–0011]

RIN 1557–AE83

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Regulation Q; Docket No. R–1705]

RIN 7100–AF79

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

RIN 3064–AF41

Regulatory Capital Rule: Money Market Mutual Fund Liquidity Facility

AGENCY: Board of Governors of the Federal Reserve System (Board), Office of the Comptroller of the Currency (OCC), and Federal Deposit Insurance Corporation (FDIC).

ACTION: Interim final rule and request for comment.

SUMMARY: To provide liquidity to the money market sector to help stabilize the financial system, the Board of Governors of the Federal Reserve System authorized the Federal Reserve Bank of Boston to establish the Money Market Mutual Fund Liquidity Facility (MMLF), pursuant to section 13(3) of the Federal Reserve Act. Under the MMLF, the Federal Reserve Bank of Boston will extend non-recourse loans to eligible financial institutions to purchase certain types of assets from money market mutual funds (MMFs). To facilitate this Federal Reserve lending program, the Board, OCC and FDIC (together, the agencies) are adopting this interim final rule to allow banking organizations to neutralize the regulatory capital effects of participating in the program. This

treatment would extend to the community bank leverage ratio.

DATES: The interim final rule is effective March 23, 2020. Comments on the interim final rule must be received no later than May 7, 2020.

ADDRESSES:

OCC: Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''Regulatory Capital Rule: Money Market Mutual Fund Liquidity Facility'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

• *Federal eRulemaking Portal—Regulations.gov Classic or Regulations.gov Beta:*

Regulations.gov Classic: Go to *https://www.regulations.gov/.* Enter ''Docket ID OCC–2020–0011'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments. For help with submitting effective comments please click on ''View Commenter's Checklist.'' Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.

Regulations.gov Beta: Go to *https://beta.regulations.gov/* or click ''Visit New *Regulations.gov Site*'' from the *Regulations.gov* Classic homepage. Enter ''Docket ID OCC–2020–0011'' in the Search Box and click ''Search.'' Public comments can be submitted via the ''Comment'' box below the displayed document information or by clicking on the document title and then clicking the ''Comment'' box on the top-left side of the screen. For help with submitting effective comments please click on ''Commenter's Checklist.'' For assistance with the *Regulations.gov* Beta site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. ET or email *regulations@erulemakinghelpdesk.com.*

• *Email: regs.comments@occ.treas.gov.*

• *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

• *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

• *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2020–0011'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

• *Viewing Comments Electronically—Regulations.gov Classic or Regulations.gov Beta: Regulations.gov Classic:* Go to *https://www.regulations.gov/.* Enter ''Docket ID OCC–2020–0011'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on ''View all documents and comments in this docket'' and then using the filtering tools on the left side of the screen. Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*. The docket may be viewed after the close of the comment period in the same manner as during the comment period.

Regulations.gov Beta: Go to *https://beta.regulations.gov/* or click ''Visit New *Regulations.gov Site*'' from the *Regulations.gov* Classic homepage. Enter ''Docket ID OCC–2020–0011'' in the Search Box and click ''Search.'' Click on the ''Comments'' tab. Comments can be viewed and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen. Supporting materials can be viewed by clicking on the ''Documents'' tab and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen.'' For assistance with the *Regulations.gov* Beta site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday-Friday, 9 a.m.–5 p.m. ET or email *regulations@erulemakinghelpdesk.com.*

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

• *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

Board: You may submit comments, identified by Docket No.R–1705; RIN 7100–AF79, by any of the following methods:

• *Agency website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

• *Email: regs.comments@federalreserve.gov.* Include docket and RIN numbers in the subject line of the message.

• *FAX:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments will be made available on the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684.

FDIC: You may submit comments, identified by RIN 3064–AF41, by any of the following methods:

• *Agency website: http://www.fdic.gov/regulations/laws/federal.* Follow instructions for submitting comments on the Agency website.

• *Email: Comments@FDIC.gov.* Include ''RIN 3064–AF41'' on the subject line of the message.

• *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/RIN 3064–AF41, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

• *Hand Delivery/Courier:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. All comments received must include the agency name (FDIC) and RIN 3064–AF41 and will be posted without change to *http://www.fdic.gov/regulations/laws/*

federal, including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

OCC: Margot Schwadron, Director, or Benjamin Pegg, Risk Expert, Capital and Regulatory Policy, (202) 649–6370; or Carl Kaminski, Special Counsel, or Kevin Korzeniewski, Counsel, Chief Counsel's Office, (202) 649–5490, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Anna Lee Hewko, Associate Director, (202) 530–6360, Constance Horsley, Deputy Associate Director, (202) 452–5239, Juan Climent, Manager, (202) 460 2180, Division of Supervision and Regulation; Benjamin McDonough, Assistant General Counsel, (202) 452–2036, Asad Kudiya, Senior Counsel, (202) 475–6358, or Mary Watkins, Senior Attorney, (202) 452–3722, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263–4869.

FDIC: Bobby R. Bean, Associate Director, *bbean@fdic.gov;* Benedetto Bosco, Chief, Capital Policy Section, *bbosco@fdic.gov;* Noah Cuttler, Senior Policy Analyst, *ncuttler@fdic.gov; regulatorycapital@fdic.gov;* Capital Markets Branch, Division of Risk Management Supervision, (202) 898–6888; or Michael Phillips, Counsel, *mphillips@fdic.gov;* Catherine Wood, Counsel, *cawood@fdic.gov;* Supervision and Legislation Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (800) 925–4618.

SUPPLEMENTARY INFORMATION:

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I. Background

Recent events have significantly and adversely impacted global financial markets. The spread of the Coronavirus Disease 2019 (COVID–2019) has slowed economic activity in many countries, including the United States. In particular, sudden disruptions in financial markets have put increasing liquidity pressure on money market mutual funds. Given these pressures, money market mutual funds have been faced with redemption requests from clients with immediate cash needs. The money market mutual funds may need to sell a significant number of assets to meet these redemption requests, which could further increase market pressures.

In order to prevent the disruption in the money markets from destabilizing the financial system, on March 19, 2020, the Board, with approval of the Secretary of the Treasury, authorized the Federal Reserve Bank of Boston to establish the MMLF, pursuant to section 13(3) of the Federal Reserve Act.[1] Under the MMLF, the Federal Reserve Bank of Boston will extend non-recourse loans to eligible borrowers to purchase assets from money market mutual funds. Assets purchased from MMFs will be posted as collateral to the Federal Reserve Bank of Boston (eligible collateral). Eligible borrowers under the MMLF include certain banking organizations subject to the agencies' capital rule,[2] such as depository institutions and depository institution holding companies. Eligible collateral under the MMLF includes U.S. Treasuries and fully guaranteed agency securities, securities issued by government-sponsored enterprises, and certain types of commercial paper.

To facilitate this Federal Reserve lending program, the agencies are adopting this interim final rule to allow banking organizations to neutralize the effects of purchasing assets through the program on risk-based and leverage capital ratios.

III. The Interim Final Rule

The agencies' capital rule requires banking organizations to comply with risk-based and leverage capital requirements, which are expressed as a ratio of regulatory capital to assets. Risk-based requirements are based on risk-weighted assets, whereas leverage requirements are based on a measure of total consolidated assets or total leverage exposure. Participation in the MMLF will affect the balance sheet of a banking organization because the banking organization must acquire and hold assets (that is, eligible collateral pledged to the Federal Reserve Bank of Boston) on its balance sheet. As a result, a banking organization that participates in the MMLF could potentially be subject to increased capital requirements.

The agencies have determined that the current leverage and risk-based capital requirements for the assets acquired by a banking organization as part of the MMLF do not reflect the substantial protections provided to the organization by the Federal Reserve Bank of Boston in connection with the facility.[3] Because of the non-recourse nature of the Federal Reserve's extension of credit to the banking organization, the organization is not exposed to credit or market risk from the assets purchased by the banking organization and pledged to the Federal Reserve. Therefore, the agencies believe that it would be appropriate to exclude the effects of purchasing assets through the MMLF from a banking organization's regulatory capital.[4]

Specifically, the interim final rule would permit banking organizations to exclude non-recourse exposures acquired as part of the MMLF from a banking organization's total leverage exposure, average total consolidated assets, advanced approaches-total risk-weighted assets, and standardized total risk-weighted assets, as applicable.[5]

The agencies seek comment on all aspects of this interim final rule.

Questions: Discuss the advantages and disadvantages of neutralizing the effects of participating in the MMLF on regulatory capital requirements. How does the proposed approach support the objectives of the facility? What other steps could be taken to support the objectives of the facility? How does the proposed approach sufficiently support the objectives of safety and soundness?

IV. Administrative Law Matters

A. Administrative Procedure Act

The agencies are issuing the interim final rule without prior notice and the opportunity for public comment and the delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).[6] Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an ''agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice

[1] 12 U.S.C. 343(3).

[2] *See* 12 CFR part 3 (OCC); 12 CFR part 217 (Board); 12 CFR part 324 (FDIC).

[3] On September 26, 2008, the Board published an interim final rule that provided the same regulatory capital treatment for assets purchased through the Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility. 73 FR 55706 (Sept. 26, 2008).

[4] This includes assets purchased beginning on March 19, 2020, and pledged to the Federal Reserve Bank of Boston in connection with this facility.

[5] This treatment would extend to the community bank leverage ratio.

[6] 5 U.S.C. 553.

and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [7]

The agencies believe that the public interest is best served by implementing the interim final rule immediately upon publication in the **Federal Register**. As discussed above, the spread of COVID–19 has slowed economic activity in many countries, including the United States. In particular, sudden disruptions in financial markets have put increasing liquidity pressure on MMFs. Given these pressures, MMFs have been faced with redemption requests from clients with immediate cash needs. The MMFs may need to sell a significant number of assets to meet these redemption requests, which could further increase market pressures.

In order to prevent the disruption in the money markets from destabilizing the financial system, on March 18, 2020, the Board, with approval of the Secretary of the Treasury, authorized the Federal Reserve Bank of Boston to establish the MMLF, and this interim final rule will facilitate this Federal Reserve lending program. For these reasons, the agencies find that there is good cause consistent with the public interest to issue the rule without advance notice and comment.[8]

The APA also requires a 30-day delayed effective date, except for (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause.[9] Because the rules relieve a restriction, the interim final rule is exempt from the APA's delayed effective date requirement.[10]

While the agencies believe that there is good cause to issue the rule without advance notice and comment and with an immediate effective date, the agencies are interested in the views of the public and requests comment on all aspects of the interim final rule.

B. Congressional Review Act

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a ''major'' rule.[11] If a rule is deemed a ''major rule'' by the Office of Management and Budget (OMB), the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[12]

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.[13]

For the same reasons set forth above, the agencies are adopting the interim final rule without the delayed effective date generally prescribed under the Congressional Review Act. The delayed effective date required by the Congressional Review Act does not apply to any rule for which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.[14] In light of current market uncertainty, the agencies believe that delaying the effective date of the rule would be contrary to the public interest.

As required by the Congressional Review Act, the agencies will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid OMB control number. The interim final rule affects the agencies' current information collections for the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031, FFIEC 041, and FFIEC 051). The OMB control numbers for the agencies are: OCC OMB No. 1557–0081; Board OMB No. 7100–0036; and FDIC OMB No. 3064–0052. The Board has reviewed this interim final rule pursuant to authority delegated by the OMB.

Although there is a substantive change to the actual calculation of total leverage exposure, total consolidated assets, standardized total risk-weighted assets, and advanced approaches total risk-weighted assets, as applicable, for purposes of the Call Reports, the change should be minimal and result in a zero net change in hourly burden under the agencies' information collections. Submissions will, however, be made by the agencies to OMB. The changes to the Call Reports and their related instructions will be addressed in a separate **Federal Register** notice. Similarly, the Board will address corresponding changes to the information collected on the FR Y–9C (FR Y–9; OMB No. 7100–0128) as part of a separate **Federal Register** notice.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [15] requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.[16] The RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). As discussed previously, consistent with section 553(b)(B) of the APA, the agencies have determined for good cause that general notice and opportunity for public comment is unnecessary, and therefore the agencies are not issuing a notice of proposed rulemaking. Accordingly, the agencies have concluded that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply.

Nevertheless, the agencies seek comment on whether, and the extent to which, the interim final rule would affect a significant number of small entities.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[17] 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 the principle 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

[7] 5 U.S.C. 553(b)(3)(A).

[8] 5 U.S.C. 553(b)(B); 553(d)(3).

[9] 5 U.S.C. 553(d).

[10] 5 U.S.C. 553(d)(1).

[11] 5 U.S.C. 801 *et seq.*

[12] 5 U.S.C. 801(a)(3).

[13] 5 U.S.C. 804(2).

[14] 5 U.S.C. 808.

[15] 5 U.S.C. 601 *et seq.*

[16] Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $600 million or less and trust companies with total assets of $41.5 million or less. *See* 13 CFR 121.201.

[17] 12 U.S.C. 4802(a).

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, with certain exceptions, including for good cause.[18] For the reasons described above, the agencies find good cause exists under section 302 of RCDRIA to publish this interim final rule with an immediate effective date.

As such, the final rule will be effective on March 23, 2020. Nevertheless, the agencies seek comment on RCDRIA.

F. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act[19] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the interim final rule in a simple and straightforward manner. The agencies invite comments on whether there are additional steps it could take to make the rule easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand? What else could we do to make the regulation easier to understand?

G. Unfunded Mandates

As a general matter, the Unfunded Mandates Act of 1995 (UMRA), 2 U.S.C. 1531 *et seq.,* requires the preparation of a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. However, the UMRA does not apply to final rules for which a general notice of proposed rulemaking was not published. See 2 U.S.C. 1532(a). Therefore, because the OCC has found good cause to dispense with notice and comment for this interim final rule, the OCC has not prepared an economic analysis of the rule under the UMRA.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, Federal savings associations, National banks, Risk.

12 CFR Part 217

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Risk, Securities.

12 CFR Part 324

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

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons stated in the joint preamble, the Office of the Comptroller of the Currency amends part 3 of chapter I of Title 12, Code of Federal Regulations as follows:

PART 3—CAPITAL ADEQUACY STANDARDS

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

Authority: 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, and 5412(b)(2)(B).

Subpart G—Transition Provisions

■ 2. Add § 3.302 to read as follows:

§ 3.302 Exposures Related the Money Market Mutual Fund Liquidity Facility.

Notwithstanding any other section of this part, a national bank or federal savings association may exclude exposures acquired pursuant to a non-recourse loan that is provided as part of the Money Market Mutual Fund Liquidity Facility, announced by the Board on March 18, 2020, from total leverage exposure, average total consolidated assets, advanced approaches total risk-weighted assets, and standardized total risk-weighted assets, as applicable. For the purpose of this provision, a national bank's or federal savings association's liability under the facility must be reduced by the purchase price of the assets acquired with funds advanced from the facility.

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons stated in the joint preamble, the Board of Governors of the Federal Reserve System amends 12 CFR chapter II as follows:

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

■ 3. The authority citation for part 217 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–1, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371 and 5371n note.

Subpart G—Transition Provisions

■ 4. Add § 217.302 to read as follows:

§ 217.302 Exposures Related the Money Market Mutual Fund Liquidity Facility.

Notwithstanding any other section of this part, a Board-regulated institution may exclude exposures acquired pursuant to a non-recourse loan that is provided as part of the Money Market Mutual Fund Liquidity Facility, announced by the Board on March 18, 2020, from total leverage exposure, average total consolidated assets, advanced approaches total risk-weighted assets, and standardized total risk-weighted assets, as applicable. For the purpose of this provision, a board-regulated institution's liability under the facility must be reduced by the purchase price of the assets acquired with funds advanced from the facility.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, chapter III of title 12 of the Code of Federal Regulations is amended as follows:

PART 324—CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS

■ 5. The authority citation for part 324 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i),

[18] 12 U.S.C. 4802.

[19] 12 U.S.C. 4809.

1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; 5371; 5412; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub. L. 111–203, 124 Stat. 1376, 1887 (15 U.S.C. 78o–7 note).

Subpart G—Transition Provisions

■ 6. Add § 324.302 to read as follows:

§ 324.302 Exposures Related the Money Market Mutual Fund Liquidity Facility.

Notwithstanding any other section of this part, an FDIC-supervised institution may exclude exposures acquired pursuant to a non-recourse loan that is provided as part of the Money Market Mutual Fund Liquidity Facility, announced by the Federal Reserve on March 18, 2020, from total leverage exposure, average total consolidated assets, advanced approaches total risk-weighted assets, and standardized total risk-weighted assets, as applicable.

For the purpose of this provision, an FDIC-supervised institution's liability under the facility must be reduced by the purchase price of the assets acquired with funds advanced from the facility.

Morris R. Morgan,

First Deputy Comptroller, Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on March 19, 2020.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2020–06156 Filed 3–19–20; 3:00 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0205; Product Identifier 2020–NM–024–AD; Amendment 39–19883; AD 2020–06–14]

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 all The Boeing Company Model 787–8, 787–9, and 787–10 airplanes. This AD requires repetitive cycling of the airplane electrical power. This AD was prompted by a report that the stale-data monitoring function of the common core system (CCS) may be lost when continuously powered on for 51 days. This could lead to undetected or unannunciated loss of common data network (CDN) message age validation, combined with a CDN switch failure. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 7, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 7, 2020.

The FAA must receive comments on this AD by May 7, 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 Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0205.

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–2020–0205; 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: Joe Salemeh, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3536; email: *joe.salameh@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA has received a report indicating that the stale-data monitoring function of CCS may be lost when continuously powered on for 51 days. This could lead to undetected or unannunciated loss of CDN message age validation, combined with a CDN switch failure. The CDN handles all the flight-critical data (including airspeed, altitude, attitude, and engine operation), and several potentially catastrophic failure scenarios can result from this situation. Potential consequences include:

- Display of misleading primary attitude data for both pilots.
- Display of misleading altitude on both pilots' primary flight displays (PFDs).
- Display of misleading airspeed data on both pilots' PFDs, without annunciation of failure, coupled with the loss of stall warning, or over-speed warning.
- Display of misleading engine operating indications on both engines.

The potential loss of the stale-data monitoring function of the CCS when continuously powered on for 51 days, if not addressed, could result in erroneous flight-critical data being routed and displayed as valid data, which could reduce the ability of the flightcrew to maintain the safe flight and landing of the airplane.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Service Bulletin B787–81205–SB420045–00, Issue 002, dated February 14, 2020. The service information describes procedures for repetitive cycling of the airplane electrical power. 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 issuing 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.

AD Requirements

This AD requires accomplishing the actions identified as ''RC'' (required for compliance) in the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB420045–00, Issue 002, dated February 14, 2020, described previously, except for any differences identified as exceptions in the regulatory text of this AD.

For information on the procedures and compliance times, see this service information at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0205.

Interim Action

The FAA considers this AD interim action. If final action is later identified, the FAA might consider further rulemaking then.

Justification For Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C.) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking. Similarly, Section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies foregoing notice and comment prior to adoption of this rule because, as described in the Discussion section of this AD, the stale-data monitoring function of the CCS may be lost when continuously powered on for 51 days. This could lead to undetected or unannunciated loss of CDN message age validation, combined with a CDN switch failure. This condition, if not addressed, could result in erroneous flight-critical data being routed and displayed as valid data, which could reduce the ability of the flightcrew to maintain the safe flight and landing of the airplane. Given the significance of the risk presented by this unsafe condition, the unsafe condition must be immediately addressed.

Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the reasons stated above, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) 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–2020–0205 and Product Identifier 2020–NM–024–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.

Except for Confidential Business Information as described in the following paragraph, and other information as described in 14 CFR 11.35, 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 the agency receives about this final rule.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Joe Salemeh, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3536; email: *joe.salameh@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act (RFA)

The requirements of the 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 196 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Power cycling	1 work-hour × $85 per hour = $85 per cycle.	$0	$85 per cycle	$16,660 per cycle.

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of

that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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):

2020–06–14 The Boeing Company: Amendment 39–19883; Docket No. FAA–2020–0205; Product Identifier 2020–NM–024–AD.

(a) Effective Date

This AD is effective April 7, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 787–8, 787–9, and 787–10 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 42, Integrated Modular Avionics.

(e) Unsafe Condition

This AD was prompted by a report that the stale-data monitoring function of the common core system (CCS) may be lost when continuously powered on for 51 days. This could lead to undetected or unannunciated loss of common data network (CDN) message age validation, combined with a CDN switch failure. The FAA is issuing this AD to address this condition, which could result in erroneous flight-critical data being routed and displayed as valid data, and could reduce the ability of the flightcrew to maintain the safe flight and landing of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in paragraph 5., ''Compliance,'' of Boeing Alert Service Bulletin B787–81205–SB420045–00, Issue 002, dated February 14, 2020, do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB420045–00, Issue 002, dated February 14, 2020.

(h) Exception to Service Information Specifications

Where Boeing Alert Service Bulletin B787–81205–SB420045–00, Issue 002, dated February 14, 2020, uses the phrase ''the Issue 2 date of this service bulletin,'' this AD requires using ''the effective date of this AD.''

(i) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin B787–81205–SB420045–00, Issue 001, dated January 28, 2020.

(j) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) For service information that contains steps that are labeled as RC, the provisions of paragraphs (j)(4)(i) and (ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled 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 RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(k) Related Information

(1) For more information about this AD, contact Joe Salemeh, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3536; email: *joe.salameh@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (l)(3) and (4) of this AD.

(l) 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) Boeing Alert Service Bulletin B787–81205–SB420045–00, Issue 002, dated February 14, 2020.

(ii) [Reserved]

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

(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 March 17, 2020.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–06092 Filed 3–18–20; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31302; Amdt. No. 3896]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective March 23, 2020. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 23, 2020.

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

For Examination

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

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

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

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

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

Availability

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

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

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

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

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

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

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on March 3, 2020.

Rick Domingo,

Executive Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC Date	Subject
23–Apr–20	MI	Marquette	Sawyer Intl	0/0497	3/2/20	ILS OR LOC RWY 1, Amdt 1A.
23–Apr–20	MI	Marquette	Sawyer Intl	0/0498	3/2/20	RNAV (GPS) RWY 1, Amdt 1.
23–Apr–20	LA	Mansfield	C E 'Rusty' Williams	0/0852	3/3/20	RNAV (GPS) RWY 18, Orig-B.
23–Apr–20	MN	Owatonna	Owatonna Degner Rgnl	0/1181	3/3/20	VOR RWY 12, Amdt 10A.
23–Apr–20	MN	Owatonna	Owatonna Degner Rgnl	0/1182	3/2/20	RNAV (GPS) RWY 12, Amdt 1A.
23–Apr–20	ND	Dickinson	Dickinson–Theodore Roosevelt Rgnl.	0/1183	3/2/20	VOR–A, Amdt 6.
23–Apr–20	ND	Dickinson	Dickinson–Theodore Roosevelt Rgnl.	0/1184	3/2/20	RNAV (GPS) RWY 14, Amdt 1.
23–Apr–20	ND	Dickinson	Dickinson–Theodore Roosevelt Rgnl.	0/1185	3/2/20	RNAV (GPS) RWY 32, Amdt 2A.
23–Apr–20	TX	Fort Worth	Fort Worth Meacham Intl	0/1186	3/3/20	ILS OR LOC RWY 34, Amdt 2.
23–Apr–20	SD	Winner	Winner Rgnl	0/1187	3/2/20	RNAV (GPS) RWY 13, Orig-B.
23–Apr–20	CO	Hayden	Yampa Valley	0/1211	3/3/20	VOR/DME–B, Amdt 1.
23–Apr–20	MT	Kalispell	Glacier Park Intl	0/1212	3/3/20	VOR/DME RWY 30, Amdt 10A.
23–Apr–20	PA	Altoona	Altoona-Blair County	0/1226	3/3/20	RNAV (GPS) RWY 21, Amdt 1C.
23–Apr–20	PA	Altoona	Altoona-Blair County	0/1227	3/3/20	RNAV (GPS) Y RWY 3, Amdt 1A.
23–Apr–20	FL	Fort Pierce	Treasure Coast Intl	0/1228	3/3/20	RNAV (GPS) RWY 14, Amdt 2B.
23–Apr–20	FL	Fort Pierce	Treasure Coast Intl	0/1229	3/3/20	RNAV (GPS) RWY 28L, Amdt 1B.
23–Apr–20	FL	Fort Pierce	Treasure Coast Intl	0/1230	3/3/20	RNAV (GPS) RWY 32, Amdt 1C.
23–Apr–20	FL	Fort Pierce	Treasure Coast Intl	0/1231	3/3/20	VOR/DME RWY 14, Amdt 9C.
23–Apr–20	NJ	Trenton	Trenton Mercer	0/1232	3/3/20	RNAV (GPS) RWY 16, Orig-B.
23–Apr–20	NJ	Trenton	Trenton Mercer	0/1233	3/3/20	RNAV (GPS) RWY 34, Orig-D.
23–Apr–20	NJ	Trenton	Trenton Mercer	0/1234	3/3/20	ILS OR LOC RWY 6, Amdt 10D.
23–Apr–20	NJ	Trenton	Trenton Mercer	0/1235	3/3/20	RNAV (GPS) Z RWY 6, Orig-C.
23–Apr–20	NJ	Trenton	Trenton Mercer	0/1236	3/3/20	VOR OR GPS–A, Amdt 11A.
23–Apr–20	WA	Deer Park	Deer Park	0/2108	3/3/20	NDB–A, Amdt 2B.
23–Apr–20	WA	Deer Park	Deer Park	0/2109	3/3/20	RNAV (GPS) RWY 34, Orig-A.
23–Apr–20	MN	Glencoe	Glencoe Muni	0/2120	3/3/20	NDB RWY 31, Amdt 1.
23–Apr–20	OH	Lorain/Elyria	Lorain County Rgnl	0/4427	2/19/20	VOR–A, Amdt 3.
23–Apr–20	TX	Dallas	Addison	0/4428	2/19/20	RNAV (GPS) RWY 15, Amdt 1A.
23–Apr–20	TX	Dallas	Addison	0/4429	2/19/20	ILS OR LOC RWY 15, Amdt 11A.
23–Apr–20	AR	Hope	Hope Muni	0/4431	2/19/20	RNAV (GPS) RWY 16, Orig-A.
23–Apr–20	PA	Doylestown	Doylestown	0/4435	2/14/20	RNAV (GPS) RWY 5, Orig-B.
23–Apr–20	PA	Doylestown	Doylestown	0/4436	2/14/20	RNAV (GPS) RWY 23, Amdt 1B.
23–Apr–20	TN	Tullahoma	Tullahoma Rgnl Arpt/Wm Northern Field.	0/5063	2/18/20	RNAV (GPS) RWY 36, Amdt 1B.
23–Apr–20	TN	Tullahoma	Tullahoma Rgnl Arpt/Wm Northern Field.	0/5064	2/18/20	RNAV (GPS) RWY 24, Amdt 1B.
23–Apr–20	TN	Tullahoma	Tullahoma Rgnl Arpt/Wm Northern Field.	0/5065	2/18/20	RNAV (GPS) RWY 18, Amdt 1B.
23–Apr–20	TN	Springfield	Springfield Robertson County.	0/5066	2/18/20	RNAV (GPS) RWY 4, Amdt 1B.
23–Apr–20	TN	Springfield	Springfield Robertson County.	0/5067	2/18/20	RNAV (GPS) RWY 22, Amdt 1B.
23–Apr–20	GA	Eastman	Heart Of Georgia Rgnl	0/5068	2/18/20	VOR/DME–A, Amdt 8.
23–Apr–20	MS	Columbus/W Point/ Starkville.	Golden Triangle Rgnl	0/5069	2/18/20	ILS OR LOC RWY 18, Amdt 8A.
23–Apr–20	FL	Orlando	Orlando Sanford Intl	0/5070	2/18/20	ILS OR LOC RWY 9L, Amdt 4A.
23–Apr–20	FL	Orlando	Orlando Sanford Intl	0/5071	2/18/20	RNAV (GPS) RWY 18, Orig-C.
23–Apr–20	FL	Orlando	Orlando Sanford Intl	0/5072	2/18/20	RNAV (GPS) RWY 27L, Orig-A.
23–Apr–20	MD	Baltimore	Baltimore/Washington Intl Thurgood Marshall.	0/5073	2/18/20	ILS OR LOC RWY 15L, Amdt 4.
23–Apr–20	MN	Thief River Falls	Thief River Falls Rgnl	0/5076	2/19/20	RNAV (GPS) RWY 13, Orig-A.
23–Apr–20	MN	Thief River Falls	Thief River Falls Rgnl	0/5077	2/19/20	RNAV (GPS) RWY 31, Orig-A.
23–Apr–20	MN	Thief River Falls	Thief River Falls Rgnl	0/5078	2/19/20	VOR RWY 31, Amdt 8D.

AIRAC date	State	City	Airport	FDC No.	FDC Date	Subject
23–Apr–20	MN	Rochester	Rochester Intl	0/5079	2/19/20	VOR RWY 20, Amdt 14A.
23–Apr–20	MN	Rochester	Rochester Intl	0/5080	2/19/20	VOR RWY 2, Amdt 17A.
23–Apr–20	NE	Scribner	Scribner State	0/5081	2/19/20	VOR/DME RWY 35, Amdt 2B.
23–Apr–20	ND	Bismarck	Bismarck Muni	0/5082	2/19/20	ILS OR LOC RWY 13, Amdt 4.
23–Apr–20	ND	Bismarck	Bismarck Muni	0/5083	2/19/20	RNAV (GPS) RWY 3, Amdt 2A.
23–Apr–20	ND	Bismarck	Bismarck Muni	0/5084	2/19/20	RNAV (GPS) RWY 13, Orig-A.
23–Apr–20	ND	Bismarck	Bismarck Muni	0/5085	2/19/20	RNAV (GPS) RWY 31, Amdt 1B.
23–Apr–20	ND	Bismarck	Bismarck Muni	0/5086	2/19/20	VOR–A, Amdt 21.
23–Apr–20	IA	Fort Madison	Fort Madison Muni	0/5087	2/19/20	VOR/DME–A, Amdt 7A.
23–Apr–20	WI	Menomonie	Menomonie Muni-Score Field.	0/5090	2/19/20	VOR/DME RWY 27, Amdt 1.
23–Apr–20	MT	Great Falls	Great Falls Intl	0/5095	2/19/20	VOR/DME RWY 3, Amdt 17A.
23–Apr–20	CA	Bakersfield	Meadows Field	0/5096	2/19/20	VOR–A, Orig-A.
23–Apr–20	WA	Walla Walla	Walla Walla Rgnl	0/5097	2/19/20	VOR/DME RWY 2, Orig-B.
23–Apr–20	CA	Red Bluff	Red Bluff Muni	0/5098	2/19/20	VOR/DME RWY 15, Amdt 8A.
23–Apr–20	CA	Red Bluff	Red Bluff Muni	0/5099	2/19/20	VOR RWY 33, Amdt 8A.
23–Apr–20	AL	Mobile	Mobile Downtown	0/5886	2/19/20	VOR RWY 18, Amdt 2A.
23–Apr–20	AL	Mobile	Mobile Downtown	0/5887	2/19/20	VOR RWY 14, Amdt 8A.
23–Apr–20	MA	Beverly	Beverly Rgnl	0/5888	2/19/20	VOR RWY 16, Amdt 5D.
23–Apr–20	TX	Houston	William P Hobby	0/5889	2/19/20	RNAV (GPS) RWY 17, Amdt 1A.
23–Apr–20	TX	Houston	William P Hobby	0/5890	2/19/20	RNAV (GPS) RWY 22, Amdt 2B.
23–Apr–20	TX	Houston	William P Hobby	0/5891	2/19/20	RNAV (GPS) RWY 35, Amdt 1B.
23–Apr–20	GA	Waycross	Waycross-Ware County	0/5900	2/19/20	VOR–A, Amdt 9.
23–Apr–20	MN	Austin	Austin Muni	0/6450	2/21/20	ILS OR LOC RWY 35, Amdt 1B.
23–Apr–20	TX	Dallas	Dallas Executive	0/6451	2/21/20	VOR/DME RWY 17, Amdt 1.
23–Apr–20	TX	Dallas	Dallas Executive	0/6452	2/21/20	RNAV (GPS) RWY 35, Orig.
23–Apr–20	MO	Jefferson City	Jefferson City Memorial	0/6454	2/21/20	RNAV (GPS) RWY 12, Amdt 1A.
23–Apr–20	MO	Jefferson City	Jefferson City Memorial	0/6455	2/21/20	RNAV (GPS) RWY 30, Orig-A.
23–Apr–20	FL	Daytona Beach	Daytona Beach Intl	0/6527	2/20/20	RNAV (GPS) RWY 7L, Amdt 1B.
23–Apr–20	FL	Daytona Beach	Daytona Beach Intl	0/6528	2/20/20	RNAV (GPS) RWY 16, Amdt 1C.
23–Apr–20	TX	Abilene	Abilene Rgnl	0/6651	2/21/20	VOR OR GPS–A, Amdt 8A.
23–Apr–20	FL	Palm Coast	Flagler Executive	0/6660	2/20/20	RNAV (GPS) RWY 6, Amdt 2.
23–Apr–20	FL	Palm Coast	Flagler Executive	0/6661	2/20/20	RNAV (GPS) RWY 24, Amdt 1.
23–Apr–20	FL	Palm Coast	Flagler Executive	0/6662	2/20/20	RNAV (GPS) RWY 29, Amdt 1.
23–Apr–20	IN	La Porte	La Porte Muni	0/7323	2/21/20	VOR–A, Amdt 7B.
23–Apr–20	IN	La Porte	La Porte Muni	0/7325	2/21/20	RNAV (GPS) RWY 2, Amdt 1B.
23–Apr–20	IN	La Porte	La Porte Muni	0/7326	2/21/20	RNAV (GPS) RWY 20, Amdt 1A.
23–Apr–20	AZ	Phoenix	Phoenix Sky Harbor Intl	0/7649	2/24/20	ILS OR LOC/DME RWY 7L, Amdt 11A.
23–Apr–20	AZ	Phoenix	Phoenix Sky Harbor Intl	0/7650	2/24/20	ILS OR LOC RWY 7R, Amdt 2B.
23–Apr–20	AZ	Phoenix	Phoenix Sky Harbor Intl	0/7652	2/24/20	ILS OR LOC RWY 25L, Amdt 1G.
23–Apr–20	AZ	Phoenix	Phoenix Sky Harbor Intl	0/7653	2/24/20	RNAV (GPS) Y RWY 7L, Amdt 1A.
23–Apr–20	AZ	Phoenix	Phoenix Sky Harbor Intl	0/7654	2/24/20	RNAV (GPS) Y RWY 7R, Amdt 1A.
23–Apr–20	AZ	Phoenix	Phoenix Sky Harbor Intl	0/7655	2/24/20	RNAV (GPS) Y RWY 8, Amdt 1.
23–Apr–20	AZ	Phoenix	Phoenix Sky Harbor Intl	0/7656	2/24/20	RNAV (GPS) Y RWY 25L, Amdt 1A.
23–Apr–20	AZ	Phoenix	Phoenix Sky Harbor Intl	0/7657	2/24/20	RNAV (GPS) Y RWY 25R, Amdt 2B.
23–Apr–20	AZ	Phoenix	Phoenix Sky Harbor Intl	0/7658	2/24/20	RNAV (GPS) Y RWY 26, Amdt 2A.
23–Apr–20	AZ	Phoenix	Phoenix Sky Harbor Intl	0/7745	2/24/20	ILS OR LOC RWY 8, Orig-D.
23–Apr–20	NY	Buffalo	Buffalo Niagara Intl	0/8412	2/26/20	RNAV (GPS) RWY 14, Amdt 2B.
23–Apr–20	NY	Buffalo	Buffalo Niagara Intl	0/8413	2/26/20	RNAV (GPS) RWY 32, Amdt 2A.
23–Apr–20	PA	Johnstown	John Murtha Johnstown-Cambria Co.	0/8416	2/26/20	RNAV (GPS) RWY 5, Amdt 2A.
23–Apr–20	PA	Johnstown	John Murtha Johnstown-Cambria Co.	0/8417	2/26/20	RNAV (GPS) RWY 23, Amdt 2A.
23–Apr–20	UT	Panguitch	Panguitch Muni	0/8930	2/25/20	RNAV (GPS) RWY 36, Orig.
23–Apr–20	UT	Panguitch	Panguitch Muni	0/8931	2/25/20	RNAV (GPS) RWY 18, Orig.
23–Apr–20	OK	Perry	Perry Muni	0/9176	2/25/20	VOR RWY 17, Amdt 3C.
23–Apr–20	IL	Decatur	Decatur	0/9213	2/25/20	RNAV (GPS) RWY 12, Orig-A.
23–Apr–20	IL	Decatur	Decatur	0/9214	2/25/20	RNAV (GPS) RWY 6, Orig-B.
23–Apr–20	SD	Watertown	Watertown Rgnl	0/9219	2/25/20	VOR OR TACAN RWY 17, Amdt 17.
23–Apr–20	SD	Watertown	Watertown Rgnl	0/9220	2/25/20	RNAV (GPS) RWY 17, Orig.
23–Apr–20	SD	Watertown	Watertown Rgnl	0/9221	2/25/20	RNAV (GPS) RWY 30, Amdt 1.
23–Apr–20	CO	Steamboat Springs	Steamboat Springs/Bob Adams Field.	0/9226	2/26/20	VOR/DME–C, Amdt 1B.
23–Apr–20	CO	Steamboat Springs	Steamboat Springs/Bob Adams Field.	0/9227	2/26/20	RNAV (GPS)-E, Orig-A.
23–Apr–20	NE	Kearney	Kearney Rgnl	0/9319	2/26/20	VOR RWY 18, Amdt 14.

AIRAC date	State	City	Airport	FDC No.	FDC Date	Subject
23–Apr–20	AR	Lake Village	Lake Village Muni	0/9320	2/26/20	VOR–A, Amdt 8B.
23–Apr–20	KS	Liberal	Liberal Mid-America Rgnl	0/9631	3/2/20	VOR RWY 4, Amdt 3.
23–Apr–20	KS	Liberal	Liberal Mid-America Rgnl	0/9632	3/2/20	VOR/DME RWY 17, Amdt 4.
23–Apr–20	MN	Buffalo	Buffalo Muni	0/9633	2/26/20	VOR–A, Orig.
23–Apr–20	TX	Beeville	Beeville Muni	0/9634	2/26/20	VOR/DME RWY 12, Amdt 6A.
23–Apr–20	FL	Marianna	Marianna Muni	0/9684	2/26/20	VOR–A, Amdt 12A.
23–Apr–20	FL	Marianna	Marianna Muni	0/9685	2/26/20	VOR–B, Amdt 5A.
23–Apr–20	FL	Marianna	Marianna Muni	0/9686	2/26/20	NDB–C, Amdt 4B.
23–Apr–20	MI	Iron Mountain Kingsford	Ford	0/9687	2/26/20	LOC/DME BC RWY 19, Amdt 13A.
23–Apr–20	MI	Iron Mountain Kingsford	Ford	0/9688	2/26/20	RNAV (GPS) RWY 1, Orig-A.
23–Apr–20	MI	Iron Mountain Kingsford	Ford	0/9689	2/26/20	RNAV (GPS) RWY 19, Orig-A.
23–Apr–20	MI	Iron Mountain Kingsford	Ford	0/9690	2/26/20	VOR RWY 31, Amdt 16A.
23–Apr–20	MA	Hyannis	Barnstable Muni-Boardman/Polando Field.	0/9691	2/26/20	RNAV (GPS) RWY 15, Orig-B.
23–Apr–20	MA	Hyannis	Barnstable Muni-Boardman/Polando Field.	0/9692	2/26/20	RNAV (GPS) RWY 6, Orig-A.
23–Apr–20	MA	Hyannis	Barnstable Muni-Boardman/Polando Field.	0/9693	2/26/20	RNAV (GPS) RWY 24, Amdt 1.
23–Apr–20	MA	Hyannis	Barnstable Muni-Boardman/Polando Field.	0/9694	2/26/20	RNAV (GPS) RWY 33, Orig-B.
23–Apr–20	NY	New York	Laguardia	0/9903	2/14/20	ILS OR LOC RWY 4, Amdt 37A.
23–Apr–20	FL	Miami	Miami-Opa Locka Executive.	0/9974	2/27/20	ILS OR LOC RWY 27R, Amdt 1C.

[FR Doc. 2020–05868 Filed 3–20–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31301; Amdt. No. 3895]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective March 23, 2020. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of March 23, 2020.

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

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html* .

Availability

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

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

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

The large number of SIAPs, Takeoff Minimums and ODPs,their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical.

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

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

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

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

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

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866;(2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979); and (3)does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on March 6, 2020.

Rick Domingo,

Executive Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 23 April 2020

Laurel, MS, Hesler-Noble Field, VOR–A, Amdt 6
Lebanon, NH, Lebanon Muni, RNAV (GPS) RWY 18, Amdt 1
Hudson, NY, Columbia County, NDB–A, Amdt 4B, CANCELLED
New Castle, PA, New Castle Muni, NDB RWY 23, Amdt 3C, CANCELLED
Viroqua, WI, Viroqua Muni, Takeoff Minimums and Obstacle DP, Amdt 2

Effective 21 May 2020

Marianna, AR, Marianna/Lee County-Steve Edwards Field, RNAV (GPS) RWY 36, Amdt 1B
West Memphis, AR, West Memphis Muni, ILS OR LOC RWY 17, Amdt 5B
Fort Huachuca Sierra Vista, AZ, Sierra Vista Muni-Libby AAF, TACAN RWY 8, Amdt 1B
Fort Huachuca Sierra Vista, AZ, Sierra Vista Muni-Libby AAF, TACAN RWY 26, Amdt 1B
Chico, CA, Chico Muni, Takeoff Minimums and Obstacle DP, Amdt 7
Modesto, CA, Modesto City-Co-Harry Sham Fld, ILS OR LOC RWY 28R, Amdt 15
Modesto, CA, Modesto City-Co-Harry Sham Fld, RNAV (GPS) RWY 28R, Amdt 1
Modesto, CA, Modesto City-Co-Harry Sham Fld, VOR RWY 28R, Amdt 1
Paso Robles, CA, Paso Robles Muni, PASO ROBLES ONE, Graphic DP
Paso Robles, CA, Paso Robles Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Sacramento, CA, Sacramento Intl, Takeoff Minimums and Obstacle DP, Amdt 1A
Live Oak, FL, Suwannee County, RNAV (GPS) RWY 25, Orig-C
Perry, FL, Perry-Foley, Takeoff Minimums and Obstacle DP, Amdt 1B
Clarion, IA, Clarion Muni, NDB RWY 14, Amdt 4A, CANCELLED
Council Bluffs, IA, Council Bluffs Muni, ILS OR LOC RWY 36, Amdt 1B
Independence, IA, James H Connell Fld at Independence Muni, RNAV (GPS) RWY 18, Amdt 1A
Independence, IA, James H Connell Fld at Independence Muni, RNAV (GPS) RWY 36, Amdt 1A
Independence, IA, James H Connell Fld at Independence Muni, Takeoff Minimums and Obstacle DP, Amdt 5A
Mapleton, IA, James G Whiting Memorial Field, RNAV (GPS) RWY 20, Orig-C
Sheldon, IA, Sheldon Rgnl, RNAV (GPS) RWY 33, Amdt 1D
Spencer, IA, Spencer Muni, RNAV (GPS) RWY 12, Orig-A
Urbana, IL, Frasca Field, VOR–A, Amdt 11B
Harper, KS, Harper Muni, RNAV (GPS)–A, Orig
Harper, KS, Harper Muni, VOR OR GPS–B, Amdt 1B, CANCELLED
Independence, KS, Independence Muni, ILS OR LOC RWY 35, Amdt 2A
Independence, KS, Independence Muni, VOR–A, Amdt 3A
Kingman, KS, Kingman Airport—Clyde Cessna Field, Takeoff Minimums and Obstacle DP, Orig-B
Harlan, KY, Tucker-Guthrie Memorial, RNAV (GPS)–A, Amdt 1
Shreveport, LA, Shreveport Downtown, Takeoff Minimums and Obstacle DP, Amdt 4
Baltimore, MD, Baltimore/Washington Intl Thurgood Marshall, Takeoff Minimums and Obstacle DP, Amdt 10A
Augusta, ME, Augusta State, RNAV (GPS)–B, Orig-C, CANCELLED
Augusta, ME, Augusta State, Takeoff Minimums and Obstacle DP, Amdt 4
Battle Creek, MI, W K Kellogg, NDB RWY 23R, Amdt 19A, CANCELLED
Austin, MN, Austin Muni, RNAV (GPS) RWY 35, Amdt 2A
Mahnomen, MN, Mahnomen County, RNAV (GPS) RWY 17, Amdt 1A
Mahnomen, MN, Mahnomen County, RNAV (GPS) RWY 35, Amdt 1A

Pine River, MN, Pine River Rgnl, NDB RWY 34, Amdt 2A
Staples, MN, Staples Muni, NDB RWY 14, Amdt 3C
Tarkio, MO, Gould Peterson Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Trenton, MO, Trenton Muni, NDB RWY 18, Amdt 7D, CANCELLED
Trenton, MO, Trenton Muni, NDB RWY 36, Amdt 10B, CANCELLED
Tioga, ND, Tioga Muni, RNAV (GPS) RWY 12, Orig-B
Toledo, OH, Toledo Executive, Takeoff Minimums and Obstacle DP, Amdt 3
Gregory, SD, Gregory Muni—Flynn Fld, RNAV (GPS) RWY 13, Orig-C
Pierre, SD, Pierre Rgnl, ILS OR LOC RWY 31, Amdt 13
Gilmer, TX, Fox Stephens Field-Gilmer Muni, VOR/DME–A, Amdt 1A, CANCELLED
Houston, TX, William P Hobby, Takeoff Minimums and Obstacle DP, Amdt 7
Mount Pleasant, TX, Mount Pleasant Rgnl, VOR/DME–A, Orig-A, CANCELLED
Sulphur Springs, TX, Sulphur Springs Muni, RNAV (GPS) RWY 1, Amdt 1C
Terrell, TX, Terrell Muni, NDB RWY 17, Amdt 4, CANCELLED
Ogden, UT, Ogden-Hinckley, ILS OR LOC RWY 3, Amdt 5A
Newport News, VA, Newport News/Williamsburg Intl, ILS OR LOC RWY 7, Amdt 35
Marshfield, WI, Marshfield Muni, SDF RWY 34, Amdt 7, CANCELLED

[FR Doc. 2020–05870 Filed 3–20–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9895]

RIN 1545–BM36

Covered Asset Acquisitions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final Income Tax Regulations under section 901(m) of the Internal Revenue Code (Code) with respect to transactions that generally are treated as asset acquisitions for U.S. income tax purposes and either are treated as stock acquisitions or are disregarded for foreign income tax purposes. These regulations are necessary to provide guidance on applying section 901(m). These regulations affect taxpayers claiming foreign tax credits.

DATES:

Effective date: These regulations are effective on March 23, 2020.

Applicability dates: For dates of applicability, see §§ 1.704–1(b)(1)(ii)(b)(4), 1.901(m)–1(b), 1.901(m)–2(f), 1.901(m)–3(d), 1.901(m)–4(g), 1.901(m)–5(i), 1.901(m)–6(d), 1.901(m)–7(g), and 1.901(m)–8(e).

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Parry at (202) 317–6936 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 7, 2016, both a notice of proposed rulemaking by cross-reference in part to temporary regulations (REG–129128–14) (2016 proposed regulations) under sections 901(m) and 704 of the Code and temporary regulations (TD 9800) under section 901(m) were published in the **Federal Register** at 81 FR 88562 and 81 FR 88103. The temporary and proposed regulations include the rules described in Notice 2014–44 (2014–32 I.R.B. 270 (August 4, 2014)) and Notice 2014–45 (2014–34 I.R.B. 388 (August 18, 2014).

A public hearing was not requested, and none was held. However, the Department of the Treasury (Treasury Department) and the IRS received written comments in response to the notice of proposed rulemaking. After consideration of all the comments, the 2016 proposed regulations under section 901(m) are adopted as revised by this Treasury decision. The revisions are discussed in this preamble. This Treasury decision also adopts the 2016 proposed regulations under section 704 without revision. The regulations adopted by this Treasury decision are referred to herein as the ''final regulations.'' Defined terms used in this preamble but not defined herein have the meaning provided in the final regulations.

Summary of Comments and Explanation of Revisions

1. Scope of Covered Asset Acquisitions (CAAs)

Proposed § 1.901(m)–2(b) identifies six categories of transactions that constitute CAAs, three of which are specified in the statute and three of which are additional categories of transactions that are identified as CAAs pursuant to the authority granted under section 901(m)(2)(D).

One comment requested that an exemption to section 901(m) be provided for CAAs in which all or substantially all of the gains and losses with respect to the relevant foreign assets (RFAs) are recognized by members of the U.S.-parented group that includes the section 901(m) payor. The comment suggested that the policies of section 901(m) are not implicated in such a situation because if the same group takes into account the gains on the RFAs up front and then, in the future recognizes offsetting cost recovery items on those assets, over time, the U.S. income tax base is unchanged.

The Treasury Department and IRS agree that an exemption would be appropriate in certain cases, but have determined that the comment's suggestion is overbroad. As proposed by the comment, the exemption would apply to U.S. members of an affiliated group that do not file a consolidated return and to related controlled foreign corporations. This leaves open the possibility of manipulation of foreign tax credits. For example, in the case of affiliated but non-consolidated U.S. entities, the entity recognizing the U.S. gain on the assets up front may be an entity that is exempt from tax under section 501 while the entity recognizing the offsetting cost recovery items may be in a position to take advantage of the excess foreign taxes related to the basis difference.

The Treasury Department and IRS have determined that the exemption should apply only if a domestic section 901(m) payor or a member of its consolidated group recognized the gains or losses or took into account a distributive share of the gains or losses recognized by a partnership for U.S. tax purposes as part of the original CAA. Accordingly, the definition of aggregate basis difference is modified to take into account allocated basis difference adjustments determined based on gain or loss recognized with respect to an RFA as a result of a CAA. See § 1.901(m)–1(a)(1), (6), (48), and (49). For example, if one domestic corporation, USS1, sold a foreign disregarded entity (FDE) that held an asset to another member of its consolidated group, USS2, the transaction is a CAA, because it is an asset sale for U.S. income tax purposes and an acquisition of stock of the FDE for foreign tax purposes. As a result, the asset is an RFA owned by USS2 subject to section 901(m). However, any aggregate basis difference USS2 determines with respect to the RFA will be adjusted to take into account the gain recognized for U.S. income tax purposes by USS1 on the original sale, provided USS1 and USS2 are still members of the same consolidated group in the year the allocated basis difference is determined.

Another comment suggested that the final category of transactions, which includes any asset acquisition for U.S. and foreign income tax purposes that results in an increase in the U.S. basis

without a corresponding increase in the foreign basis, be replaced with one or more specifically defined transactions. The comment recommended that new CAAs be limited to specific transactions that are likely to achieve the same hyping of foreign tax credits as the three categories of CAAs specified in the statute and that typically involve intensive U.S. tax planning. The comment also suggested that if the Treasury Department and IRS found a list of specific transactions to be too limited, they could add an anti-abuse rule that would treat any transaction as a CAA if it was structured with a principal purpose of avoiding the specific categories of transactions set forth in the revised list of transactions.

The Treasury Department and IRS do not agree that the final category of transactions is overbroad. Section 901(m) is designed to address transactions that result in a basis difference for U.S. and foreign income tax purposes. There is no intent test. Proposed § 1.901(m)–7 provides a de minimis exception that relieves the burden of applying section 901(m) to ordinary course transactions below the threshold provided in that rule. The Treasury Department and IRS have determined there is no policy justification for exempting transactions to which this exception does not apply on the grounds that the transaction lacked an intent to hype foreign taxes, and replacing this category of transactions with an anti-abuse rule would inappropriately introduce an intent component that is not required by the statute. Accordingly, the comment is not adopted.

2. Aggregate Basis Difference Carryover

Proposed § 1.901(m)–3(c) provides rules for determining the amount of aggregate basis difference carryover for a given U.S. taxable year of a section 901(m) payor that will be included in the section 901(m) payor's aggregate basis difference for the next U.S. taxable year. The carryover reflects the extent to which the aggregate basis difference for a U.S. taxable year has not yet given rise to a disqualified tax amount.

A comment requested that the aggregate basis difference carryover rule be eliminated due to the increased compliance costs resulting from the added complexity of tracking the carryover amounts. The comment argued that these compliance costs are unjustified, given that Congress enacted an administrable approach in the statute and did not express any intent that carryover rules could apply.

The Treasury Department and IRS have determined that the aggregate basis difference carryover rule is necessary to prevent the avoidance of the purpose of section 901(m), particularly in the case of timing differences. For example, assume a section 901(m) payor that is also a foreign payor has a foreign taxable year ending on March 31 and a U.S. taxable year ending on December 31. Assume further that the section 901(m) payor recognizes foreign gain on the disposition of an RFA on November 30, in U.S. tax year 1. For U.S. income tax purposes, because the disposition occurs in U.S. tax year 1, the section 901(m) payor will have allocated basis difference in U.S. tax year 1, requiring a calculation of a disqualified tax amount. For foreign income tax purposes, the foreign tax on the gain is not imposed until the end of the foreign taxable year, which is March 31, in U.S. tax year 2. Assuming the section 901(m) payor does not pay any other foreign taxes, the disqualified tax amount for U.S. tax year 1 will be zero, because the foreign taxes are not taken into account by the section 901(m) payor for U.S. income tax purposes until U.S. tax year 2. Because the allocated basis difference in U.S. tax year 1 does not give rise to a disqualified tax amount, the aggregate basis difference carryover rule requires that the allocated basis difference be carried into U.S. tax year 2 and be used to calculate a disqualified tax amount with respect to the foreign taxes taken into account in U.S. tax year 2. Without the aggregate basis difference carryover rule, there would be no disqualified tax amount in U.S. tax year 1, because there are not foreign taxes taken into account in that year, and no disqualified tax amount in U.S. tax year 2, because there is no allocated basis difference in that year. This would allow avoidance of the application of section 901(m) to a fact pattern that is clearly meant to be covered by the statute. The aggregate basis difference carryover rule also prevents taxpayers from avoiding the application of section 901(m) by timing dispositions of RFAs to coincide with offsetting unrelated foreign losses. For these reasons, the comment is not adopted.

3. Foreign Basis Election

Basis difference with respect to an RFA is generally equal to the U.S. basis in the RFA immediately after a CAA less the U.S. basis in the RFA immediately before the CAA. Proposed § 1.901(m)–4(c) provides that a taxpayer may instead elect to determine basis difference as the U.S. basis in the RFA immediately after the CAA less the foreign basis in the RFA immediately after the CAA. This is referred to as the foreign basis election. Paragraphs (c) and (g)(3) of proposed § 1.901(m)–4 provide that taxpayers may apply the foreign basis election retroactively to CAAs that have occurred on or after January 1, 2011, provided that the taxpayer applies all of the rest of the rules in the 2016 proposed regulations retroactively, with a few limited exceptions.

One comment suggested that though this consistency requirement is appropriate for tax years that remain open, the requirement is unfair if some tax years of the taxpayer or its affiliates are already closed. The comment recommended the consistency requirement be modified to permit taxpayers to apply the foreign basis election as long as they apply the rules in the 2016 proposed regulations consistently to all relevant tax years that remain open.

The Treasury Department and IRS agree that taxpayers should not be denied the choice to retroactively apply the foreign basis election because a closed tax year is preventing them from satisfying the consistency requirement. However, because the statute of limitations for refunds attributable to foreign tax credits is ten years while the statute of limitations for assessment is generally only three years, the only relevant tax years of the taxpayer or its affiliates that would be closed are the tax years in which a consistent application of the regulations would result in an assessment. The Treasury Department and IRS do not believe taxpayers should be able to obtain the benefits of retroactive application of the regulations while avoiding the negative consequences. Accordingly, while the consistency requirement has been modified to apply only for tax years that remain open, an additional requirement is added that any deficiencies be taken into account that would have resulted from the consistent application of the final regulations for a tax year that is closed. See § 1.901(m)–4(g)(3). For example, assume a taxpayer chooses to make a retroactive foreign basis election that would give rise to a $6 million refund in a prior year that is open under the statute of limitations for refunds but that a consistent retroactive application of another provision of the final regulations would give rise to a $1 million deficiency in another prior year that is closed under the statute of limitations for assessment. In this case, in order to meet the consistency requirement, the taxpayer would need to reduce its refund claim in the open year from $6 million to $5 million to take into account the $1 million deficiency that would have resulted in the closed tax year.

4. Successor Rules

The successor rules in proposed § 1.901(m)–6(b) provide that section 901(m) continues to apply to any unallocated basis difference with respect to an RFA after there is a transfer of the RFA for U.S. income tax purposes, regardless of whether the transfer is a disposition, a CAA, or a non-taxable transaction. For example, if a section 901(m) payor contributes an RFA with respect to a prior CAA to a partnership, any unallocated basis difference in the RFA remains subject to the section 901(m) in the hands of the partnership. One comment suggested that the Treasury Department and IRS consider whether it would be appropriate to apply principles similar to those of section 704(c) to treat the section 901(m) ''taint'' in the RFA as a built-in item that is allocated back to the contributing partner.

The Treasury Department and IRS have considered this comment and determined that the provisions in proposed § 1.901(m)–5 for allocating basis difference to partners in a partnership that owns RFAs reflect the most appropriate approach, whether the RFAs are contributed to the partnership in a successor transaction or the partnership acquires them directly in a CAA. These allocation rules are based on the principle that the partner that takes into account the basis difference is the one that should be subject to section 901(m). For example, if there is a cost recovery amount of 20x due to increased depreciation deductions related to a U.S. basis step-up in a CAA, section 901(m) basically operates to disallow a credit for foreign taxes on that 20x differential created between income for U.S. and foreign tax purposes. The 2016 proposed regulations take the approach that the partner to whom the 20x of increased depreciation is allocated is the one that benefits from the income differential and is therefore the one to whom the section 901(m) disallowance should apply. If some other partner contributed the RFA to the partnership but does not get an allocation of the increased depreciation deductions, the Treasury Department and IRS see no policy reason to nevertheless subject the contributing partner to the section 901(m) disallowance.

5. De Miminis Threshold

Proposed § 1.901(m)–7 describes de minimis rules under which certain basis differences are not taken into account for purposes of section 901(m). In general, under the 2016 proposed regulations, a basis difference with respect to an RFA is not taken into account for purposes of section 901(m) if either (i) the sum of the basis differences for all RFAs with respect to the CAA is less than the greater of $10 million or 10 percent of the total U.S. basis of all RFAs immediately after the CAA; or (ii) the RFA is part of a class of RFAs for which the sum of the basis differences of all RFAs in the class is less than the greater of $2 million or 10 percent of the total U.S. basis of all RFAs in the class immediately after the CAA. The threshold dollar amounts and percentages to meet the de minimis exemptions for related-party CAAs are lower than those for unrelated party CAAs, replacing the terms ''$10 million,'' ''10 percent,'' and ''$2 million'' with the terms ''$5 million,'' ''5 percent,'' and ''$1 million,'' respectively.

One comment expressed the view that the threshold amounts for the de minimis rules were too low, noting that the potential basis differential with respect to transactions of those magnitudes would not generate a sufficient foreign tax credit benefit to justify intensive tax planning. The comment suggested raising the $10 million threshold to $15 million. The comment also recommended eliminating the reduced de minimis thresholds in the context of related-party transactions. The comment argued that the test should be different for related parties only if the fact that the parties are related somehow makes the rules less burdensome than they are for unrelated parties or makes the likelihood of tax arbitrage higher. The comment suggested that this was unlikely to be the case in the context of section 901(m).

Although the Treasury Department and the IRS do not believe that the comment made a compelling argument for increasing the threshold for the cumulative basis difference exemption, the Treasury Department and IRS agree that it is appropriate to extend the scope of the de minimis rules in order to further reduce the burden of compliance with the rules. However, rather than increasing the threshold amount, the Treasury Department and IRS have decided to add an additional exclusion, such that a basis difference with respect to an individual RFA is not taken into account for purposes of section 901(m) if the basis difference is less than $20,000. See § 1.901(m)–7(b)(4). Like the de minimis exceptions contained in the 2016 proposed regulations, this de minimis exception applies independently of the other de minimis exceptions. Moreover, the reduced thresholds for related-party transactions are eliminated, as suggested by the comment. See § 1.901(m)–7(c).

6. Interaction With Section 909

One comment requested adding a priority rule to the regulations to address transactions to which both section 901(m) and section 909 apply, such as, for example, the acquisition of a reverse hybrid with respect to which a section 338 election is made. The acquisition is a CAA under section 901(m), and the reverse hybrid structure is a specified foreign tax credit splitting event under the section 909 regulations. The comment recommended that, given the complexity of the calculation of disqualified tax amounts under section 901(m), those calculations should be made first and section 909 should then be applied to determine whether any of the remaining foreign taxes are suspended.

The Treasury Department and IRS agree with the comment that if section 901(m) and section 909 apply to the same transaction, the section 901(m) calculations should be undertaken before applying section 909. However, the comment's recommendation implied that only the portion of the foreign taxes that are not disqualified under section 901(m) are subject to potential suspension under section 909. The Treasury Department and IRS disagree with this implication. Section 909 defers taking into account foreign taxes for purposes of claiming a foreign tax credit or claiming a deduction. Foreign taxes that are disqualified for foreign tax credit purposes under section 901(m) but remain eligible to be deducted may be subject to deferral under section 909 as well. The comment's suggestion is adopted with these clarifications. See § 1.901(m)–8(d).

7. Changes Related to the Tax Cuts and Jobs Act (TCJA)

The final regulations reflect modifications to the rules contained in the 2016 proposed regulations necessary to reflect statutory changes by the TCJA, Public Law 115–97 (2017). References to section 902 corporations are replaced with references to applicable foreign corporations, which consist of section 902 corporations before the applicability of the TCJA modifications to the foreign tax credit rules and controlled foreign corporations thereafter. See § 1.901(m)–1(a)(7). In addition, a definition of separate category is added and utilized to address the income groupings required under section 960 following TCJA. See § 1.901(m)–1(a)(42).

8. Applicability Dates

The 2016 proposed regulations were generally proposed to apply to CAAs occurring on or after the date of publication of the final regulations. However, the 2016 proposed regulations also provided that taxpayers could rely on the rules therein before they would otherwise be applicable, provided that taxpayers consistently applied proposed § 1.901(m)–2 (excluding § 1.901(m)–2(d)) to all CAAs occurring on or after December 7, 2016, and consistently applied § 1.704–1(b)(4)(viii)(*c*)(*4*)(*v*) through (*vii*), § 1.901(m)–1, and §§ 1.901(m)–3 through 1.901(m)–8 (excluding § 1.901(m)–4(e)) to all CAAs occurring on or after January 1, 2011. For this purpose, persons that are related (within the meaning of section 267(b) or 707(b)) were treated as a single taxpayer.

In order to be consistent with the revised applicability of the foreign basis election, as discussed in Part 3 of this Summary of Comments and Explanation of Revisions section, and allow the rules in the final regulations to be applied retroactively, the final regulations provide that taxpayers may choose to apply the rules before they would otherwise be applicable, provided that the consistency requirements described in the preceding paragraph are met, on any original or amended tax return for each taxable year for which the application of the provisions affects the tax liability and for which the statute of limitations does not preclude assessment or the filing of a claim for refund, as applicable. The relevant tax returns for taxable years ending before March 23, 2020, must be filed no later than March 23, 2021. In the case of taxable years that are not open for assessment, appropriate adjustments must be made to take into account deficiencies that would have resulted from the consistent application of the applicable provisions.

Special Analyses

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

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. In general, foreign corporations are not considered small entities. Nor are U.S. taxpayers considered small entities to the extent the taxpayers are natural persons or entities other than small entities. Small entities are significantly less likely to engage in the types of transactions addressed by the regulations than U.S. multinational corporations. Moreover, the de minimis rules discussed in Part 5 of the Summary of Comments and Explanation of Revisions section further limit the number of small entities likely to be subject to the regulations.

Pursuant to section 7805(f), the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. No comments were received.

Drafting Information

The principal author of these regulations is Jeffrey L. Parry of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by removing entries for §§ 1.901(m)–1T through 1.901(m)–8T and § 1.901(m)–5T and adding entries for §§ 1.901(m)–1 through 1.901(m)–8 and § 1.901(m)–5 in numerical order to read as follows:

Authority: 26 U.S.C. 7805.

* * * * *

Sections 1.901(m)–1 through 1.901–8 also issued under 26 U.S.C. 901(m)(7).

Section 1.901(m)–5 also issued under 26 U.S.C. 901(m)(3)(B)(ii).

* * * * *

■ **Par. 2.** Section 1.704–1 is amended by adding paragraphs (b)(1)(ii)(*b*)(*4*) and (b)(4)(viii)(*c*)(*4*)(*v*) through (*vii*) to read as follows:

§ 1.704–1 Partner's distributive share.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(*b*) * * *

(*4*) *Special rules for covered asset acquisitions.* Paragraphs (b)(4)(viii)(*c*)(*4*)(*v*) through (*vii*) of this section apply to covered asset acquisitions (CAAs) (as defined in § 1.901(m)–1(a)(13)) occurring on or after March 23, 2020. Taxpayers may, however, choose to apply paragraphs (b)(4)(viii)(*c*)(*4*)(*v*) through (*vii*) of this section before the date paragraphs (b)(4)(viii)(*c*)(*4*)(*v*) through (*vii*) of this section are applicable provided that they (along with any persons that are related (within the meaning of section 267(b) or 707(b)) to the taxpayer)—

(*i*) Consistently apply paragraphs (b)(4)(viii)(*c*)(*4*)(*v*) through (*vii*) of this section, § 1.901(m)–1, and §§ 1.901(m)–3 through 1.901(m)–8 (excluding § 1.901(m)–4(e)) to all CAAs occurring on or after January 1, 2011, and consistently apply § 1.901(m)–2 (excluding § 1.901(m)–2(d)) to all CAAs occurring on or after December 7, 2016, on any original or amended tax return for each taxable year for which the application of the provisions listed in this paragraph (b)(1)(ii)(*b*)(*4*)(*i*) affects the tax liability and for which the statute of limitations does not preclude assessment or the filing of a claim for refund, as applicable;

(*ii*) File all tax returns described in paragraph (b)(1)(ii)(*b*)(*4*)(*i*) of this section for any taxable year ending on or before March 23, 2020, no later than March 23, 2021; and

(*iii*) Make appropriate adjustments to take into account deficiencies that would have resulted from the consistent application under paragraph (b)(1)(ii)(*b*)(*4*)(*i*) of this section for taxable years that are not open for assessment.

* * * * *

(4) * * *

(viii) * * *

(*c*) * * *

(*4*) * * *

(*v*) *Adjustments related to section 901(m).* If one or more assets owned by a partnership are relevant foreign assets (or RFAs) with respect to a foreign income tax, then, solely for purposes of applying the safe harbor provisions of paragraph (b)(4)(viii)(*a*)(*1*) of this section to allocations of CFTEs with respect to that foreign income tax, the net income in a CFTE category that includes partnership items of income, deduction, gain, or loss attributable to the RFA shall be increased by the amount described in paragraph (b)(4)(viii)(*c*)(*4*)(*vi*) of this section and reduced by the amount described in paragraph (b)(4)(viii)(*c*)(*4*)(*vii*) of this section. Similarly, a partner's CFTE category share of income shall be increased by the portion of the amount described in paragraph (b)(4)(viii)(*c*)(*4*)(*vi*) of this section that is allocated to the partner under § 1.901(m)–5(d) and reduced by the

portion of the amount described in paragraph (b)(4)(viii)(*c*)(*4*)(*vii*) of this section that is allocated to the partner under § 1.901(m)–5(d). The principles of this paragraph (b)(4)(viii)(*c*)(*4*)(*v*) apply similarly when a partnership owns an RFA indirectly through one or more other partnerships. For purposes of this paragraph (b)(4)(viii)(*c*)(*4*)(*v*) and paragraphs (b)(4)(viii)(*c*)(*4*)(*vi*) and (b)(4)(viii)(*c*)(*4*)(*vii*) of this section, basis difference is defined in § 1.901(m)–4, cost recovery amount is defined in § 1.901(m)–5(b)(2), disposition amount is defined in § 1.901(m)–5(c)(2), foreign income tax is defined in § 1.901(m)–1(a)(26), RFA is defined in § 1.901(m)–2(c), U.S. disposition gain is defined in § 1.901(m)–1(a)(52), and U.S. disposition loss is defined in § 1.901(m)–1(a)(53).

(*vi*) *Adjustment amounts for RFAs with a positive basis difference.* With respect to RFAs with a positive basis difference, the amount referenced in paragraph (b)(4)(viii)(*c*)(*4*)(*v*) of this section is the sum of any cost recovery amounts and disposition amounts attributable to U.S. disposition loss that correspond to partnership items that are included in the net income in the CFTE category and that are taken into account for the U.S. taxable year of the partnership under § 1.901(m)–5(d).

(*vii*) *Adjustment amounts for RFAs with a negative basis difference.* With respect to RFAs with a negative basis difference, the amount referenced in paragraph (b)(4)(viii)(*c*)(*4*)(*v*) of this section is the sum of any cost recovery amounts and disposition amounts attributable to U.S. disposition gain that correspond to partnership items that are included in the net income in the CFTE category and that are taken into account for the U.S. taxable year of the partnership under § 1.901(m)–5(d).

* * * * *

■ **Par. 3.** Section 1.901(m)–1 is added to read as follows:

§ 1.901(m)–1 Definitions.

(a) *Definitions.* For purposes of section 901(m), this section, and §§ 1.901(m)–2 through 1.901(m)–8, the following definitions apply:

(1) The term *aggregate basis difference* means, with respect to a foreign income tax and a foreign payor, the sum of the allocated basis differences and the allocated basis difference adjustments for a U.S. taxable year of a section 901(m) payor, plus any aggregate basis difference carryover from the immediately preceding U.S. taxable year of the section 901(m) payor with respect to the foreign income tax and foreign payor, as adjusted under § 1.901(m)–6(c). For purposes of this definition, if foreign law imposes tax on the combined income (within the meaning of § 1.901–2(f)(3)(ii)) of two or more foreign payors, all foreign payors whose items of income, deduction, gain, or loss are included in the U.S. taxable income or earnings and profits of the section 901(m) payor are treated as a single foreign payor. Aggregate basis difference is determined with respect to each separate category.

(2) The term *aggregate basis difference carryover* has the meaning provided in § 1.901(m)–3(c).

(3) The term *aggregated CAA transaction* means a series of related CAAs occurring as part of a plan.

(4) The term *allocable foreign income* means the portion of foreign income of a foreign payor that relates to the foreign income tax amount of the foreign payor that is paid or accrued by, or considered paid or accrued by, a section 901(m) payor.

(5) The term *allocated basis difference* means, with respect to an RFA and a foreign income tax, the sum of the cost recovery amounts and disposition amounts assigned to a U.S. taxable year of the section 901(m) payor under § 1.901(m)–5.

(6) The term *allocated basis difference adjustment* means an adjustment to a section 901(m) payor's allocated basis difference with respect to an RFA and a foreign income tax for a U.S. taxable year. If the RFA has a positive basis difference, the allocated basis difference adjustment is equal to the lesser of the allocated basis difference or the portion of any unallocated CAA gain that corresponds to the CAA gain recognized by the section 901(m) payor or a member of the section 901(m) payor's consolidated group. If the RFA has a negative basis difference, the allocated basis difference adjustment is equal to the greater of the allocated basis difference or the portion of any unallocated CAA loss that corresponds to the CAA loss recognized by the section 901(m) payor or a member of the section 901(m) payor's consolidated group. For purposes of this paragraph, CAA gain or CAA loss recognized by the section 901(m) payor or a member of the section 901(m) payor's consolidated group includes their distributive share of CAA gain or CAA loss recognized by a partnership.

(7) The term *applicable foreign corporation* means—

(i) For taxable years of foreign corporations beginning before January 1, 2018, a section 902 corporation (as defined in section 909(d)(5) (as in effect on December 21, 2017)), and

(ii) For taxable years of foreign corporations beginning after December 31, 2017, a controlled foreign corporation (as defined in section 957).

(8) The term *basis difference* has the meaning provided in § 1.901(m)–4.

(9) The term *CAA gain* means the amount of gain recognized with respect to an RFA for U.S. tax purposes as a result of a CAA.

(10) The term *CAA loss* means the amount of loss recognized with respect to an RFA for U.S. tax purposes as a result of a CAA.

(11) The term *consolidated group* has the meaning provided in § 1.1502–1(h).

(12) The term *cost recovery amount* has the meaning provided in § 1.901(m)–5(b)(2).

(13) The term *covered asset acquisition* (or *CAA*) has the meaning provided in § 1.901(m)–2.

(14) The term *cumulative basis difference exemption* has the meaning provided in § 1.901(m)–7(b)(2).

(15) The term *disposition* means an event (for example, a sale, abandonment, or mark-to-market event) that results in gain or loss being recognized with respect to an RFA for purposes of U.S. income tax or a foreign income tax, or both.

(16) The term *disposition amount* has the meaning provided in § 1.901(m)–5(c)(2).

(17) The term *disqualified tax amount* has the meaning provided in § 1.901(m)–3(b).

(18) The term *disregarded entity* means an entity that is disregarded as an entity separate from its owner, as described in § 301.7701–2(c)(2)(i) of this chapter.

(19) The term *fiscally transparent entity* means an entity, including a disregarded entity, that is fiscally transparent under the principles of § 1.894–1(d)(3) for purposes of U.S. income tax or a foreign income tax (or both).

(20) The term *foreign basis* means the adjusted basis of an asset determined for purposes of a foreign income tax.

(21) The term *foreign basis election* has the meaning provided in § 1.901(m)–4(c).

(22) The term *foreign country creditable tax* (or *FCCT*) means, with respect to a foreign income tax amount, the amount of income, war profits, or excess profits tax paid or accrued to a foreign country or possession of the United States and claimed as a foreign tax credit for purposes of determining the foreign income tax amount. To qualify as a FCCT, the tax imposed by the foreign country or possession must be a foreign income tax or a withholding

tax determined on a gross basis as described in section 901(k)(1)(B).

(23) The term *foreign disposition gain* means, with respect to a foreign income tax, the amount of gain recognized on a disposition of an RFA in determining foreign income, regardless of whether the gain is deferred or otherwise not taken into account currently. Notwithstanding the foregoing, if after a section 743(b) CAA there is a disposition of an asset that is an RFA with respect to that section 743(b) CAA, foreign disposition gain has the meaning provided in § 1.901(m)–5(c)(2)(iii).

(24) The term *foreign disposition loss* means, with respect to a foreign income tax, the amount of loss recognized on a disposition of an RFA in determining foreign income, regardless of whether the loss is deferred or disallowed or otherwise not taken into account currently. Notwithstanding the foregoing, if after a section 743(b) CAA there is a disposition of an asset that is an RFA with respect to that section 743(b) CAA, foreign disposition loss has the meaning provided in § 1.901(m)–5(c)(2)(iii).

(25) The term *foreign income* means, with respect to a foreign income tax, the taxable income (or loss) reflected on a foreign tax return (as properly amended or adjusted), even if the taxable income (or loss) is reported by an entity that is a fiscally transparent entity for purposes of the foreign income tax. If, however, foreign law imposes tax on the combined income (within the meaning of § 1.901–2(f)(3)(ii)) of two or more foreign payors, foreign income means the combined taxable income (or loss) of such foreign payors, regardless of whether such income (or loss) is reflected on a single foreign tax return.

(26) The term *foreign income tax* means an income, war profits, or excess profits tax for which a credit is allowable under section 901 or section 903, except that it does not include any withholding tax determined on a gross basis as described in section 901(k)(1)(B).

(27) The term *foreign income tax amount* means, with respect to a foreign income tax, the amount of tax (including an amount of tax that is zero) reflected on a foreign tax return (as properly amended or adjusted). If foreign law imposes tax on the combined income (within the meaning of § 1.901–2(f)(3)(ii)) of two or more foreign payors, however, a foreign income tax amount means the amount of tax imposed on the combined income, regardless of whether the tax is reflected on a single foreign tax return.

(28) The term *foreign payor* means an individual or entity (including a disregarded entity) subject to a foreign income tax. If foreign law imposes tax on the combined income (within the meaning of § 1.901–2(f)(3)(ii)) of two or more individuals or entities, each such individual or entity is a foreign payor. An individual or entity may be a foreign payor with respect to more than one foreign income tax for purposes of applying section 901(m).

(29) The term *foreign taxable year* means a taxable year for purposes of a foreign income tax.

(30) The term *mid-year transaction* means a transaction in which a foreign payor that is a corporation or a disregarded entity has a change in ownership or makes an election pursuant to § 301.7701–3 to change its entity classification, or a transaction in which a foreign payor that is a partnership terminates under section 708(b)(1), provided in each case that the foreign payor's foreign taxable year does not close as a result of the transaction, and, if the foreign payor is a corporation or a partnership, the foreign payor's U.S. taxable year closes.

(31) The term *prior CAA* has the meaning provided in § 1.901(m)–6(b)(2).

(32) The term *prior section 743(b) CAA* has the meaning provided in § 1.901(m)–6(b)(4)(iii).

(33) The term *relevant foreign asset* (or *RFA*) has the meaning provided in § 1.901(m)–2.

(34) The term *reverse hybrid* has the meaning provided in § 1.909–2(b)(1)(iv).

(35) The term *RFA class exemption* has the meaning provided in § 1.901(m)–7(b)(3).

(36) The term *RFA exemption* has the meaning provided in § 1.901(m)–7(b)(4).

(37) The term *RFA owner (U.S.)* means a person that owns an RFA for U.S. income tax purposes.

(38) The term *RFA owner (foreign)* means an individual or entity (including a disregarded entity) that owns an RFA for purposes of a foreign income tax.

(39) The term *section 338 CAA* has the meaning provided in § 1.901(m)–2(b)(1).

(40) The term *section 743(b) CAA* has the meaning provided in § 1.901(m)–2(b)(3).

(41) The term *section 901(m) payor* means a person eligible to claim the foreign tax credit allowed under section 901(a), regardless of whether the person chooses to claim the foreign tax credit, as well as an applicable foreign corporation. Each member of a consolidated group is a separate section 901(m) payor. If individuals file a joint return, those individuals are treated as a single section 901(m) payor.

(42) The term *separate category* means each separate category described in § 1.904–5(a)(4)(v), and in the case of an applicable foreign corporation described in paragraph (a)(7)(ii) of this section, each income group described in § 1.960–1(d)(2)(ii).

(43) The term *subsequent CAA* has the meaning provided in § 1.901(m)–6(b)(4)(i).

(44) The term *subsequent section 743(b) CAA* has the meaning provided in § 1.901(m)–6(b)(4)(iii).

(45) The term *successor transaction* has the meaning provided in § 1.901(m)–6(b)(2).

(46) The term *tentative disqualified tax amount* has the meaning provided in § 1.901(m)–3(b)(2)(ii).

(47) The term *unallocated basis difference* means, with respect to an RFA and a foreign income tax, the basis difference reduced by the sum of the cost recovery amounts and the disposition amounts that have been computed under § 1.901(m)–5.

(48) The term *unallocated CAA gain* means, with respect to an RFA, the CAA gain reduced by the sum of the allocated basis difference adjustments that have been computed with respect to the RFA.

(49) The term *unallocated CAA loss* means, with respect to an RFA, the CAA loss reduced by the sum of the allocated basis difference adjustments that have been computed with respect to the RFA.

(50) The term *U.S. basis* means the adjusted basis of an asset determined for U.S. income tax purposes.

(51) The term *U.S. basis deduction* has the meaning provided in § 1.901(m)–5(b)(3).

(52) The term *U.S. disposition gain* means the amount of gain recognized for U.S. income tax purposes on a disposition of an RFA, regardless of whether the gain is deferred or otherwise not taken into account currently. Notwithstanding the foregoing, if after a section 743(b) CAA there is a disposition of an asset that is an RFA with respect to that section 743(b) CAA, U.S. disposition gain has the meaning provided in § 1.901(m)–5(c)(2)(iii).

(53) The term *U.S. disposition loss* means the amount of loss recognized for U.S. income tax purposes on a disposition of an RFA, regardless of whether the loss is deferred or disallowed or otherwise not taken into account currently. Notwithstanding the foregoing, if after a section 743(b) CAA there is a disposition of an asset that is an RFA with respect to that section 743(b) CAA, U.S. disposition loss has the meaning provided in § 1.901(m)–5(c)(2)(iii).

(54) The term *U.S. taxable year* means a taxable year as defined in section 7701(a)(23).

(b) *Applicability dates.* (1) Except as provided in paragraph (b)(2) of this section, this section applies to CAAs occurring on or after March 23, 2020.

(2) Paragraphs (a)(8), (12), (13), (15), (16), (18), (19), (23) through (26), (31) through (33), (39), (40), (43) through (45), (47), (50), and (52) through (54) of this section apply to CAAs occurring on or after July 21, 2014, and to CAAs occurring before that date resulting from an entity classification election made under § 301.7701–3 that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014. Paragraphs (a)(8), (12), (13), (15), (16), (18), (19), (23) through (26) through (33), (39), (40), (43) through (45), (47), (50), and (52) through (54) of this section also apply to CAAs occurring on or after January 1, 2011, and before July 21, 2014, other than CAAs occurring before July 21, 2014, resulting from an entity classification election made under § 301.7701–3 that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014, but only if the basis difference (within the meaning of section 901(m)(3)(C)(i)) in one or more RFAs with respect to the CAA had not been fully taken into account under section 901(m)(3)(B) either as of July 21, 2014, or, in the case of an entity classification election made under § 301.7701–3 that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014, before the transactions that are deemed to occur under § 301.7701–3(g) as a result of the change in classification.

(3) Taxpayers may, however, choose to apply provisions in this section before the date such provisions are applicable pursuant to paragraph (b)(1) or (2) of this section, provided that they (along with any persons that are related (within the meaning of section 267(b) or 707(b)) to the taxpayer)—

(i) Consistently apply this section, § 1.704–1(b)(4)(viii)(*c*)(*4*)(*v*) through (*vii*), and §§ 1.901(m)–3 through 1.901(m)–8 (excluding § 1.901(m)–4(e)) to all CAAs occurring on or after January 1, 2011, and consistently apply § 1.901(m)–2 (excluding § 1.901(m)–2(d)) to all CAAs occurring on or after December 7, 2016, on any original or amended tax return for each taxable year for which the application of the provisions listed in this paragraph (b)(3)(i) affects the tax liability and for which the statute of limitations does not preclude assessment or the filing of a claim for refund, as applicable;

(ii) File all tax returns described in paragraph (b)(3)(i) of this section for any taxable year ending on or before March 23, 2020, no later than March 23, 2021; and

(iii) Make appropriate adjustments to take into account deficiencies that would have resulted from the consistent application under paragraph (b)(3)(i) of this section for taxable years that are not open for assessment.

§ 1.901(m)–1T [Removed]

■ **Par. 4.** Section 1.901(m)–1T is removed.

■ **Par. 5.** Section 1.901(m)–2 is added to read as follows:

§ 1.901(m)–2 Covered asset acquisitions and relevant foreign assets.

(a) *In general.* Paragraph (b) of this section sets forth the transactions that are covered asset acquisitions (or CAAs). Paragraph (c) of this section provides rules for identifying assets that are relevant foreign assets (or RFAs) with respect to a CAA. Paragraph (d) of this section provides special rules for identifying CAAs and RFAs with respect to transactions to which paragraphs (b) and (c) of this section do not apply. Paragraph (e) of this section provides examples illustrating the rules of this section, and paragraph (f) of this section provides applicability dates.

(b) *Covered asset acquisitions.* Except as provided in paragraph (d) of this section, the transactions set forth in this paragraph (b) are CAAs.

(1) A qualified stock purchase (as defined in section 338(d)(3)) to which section 338(a) applies (*section 338 CAA*);

(2) Any transaction that is treated as an acquisition of assets for U.S. income tax purposes and treated as an acquisition of stock of a corporation (or disregarded) for foreign income tax purposes;

(3) Any acquisition of an interest in a partnership that has an election in effect under section 754 (*section 743(b) CAA*);

(4) Any transaction (or series of transactions occurring pursuant to a plan) to the extent it is treated as an acquisition of assets for purposes of U.S. income tax and as the acquisition of an interest in a fiscally transparent entity for purposes of a foreign income tax;

(5) Any transaction (or series of transactions occurring pursuant to a plan) to the extent it is treated as a partnership distribution of one or more assets the U.S. basis of which is determined by section 732(b) or 732(d) or to the extent it causes the U.S. basis of the partnership's remaining assets to be adjusted under section 734(b), provided the transaction results in an increase in the U.S. basis of one or more of the assets distributed by the partnership or retained by the partnership without a corresponding increase in the foreign basis of such assets; and

(6) Any transaction (or series of transactions occurring pursuant to a plan) to the extent it is treated as an acquisition of assets for purposes of both U.S. income tax and a foreign income tax, provided the transaction results in an increase in the U.S. basis without a corresponding increase in the foreign basis of one or more assets.

(c) *Relevant foreign asset*—(1) *In general.* Except as provided in paragraph (d) of this section, an RFA means, with respect to a foreign income tax and a CAA, any asset (including goodwill, going concern value, or other intangible) subject to the CAA that is relevant in determining foreign income for purposes of the foreign income tax.

(2) *RFA status with respect to a foreign income tax.* An asset is relevant in determining foreign income if income, deduction, gain, or loss attributable to the asset is taken into account in determining foreign income immediately after the CAA, or would be taken into account in determining foreign income immediately after the CAA if the asset were to give rise to income, deduction, gain, or loss at such time.

(3) *Subsequent RFA status with respect to another foreign income tax.* After a CAA, an asset will become an RFA with respect to another foreign income tax if, pursuant to a plan or series of related transactions that have a principal purpose of avoiding the application of section 901(m), an asset that was not relevant in determining foreign income for purposes of that foreign income tax immediately after the CAA becomes relevant in determining such foreign income. A principal purpose of avoiding section 901(m) will be deemed to exist if income, deduction, gain, or loss attributable to the asset is taken into account in determining such foreign income within the one-year period following the CAA, or would be taken into account in determining such foreign income during such time if the asset were to give rise to income, deduction, gain, or loss within the one-year period.

(d) *Identifying covered asset acquisitions and relevant foreign assets to which paragraphs (b) and (c) of this section do not apply.* For transactions occurring on or after January 1, 2011, and before July 21, 2014, other than transactions occurring before July 21, 2014, resulting from an entity classification election made under § 301.7701–3 of this chapter that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014, the transactions set forth under section

901(m)(2) are CAAs and the assets that are relevant foreign assets with respect to the CAA under section 901(m)(4) are RFAs.

(e) *Examples.* The following examples illustrate the rules of this section:

(1) *Example 1: CAA involving an acquisition of a partnership interest for foreign income tax purposes*—(i) *Facts.* (A) FPS is an entity organized in Country F that is treated as a partnership for both U.S. and Country F income tax purposes. FPS is owned equally by FC1 and FC2, each of which is a corporation organized in Country F and treated as a corporation for both U.S. and Country F income tax purposes. FPS has a single asset, Asset A. USP, a domestic corporation, owns all the interests in DE, a disregarded entity.

(B) Pursuant to the same transaction, USP acquires FC1's interest in FPS, and DE acquires FC2's interest in FPS. For U.S. income tax purposes, with respect to USP, the acquisition of the interests in FPS is treated as the acquisition of Asset A by USP. See Rev. Rul. 99–6, 1999–1 C.B. 432. For Country F tax purposes, the acquisitions of the interests of FPS by USP and DE are treated as acquisitions of partnership interests.

(ii) *Result.* The transaction is a CAA under paragraph (b)(4) of this section because it is treated as the acquisition of Asset A for U.S. income tax purposes and the acquisition of interests in a fiscally transparent entity for Country F tax purposes.

(2) *Example 2: CAA involving an asset acquisition for purposes of both U.S. income tax and a foreign income tax*—(i) *Facts.* (A) USP, a domestic corporation, wholly owns CFC1, a foreign corporation, and CFC1 wholly owns CFC2, also a foreign corporation. CFC1 and CFC2 are organized in Country F. CFC1 owns Asset A.

(B) In an exchange described in section 351, CFC1 transfers Asset A to CFC2 in exchange for CFC2 common stock and cash. CFC1 recognizes gain on the exchange under section 351(b). Under section 362(a), CFC2's U.S. basis in Asset A is increased by the gain recognized by CFC1. For Country F tax purposes, gain or loss is not recognized on the transfer of Asset A to CFC2, and therefore there is no increase in the foreign basis in Asset A.

(ii) *Result.* The transaction is a CAA under paragraph (b)(6) of this section because it is treated as an acquisition of Asset A by CFC2 for both U.S. and Country F income tax purposes, and it results in an increase in the U.S. basis of Asset A without a corresponding increase in the foreign basis of Asset A.

(3) *Example 3: RFA status determined immediately after CAA; application of principal purpose rule*—(i) *Facts.* (A) USP1 and USP2 are unrelated domestic corporations. USP1 wholly owns USSub, also a domestic corporation. On January 1 of Year 1, USP2 acquires all of the stock of USSub from USP1 in a qualified stock purchase (as defined in section 338(d)(3)) to which section 338(a) applies. Immediately after the acquisition, none of the income, deduction, gain, or loss attributable to any of the assets of USSub is taken into account in determining foreign income for purposes of a foreign income tax nor would such items be taken into account in determining foreign income for purposes of a foreign income tax immediately after the acquisition if such assets were to give rise to income, deduction, gain, or loss immediately after the acquisition.

(B) On December 1 of Year 1, USSub contributes all its assets to FSub, its wholly owned subsidiary, which is a corporation for both U.S. and Country X income tax purposes, in a transfer described in section 351 (subsequent transfer). USSub recognizes no gain or loss for U.S. or Country X income tax purposes as a result of the subsequent transfer. As a result of the subsequent transfer, income, deduction, gain, or loss attributable to the assets of USSub that were transferred to FSub is taken into account in determining foreign income of FSub for Country X tax purposes.

(ii) *Result.* (A) Under paragraph (b)(1) of this section, the acquisition by USP2 of the stock of USSub is a section 338 CAA. Under paragraph (c)(1) of this section, none of the assets of USSub are RFAs immediately after the CAA, because none of the income, deduction, gain, or loss attributable to such assets is taken into account for purposes of determining foreign income with respect to any foreign income tax immediately after the CAA (nor would such items be taken into account for purposes of determining foreign income immediately after the CAA if such assets were to give rise to income, deduction, gain, or loss at such time).

(B) Although the subsequent transfer is not a CAA under paragraph (b) of this section, the subsequent transfer causes the assets of USSub to become relevant in the hands of FSub in determining foreign income for Country X tax purposes. Because the subsequent transfer occurred within the one-year period following the CAA, it is presumed to have a principal purpose of avoiding section 901(m) under paragraph (c)(3) of this section. Accordingly, the assets of USSub with respect to the CAA occurring on January 1 of Year 1 become RFAs with respect to Country X tax as a result of the subsequent transfer. Thus, a basis difference with respect to Country X tax must be computed for the RFAs and taken into account under section 901(m).

(f) *Applicability dates.* (1) Except as provided in paragraph (f)(2) of this section, this section applies to CAAs occurring on or after March 23, 2020.

(2) Paragraphs (a), (b)(1) through (3), and (c)(1) of this section apply to transactions occurring on or after July 21, 2014, and to transactions occurring before that date resulting from an entity classification election made under § 301.7701–3 of this chapter that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014. Paragraph (d) of this section applies to transactions occurring on or after January 1, 2011, and before July 21, 2014, other than transactions occurring before July 21, 2014, resulting from an entity classification election made under § 301.7701–3 of this chapter that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014.

(3) Taxpayers may, however, choose to apply provisions in this section before the date such provisions are applicable pursuant to paragraph (f)(1) or (2) of this section, provided that they (along with any persons that are related (within the meaning of section 267(b) or 707(b)) to the taxpayer)—

(i) Consistently apply this section (excluding paragraph (d) of this section) to all CAAs occurring on or after December 7, 2016 and consistently apply § 1.704–1(b)(4)(viii)(*c*)(*4*)(*v*) through (*vii*), § 1.901(m)–1, and §§ 1.901(m)–3 through 1.901(m)–8 (excluding § 1.901(m)–4(e)) to all CAAs occurring on or after January 1, 2011, on any original or amended tax return for each taxable year for which the application of the provisions listed in this paragraph (f)(3)(i) affects the tax liability and for which the statute of limitations does not preclude assessment or the filing of a claim for refund, as applicable;

(ii) File all tax returns described in paragraph (f)(3)(i) of this section for any taxable year ending on or before March 23, 2020, no later than March 23, 2021; and

(iii) Make appropriate adjustments to take into account deficiencies that would have resulted from the consistent application under paragraph (f)(3)(i) of this section for taxable years that are not open for assessment.

§ 1.901(m)–2T [Removed]

■ **Par. 6.** Section 1.901(m)–2T is removed.

■ **Par. 7.** Section 1.901(m)–3 is added to read as follows:

§ 1.901(m)–3 Disqualified tax amount and aggregate basis difference carryover.

(a) *In general.* If a section 901(m) payor has an aggregate basis difference, with respect to a foreign income tax and a foreign payor, for a U.S. taxable year, the section 901(m) payor must determine the portion of a foreign income tax amount that is disqualified under section 901(m) (*disqualified tax amount*). Paragraph (b) of this section provides rules for determining the disqualified tax amount. Paragraph (c) of this section provides rules for determining what portion, if any, of aggregate basis difference will be carried forward to the next U.S. taxable year (*aggregate basis difference carryover*). Paragraph (d) of this section provides applicability dates.

(b) *Disqualified tax amount*—(1) *In general.* A section 901(m) payor's disqualified tax amount is not taken into account in determining the credit allowed under section 901(a). If the section 901(m) payor is an applicable foreign corporation, the disqualified tax amount is not taken into account for purposes of section 902 (for tax years of foreign corporations beginning before January 1, 2018) or 960. Sections 78 and 275 do not apply to the disqualified tax amount. The disqualified tax amount is allowed as a deduction to the extent otherwise deductible. See sections 164, 212, and 964 and the regulations under those sections.

(2) *Determination of disqualified tax amount*—(i) *In general.* Except as provided in paragraph (b)(2)(iv) of this section, the disqualified tax amount is equal to the lesser of the foreign income tax amount that is paid or accrued by, or considered paid or accrued by, the section 901(m) payor for the U.S. taxable year or the tentative disqualified tax amount. All calculations are determined with respect to each separate category.

(ii) *Tentative disqualified tax amount.* The tentative disqualified tax amount is equal to the amount determined under paragraph (b)(2)(ii)(A) of this section reduced (but not below zero) by the amount described in paragraph (b)(2)(ii)(B) of this section.

(A) The product of—

(*1*) The sum of the foreign income tax amount and the FCCTs that are paid or accrued by, or considered paid or accrued by, the section 901(m) payor, and

(*2*) A fraction, the numerator of which is the aggregate basis difference, but not in excess of the allocable foreign income, and the denominator of which is the allocable foreign income.

(B) The amount of the FCCT that is a disqualified tax amount of the section 901(m) payor with respect to another foreign income tax.

(iii) *Allocable foreign income*—(A) *No allocation required.* Except as provided in paragraph (b)(2)(iii)(D) of this section, if the entire foreign income tax amount is paid or accrued by, or considered paid or accrued by, a single section 901(m) payor, then the allocable foreign income is equal to the entire foreign income, determined with respect to each separate category.

(B) *Allocation required.* Except as provided in paragraph (b)(2)(iii)(D) of this section, if the foreign income tax amount is allocated to, and considered paid or accrued by, more than one person, a section 901(m) payor's allocable foreign income is equal to the portion of the foreign income that relates to the foreign income tax amount allocated to that section 901(m) payor, determined with respect to each separate category.

(C) *Rules for allocations.* This paragraph (b)(2)(iii)(C) provides allocation rules that apply to determine allocable foreign income in certain cases.

(*1*) If the foreign payor is involved in a mid-year transaction and the foreign income tax amount is allocated under § 1.336–2(g)(3)(ii), § 1.338–9(d), or § 1.901–2(f)(4), then, to the extent any portion of the foreign income tax amount is allocated to, and considered paid or accrued by, a section 901(m) payor, the allocable foreign income of the section 901(m) payor is determined in accordance with the principles of § 1.1502–76(b). To the extent the foreign income tax amount is allocated to an entity that is a partnership for U.S. income tax purposes, a portion of the foreign income is first allocated to the partnership in accordance with the principles of § 1.1502–76(b), which is then allocated under the rules of paragraph (b)(2)(iii)(C)(*2*) of this section to determine the allocable foreign income of a section 901(m) payor that owns an interest in the partnership directly or indirectly through one or more other partnerships for U.S. income tax purposes.

(*2*) If the foreign income tax amount is considered paid or accrued by a section 901(m) payor for a U.S. taxable year under § 1.702–1(a)(6), the determination of the allocable foreign income must be consistent with the allocation of the foreign income tax amount that relates to the foreign income. See § 1.704–1(b)(4)(viii).

(*3*) If the foreign income tax amount that is allocated to, and considered paid or accrued by, a section 901(m) payor for a U.S. taxable year is determined under § 1.901–2(f)(3)(i), the allocable foreign income is determined in accordance with § 1.901–2(f)(3)(iii).

(D) *Failure to substantiate allocable foreign income.* If, pursuant to section 901(m)(3)(A), a section 901(m) payor fails to substantiate its allocable foreign income to the satisfaction of the Secretary, then allocable foreign income will equal the amount determined by dividing the sum of the foreign income tax amount and the FCCTs that are paid or accrued by, or considered paid or accrued by, the section 901(m) payor, by the highest marginal tax rate applicable to income of the foreign payor under foreign tax law.

(iv) *Special rule.* A section 901(m) payor's disqualified tax amount is zero for a U.S. taxable year if:

(A) The section 901(m) payor's aggregate basis difference for the U.S. taxable year is a negative amount;

(B) Foreign income is less than or equal to zero for the foreign taxable year of the foreign payor; or

(C) The foreign income tax amount that is paid or accrued by, or considered paid or accrued by, the section 901(m) payor for the U.S. taxable year is zero.

(3) *Examples.* The following examples illustrate the rules of paragraph (b)(2) of this section. For purposes of all the examples, unless otherwise specified: USP is a domestic corporation. CFC1, CFC2, DE1, and DE2 are organized in Country F and are treated as corporations for Country F tax purposes. CFC1 and CFC2 are applicable foreign corporations. DE1 and DE2 are disregarded entities. USP, CFC1, and CFC2 each have a calendar year for both U.S. and Country F income tax purposes, and DE1 and DE2 each have a calendar year for Country F tax purposes. Country F and Country G each impose a single tax that is a foreign income tax. CFC1, CFC2, DE1, and DE2 each have a functional currency of the u with respect to all activities. At all relevant times, 1u equals $1. All amounts are stated in millions. The examples assume that the applicable cost recovery method for property results in basis being recovered ratably over the life of the property beginning on the first day of the U.S. taxable year in which the property is acquired or placed into service; there is a single separate category with respect to a foreign income and foreign income tax amount; and a section 901(m) payor properly substantiates its allocable foreign income to the satisfaction of the Secretary.

(i) *Example 1: Determining aggregate basis difference; multiple foreign payors*—(A) *Facts.* CFC1 wholly owns CFC2 and DE1. DE1 wholly owns DE2. Assume that the tax laws of Country F do not allow combined income reporting or the filing of consolidated income tax returns. Accordingly, CFC1, CFC2, DE1, and DE2 file separate tax returns for Country F tax purposes. USP acquires all of the stock of CFC1 in a qualified stock purchase (as defined in section 338(d)(3)) to which section 338(a) applies for both CFC1 and CFC2.

(B) *Result.* (*1*) The acquisition of CFC1 gives rise to four separate CAAs under § 1.901(m)–2(b). The acquisition of the stock of CFC1 and the deemed purchase of the stock of CFC2 under section 338(h)(3)(B) are each a section 338 CAA under § 1.901(m)–2(b)(1). Furthermore, because the deemed purchase of the assets of DE1 and DE2 for U.S. income tax purposes is disregarded for Country F tax purposes, each acquisition is a CAA under § 1.901(m)–2(b)(2). Because these four CAAs occur pursuant to a plan, under § 1.901(m)–1(a)(3) they are part of an

aggregated CAA transaction. Under § 1.901(m)–1(a)(37), CFC1 is the RFA owner (U.S.) with respect to its assets and those of DE1 and DE2. CFC2 is the RFA owner (U.S.) with respect to its assets. Under § 1.901(m)–1(a)(28), CFC1, CFC2, DE1, and DE2 are each a foreign payor for Country F tax purposes. Under § 1.901(m)–1(a)(41), CFC1 is the section 901(m) payor with respect to foreign income tax amounts for which CFC1, DE1, and DE2 are the foreign payors (see § 1.901–2(f)(1) and (f)(4)(ii)). CFC2 is the section 901(m) payor with respect to foreign income tax amounts for which CFC2 is the foreign payor (see § 1.901–2(f)(1)).

(*2*) In determining aggregate basis difference under § 1.901(m)–1(a)(1) for a U.S. taxable year of CFC1, CFC1 has three computations with respect to Country F tax, because there are three foreign payors for Country F tax purposes whose foreign income tax amount, if any, is considered paid or accrued by CFC1 as the section 901(m) payor. Furthermore, for each U.S. taxable year, CFC1 will compute a separate disqualified tax amount and aggregate basis difference carryover (if any) under paragraph (b)(2) of this section, with respect to each foreign payor.

(*3*) In determining aggregate basis difference for a U.S. taxable year of CFC2 under § 1.901(m)–1(a)(1), CFC2 has a single computation with respect to Country F tax, because there is a single foreign payor (CFC2) for Country F tax purposes whose foreign income tax amount, if any, is considered paid or accrued by CFC2 as the section 901(m) payor. Furthermore, for each U.S. taxable year, CFC2 will compute a disqualified tax amount and aggregate basis difference carryover (if any) under paragraph (b)(2) of this section.

(C) *Alternative facts.* Assume the same facts as in paragraph (b)(3)(i)(A) of this section (paragraph (A) of this *Example 1*), except that foreign income for Country F tax purposes is based on combined income (within the meaning of § 1.901–2(f)(3)(ii)) of CFC1, CFC2, DE1, and DE2. For purposes of determining an aggregate basis difference for a U.S. taxable year of CFC1 under § 1.901(m)–1(a)(1), CFC1, DE1, and DE2 are treated as a single foreign payor because all of the items of income, deduction, gain, or loss with respect to CFC1, DE1, and DE2 are included in the earnings and profits of CFC1 for U.S. income tax purposes. For each U.S. taxable year, CFC1 will therefore compute a single aggregate basis difference, disqualified tax amount, and aggregate basis difference carryover. The result for CFC2 under the alternative facts is the same as in paragraph (b)(3)(i)(B)(*3*) (paragraph (B)(*3*) of this *Example 1*).

(ii) Example 2: Computation of disqualified tax amount—(A) *Facts.* On December 31 of Year 0, USP acquires all of the stock of CFC1 in a qualified stock purchase (as defined in section 338(d)(3)) to which section 338(a) applies (Acquisition). CFC1 owns four assets (Asset A, Asset B, Asset C, and Asset D, and collectively, Assets) and conducts activities in Country F and in a Country G branch. The activities conducted by CFC1 in Country G are not subject to tax in Country F. The tax rate is 25% in Country F and 30% in Country G. For Country F tax purposes, CFC1's foreign income and foreign income tax amount for each foreign taxable year 1 through 15 is 100u and $25 (25u translated at the exchange rate of $1 = 1u), respectively. For Country G tax purposes, CFC1's foreign income and foreign income tax amount for each foreign taxable year 1 through 5 is 400u and $120 (120u translated at the exchange rate of $1 = 1u), respectively. No dispositions occur for any of the Assets during the applicable cost recovery period. Additional facts relevant to each of the Assets are summarized below.

Assets	Relevant foreign income tax	Basis difference	Applicable cost recovery period (years)	Cost recovery amount
Asset A	Country F tax	150u	15	10u (150u/15).
Asset B	Country F tax	50u	5	10u (50u/5).
Asset C	Country G tax	300u	5	60u (300u/5).
Asset D	Country G tax	(100u)	5	negative 20u (negative 100/5).

(B) *Result.* (*1*) Under § 1.901(m)–2(b)(1), the acquisition of the stock of CFC1 is a section 338 CAA. Under § 1.901(m)–2(c)(1), Assets A and B are RFAs with respect to Country F tax, because they are relevant in determining foreign income of CFC1 for Country F tax purposes and were owned by CFC1 when the Acquisition occurred. Assets C and D are RFAs with respect to Country G tax, because they are relevant in determining foreign income of CFC1 for Country G tax purposes and were owned by CFC1 when the Acquisition occurred. Under § 1.901(m)–1(a)(37), CFC1 is the RFA owner (U.S.) with respect to all of the RFAs. Under § 1.901(m)–1(a)(41) and (28), CFC1 is the section 901(m) payor and the foreign payor for Country F and Country G tax purposes.

(*2*) In determining aggregate basis difference for a U.S. taxable year of CFC1, CFC1 has two computations, one with respect to Country F tax and one with respect to Country G tax. Under § 1.901(m)–1(a)(1), the aggregate basis difference for a U.S. taxable year with respect to Country F tax is equal to the sum of the allocated basis differences and allocated basis difference adjustments with respect to Assets A and B for the U.S. taxable year. Under § 1.901(m)–1(a)(5), allocated basis differences are the sum of cost recovery amounts and disposition amounts. Because there are no dispositions, the only allocated basis differences taken into account in determining an aggregate basis difference are cost recovery amounts. Under § 1.901(m)–5(b), any cost recovery amounts are attributed to CFC1, because CFC1 is the section 901(m) payor and RFA owner (U.S.) with respect to all of the Assets. For each U.S. taxable year, CFC1 will compute a separate disqualified tax amount and aggregate basis difference carryover (if any) with respect to Country F tax and Country G tax under paragraph (b)(2) of this section. For purposes of both disqualified tax amount computations, because CFC1 is the section 901(m) payor and foreign payor, the foreign income tax amount paid or accrued by CFC1 with respect to Country F tax and Country G tax, respectively, will be the entire foreign income tax amount and CFC1's allocable foreign income will be the entire foreign income.

(*3*) With respect to Country F tax, in U.S. taxable years 1 through 5, CFC1 has an aggregate basis difference of 20u each year (10u cost recovery amount with respect to Asset A plus 10u cost recovery amount with respect to Asset B). For U.S. taxable years 1 through 5, under paragraph (b)(2) of this section, the disqualified tax amount each year is $5, the lesser of two amounts: the tentative disqualified tax amount, in this case, $5 ($25 foreign income tax amount × (20u aggregate basis difference/100u allocable foreign income)), or the foreign income tax amount paid or accrued by CFC1, in this case, $25. After U.S. taxable year 5, Asset B has no unallocated basis difference with respect to Country F tax. Accordingly, in U.S. taxable years 6 through 15, CFC1 has an aggregate basis difference of 10u each year. Accordingly, for U.S. taxable years 6 through 15, the disqualified tax amount each year is $2.50, the lesser of two amounts: the tentative disqualified tax amount, in this case, $2.50 ($25 foreign income tax amount × (10u aggregate basis difference/100u allocable foreign income)), or the foreign income tax amount paid or accrued by CFC1, in this case, $25. After U.S. taxable year 15, Asset A has no unallocated basis difference with respect to Country F tax and, therefore, CFC1 has no disqualified tax amount with respect to Country F Tax.

(*4*) With respect to Country G tax, in U.S. taxable years 1 through 5, CFC1 has an aggregate basis difference of 40u each year (60u cost recovery amount with respect to Asset C + (20u) cost recovery amount with respect to Asset D). For U.S. taxable years 1 through 5, under paragraph (b)(2) of this

section, the disqualified tax amount each year is $12, the lesser of two amounts: the tentative disqualified tax amount, in this case, $12 ($120 foreign income tax amount × (40u aggregate basis difference/400u allocable foreign income)), or the foreign income tax amount paid or accrued by CFC1, in this case, $120. After U.S. taxable year 5, Asset C and Asset D have no unallocated basis difference with respect to Country G tax. Accordingly, in U.S. taxable years 6 through 15, CFC1 has no disqualified tax amount with respect to Country G Tax.

(iii) *Example 3: FCCT*—(A) *Facts.* In U.S. taxable year 1, USP acquires all of the interests in DE1 in a transaction (Transaction) that is treated as a stock acquisition for Country F tax purposes. Immediately after the Transaction, DE1 owns assets (Pre-Transaction Assets), all of which are used in a Country G branch and give rise to income that is taken into account for Country F tax and Country G tax purposes. After the Transaction, DE1 acquires additional assets (Post-Transaction Assets), which are not used by the Country G branch. Both Country F and Country G have a tax rate of 30%. Country F imposes worldwide tax on its residents and provides a foreign tax credit for taxes paid to other jurisdictions. In foreign taxable year 3, 100u of income is attributable to DE1's Post-Transaction Assets and 100u of income is attributable to DE1's Pre-Transaction Assets. For Country G tax purposes, the foreign income is 100u and foreign income tax amount is 30u (30% × 100u). For Country F tax purposes, the foreign income is 200u and the pre-foreign tax credit tax is 60u (30% × 200u). The 60u of Country F pre-foreign tax credit tax is reduced by the 30u foreign income tax amount imposed for Country G tax purposes. Thus, the foreign income tax amount for Country F tax purposes is $30 (30u translated into dollars at the exchange rate of $1 = 1u). Assume that for U.S. taxable year 3 USP has 100u aggregate basis difference with respect to Country F tax and 100u aggregate basis difference with respect to Country G tax. USP does not dispose of DE1 or any assets of DE1 in U.S. taxable year 3.

(B) *Result.* (*1*) Under § 1.901(m)–2(b)(2), the Transaction is a CAA. Under § 1.901(m)–2(c)(1), the Pre-Transaction Assets are RFAs with respect to both Country F tax and Country G tax, because they are relevant in determining the foreign income of DE1 for Country F tax and Country G tax purposes and were owned by DE1 when the Transaction occurred. Under § 1.901(m)–1(a)(37), USP is the RFA owner (U.S.) with respect to the RFAs. Under § 1.901(m)–1(a)(28), DE1 is a foreign payor for Country F tax and Country G tax purposes. Under § 1.901(m)–1(a)(41), USP is the section 901(m) payor with respect to foreign income tax amounts for which DE1 is the foreign payor (see § 1.901–2(f)(4)(ii)). Because the Country G foreign income tax amount is claimed as a credit for purposes of determining the Country F foreign income tax amount, the Country G foreign income tax amount is an FCCT under § 1.901(m)–1(a)(22).

(*2*) Under § 1.901(m)–1(a)(1), for each U.S. taxable year, USP will separately compute the aggregate basis difference with respect to Country F tax and with respect to Country G tax and will use those amounts to separately compute a disqualified tax amount and aggregate basis difference carryover (if any) with respect to each foreign income tax. Because DE1 is a disregarded entity owned by USP during the entire U.S. taxable year 3, the foreign income tax amount paid or accrued by DE1 is not subject to allocation. Accordingly, for purposes of each of the disqualified tax amount computations, the foreign income tax amount paid or accrued by USP with respect to Country F tax and Country G tax, respectively, is the entire foreign income tax amount paid or accrued by DE1, and, under paragraph (b)(2)(iii)(A) of this section, USP's allocable foreign income will be equal to DE1's entire foreign income.

(*3*) As stated in paragraph (b)(3)(iii)(A) of this section (paragraph (A) of this *Example 3*), for U.S. taxable year 3 USP has 100u aggregate basis difference with respect to Country F tax and 100u aggregate basis difference with respect to Country G tax. With respect to Country G tax, in U.S. taxable year 3, under paragraph (b)(2) of this section, the disqualified tax amount is $30, the lesser of the two amounts: the tentative disqualified tax amount, in this case, $30 ($30 foreign income tax amount × (100u aggregate basis difference/100u allocable foreign income)), or the foreign income tax amount considered paid or accrued by USP, in this case, $30.

(*4*) With respect to Country F tax, in U.S. taxable year 3, under paragraph (b)(2) of this section, the disqualified tax amount is $0, the lesser of two amounts: the tentative disqualified tax amount, in this case $0 (($30 foreign income tax amount + $30 Country G FCCT) × (100u aggregate basis difference/200u foreign income) = $30 reduced by $30 Country G FCCT that is a disqualified tax amount of USP), or the foreign income tax amount considered paid or accrued by USP, in this case, $30.

(c) *Aggregate basis difference carryover*—(1) *In general.* If a section 901(m) payor has an aggregate basis difference carryover for a U.S. taxable year, as determined under this paragraph (c), the aggregate basis difference carryover is taken into account in computing the section 901(m) payor's aggregate basis difference for the next U.S. taxable year. For successor rules that apply to an aggregate basis difference carryover, see § 1.901(m)–6(c).

(2) *Amount of aggregate basis difference carryover.* (i) If a section 901(m) payor's disqualified tax amount is zero, all of the section 901(m) payor's aggregate basis difference (positive or negative) for the U.S. taxable year gives rise to an aggregate basis difference carryover to the next U.S. taxable year.

(ii) If a section 901(m) payor's disqualified tax amount is not zero, then aggregate basis difference carryover can arise in either or both of the following two situations:

(A) If a section 901(m) payor's aggregate basis difference for the U.S. taxable year exceeds its allocable foreign income, the excess gives rise to an aggregate basis difference carryover.

(B) If the tentative disqualified tax amount exceeds the disqualified tax amount, the excess tentative disqualified tax amount is converted into aggregate basis difference carryover by multiplying such excess by a fraction, the numerator of which is the allocable foreign income, and the denominator of which is the sum of the foreign income tax amount and the FCCTs that are paid or accrued by, or considered paid or accrued by, the section 901(m) payor.

(3) *Example.* The following example illustrates the rules of paragraph (c) of this section.

(i) *Facts.* (A) On July 1 of Year 1, CFC1 acquires all of the interests of DE1 in a transaction (Transaction) that is treated as a stock acquisition for Country F tax purposes. CFC1 and DE1 are organized in Country F and are treated as corporations for Country F tax purposes. CFC1 is an applicable foreign corporation, and DE1 is a disregarded entity. CFC1 has a calendar year for U.S. income tax purposes, and DE1 has a June 30 year-end for Country F tax purposes. Country F imposes a single tax that is a foreign income tax. CFC1 and DE1 each have a functional currency of the u with respect to all activities. Immediately after the Transaction, DE1 owns one asset, Asset A, that gives rise to income that is taken into account for Country F tax purposes. For the first U.S. taxable year (U.S. taxable year 1) there is a cost recovery amount with respect to Asset A of 9u, and for each subsequent U.S. taxable year until the U.S. basis is fully recovered, there is a cost recovery amount with respect to Asset A of 18u. There is no disposition of Asset A.

(ii) *Result.* (A) Under § 1.901(m)–2(b)(2), the Transaction is a CAA. Under § 1.901(m)–2(c)(1), Asset A is an RFA with respect to Country F tax because it is relevant in determining the foreign income of DE1 for Country F tax purposes and was owned by DE1 when the Transaction occurred. Under § 1.901(m)–1(a)(37), CFC1 is the RFA owner (U.S.) with respect to Asset A. Under § 1.901(m)–1(a)(28), DE1 is a foreign payor for Country F tax purposes. Under § 1.901(m)–1(a)(41), CFC1 is the section 901(m) payor with respect to foreign income tax amounts for which DE1 is the foreign payor (see § 1.901–2(f)(4)(ii)).

(B) Under § 1.901(m)–1(a)(1), in determining the aggregate basis difference for U.S. taxable year 1, CFC1 has one computation with respect to Country F tax. Under § 1.901(m)–1(a)(1), aggregate basis difference with respect to Country F tax is equal to the sum of allocated basis differences and allocated basis difference adjustments with respect to all RFAs, which, in this case, is only Asset A. Under § 1.901(m)–1(a)(5), allocated basis differences are the sum of cost recovery amounts and disposition amounts. Because there is no

disposition of Asset A, the only allocated basis difference taken into account in determining an aggregate basis difference are cost recovery amounts with respect to Asset A. Under § 1.901(m)–5(b), any cost recovery amounts are assigned to a U.S taxable year of CFC1, because CFC1 is the section 901(m) payor and RFA owner (U.S.) with respect to Asset A. Under paragraph (b)(2) of this section, for each U.S. taxable year, CFC1 will compute a disqualified tax amount and aggregate basis difference carryover with respect to the aggregate basis difference. Because DE1 is a disregarded entity owned by CFC1, the foreign income tax amount paid or accrued by DE1 is not subject to allocation. Accordingly, for purposes of the disqualified tax amount computation, the foreign income tax amount paid or accrued by CFC1 with respect to Country F tax is the entire foreign income tax amount paid or accrued by DE1, and under paragraph (b)(2)(iii)(A) of this section, CFC1's allocable foreign income will be equal to DE1's entire foreign income.

(C) In U.S. taxable year 1, CFC1 has an aggregate basis difference of 9u (the 9u cost recovery amount with respect to Asset A for U.S. taxable year 1). However, because the foreign taxable year of DE1, the foreign payor, will not end between July 1 and December 31, there will not be a foreign income tax amount for U.S. taxable year 1. Because the foreign income tax amount considered paid or accrued by CFC1 for U.S. taxable year 1 is zero, under paragraph (b)(2)(iv) of this section, the disqualified tax amount for U.S. taxable year 1 of CFC1 is also zero. Furthermore, because the disqualified tax amount is zero, under paragraph (c)(2)(i) of this section, CFC1 has an aggregate basis difference carryover equal to 9u, the entire amount of the aggregate basis difference for U.S. taxable year 1. Under paragraph (c)(1) of this section, the 9u aggregate basis difference carryover is taken into account in computing CFC1's aggregate basis difference for U.S. taxable year 2. Accordingly, in U.S. taxable year 2, CFC1 has an aggregate basis difference of 27u (18u cost recovery amount for U.S. taxable year 2, plus 9u aggregate basis difference carryover from U.S. taxable year 1).

(d) *Applicability dates.* This section applies to CAAs occurring on or after March 23, 2020. Taxpayers may, however, choose to apply this section before the date this section is applicable provided that they (along with any persons that are related (within the meaning of section 267(b) or 707(b)) to the taxpayer)—

(1) Consistently apply this section, § 1.704–1(b)(4)(viii)(*c*)(*4*)(*v*) through (*vii*), § 1.901(m)–1, and §§ 1.901(m)–4 through 1.901(m)–8 (excluding § 1.901(m)–4(e)) to all CAAs occurring on or after January 1, 2011, and consistently apply § 1.901(m)–2 (excluding § 1.901(m)–2(d)) to all CAAs occurring on or after December 7, 2016, on any original or amended tax return for each taxable year for which the application of the provisions listed in this paragraph (d)(1) affects the tax liability and for which the statute of limitations does not preclude assessment or the filing of a claim for refund, as applicable

(2) File all tax returns described in paragraph (d)(1) of this section for any taxable year ending on or before March 23, 2020, no later than March 23, 2021; and

(3) Make appropriate adjustments to take into account deficiencies that would have resulted from the consistent application under paragraph (d)(1) of this section for taxable years that are not open for assessment.

§ 1.901(m)–3T [Removed]

■ **Par. 8.** Section 1.901(m)–3T is removed.

■ **Par. 9.** Section 1.901(m)–4 is added to read as follows:

§ 1.901(m)–4 Determination of basis difference.

(a) *In general.* This section provides rules for determining for each RFA the basis difference that arises as a result of a CAA. A basis difference is computed separately with respect to each foreign income tax for which an asset subject to a CAA is an RFA. Paragraph (b) of this section provides the general rule for determining basis difference that references only U.S. basis in the RFA. Paragraph (c) of this section provides for an election to determine basis difference by reference to foreign basis and sets forth the procedures for making the election. Paragraph (d) of this section provides special rules for determining basis difference in the case of a section 743(b) CAA. Paragraph (e) of this section provides a special rule for determining basis difference in an RFA with respect to a CAA to which paragraphs (b) through (d) of this section do not apply. Paragraph (f) of this section provides examples illustrating the rules of this section, and paragraph (g) of this section provides applicability dates.

(b) *General rule.* Except as otherwise provided in paragraphs (c), (d), and (e) of this section, basis difference is the U.S. basis in the RFA immediately after the CAA, less the U.S. basis in the RFA immediately before the CAA. Basis difference is an attribute that attaches to an RFA.

(c) *Foreign basis election.* (1) An election (*foreign basis election*) may be made to apply section 901(m)(3)(C)(i)(II) by reference to the foreign basis immediately after the CAA instead of the U.S. basis immediately before the CAA. Accordingly, if a foreign basis election is made, basis difference is the U.S. basis in the RFA immediately after the CAA, less the foreign basis in the RFA immediately after the CAA. For this purpose, the foreign basis immediately after the CAA takes into account any adjustment to that foreign basis resulting from the CAA for purposes of the foreign income tax.

(2) Except as otherwise provided in this paragraph (c), a foreign basis election is made by the RFA owner (U.S.). If, however, the RFA owner (U.S.) is a partnership, each partner in the partnership (and not the partnership) may independently make a foreign basis election. In the case of one or more tiered partnerships, the foreign basis election is made at the level at which a partner is not also a partnership.

(3) The foreign basis election may be made separately for each CAA, and with respect to each foreign income tax and each foreign payor. For purposes of making the foreign basis election, all CAAs that are part of an aggregated CAA transaction are treated as a single CAA. Furthermore, for purposes of making the foreign basis election, if foreign law imposes tax on the combined income (within the meaning of § 1.901–2(f)(3)(ii)) of two or more foreign payors, all foreign payors whose items of income, deduction, gain, or loss for U.S. income tax purposes are included in the U.S. taxable income or earnings and profits of a single section 901(m) payor are treated as a single foreign payor.

(4) A foreign basis election is made by using foreign basis to determine basis difference for purposes of computing a disqualified tax amount and an aggregate basis difference carryover for the U.S. taxable year, as provided under § 1.901(m)–3. A separate statement or form evidencing the foreign basis election need not be filed. Except as provided in paragraphs (c)(5) and (6) of this section, in order for a foreign basis election to be effective, the election must be reflected on a timely filed original federal income tax return (taking into account extensions) for the first U.S. taxable year that the foreign basis election is relevant to the computation of any amounts reported on such return, including on any required schedules.

(5) If the RFA owner (U.S.) is a partnership, a foreign basis election reflected on a partner's timely filed amended federal income tax return is also effective if all of the following conditions are satisfied:

(i) The partner's timely filed original federal income tax return (taking into account extensions) for the first U.S. taxable year of the partner in which a foreign basis election is relevant to the computation of any amounts reported

on such return, including on any required schedules, does not reflect the application of section 901(m);

(ii) The information provided by the partnership to the partner for purposes of applying section 901(m) and any information required to be reported by the partnership is based solely on computations that use foreign basis to determine basis difference; and

(iii) Before the due date of the original federal income tax return described in paragraph (c)(5)(i) of this section, the partner delegated the authority to the partnership to choose whether to provide the partner with information to apply section 901(m) using foreign basis, either pursuant to a written partnership agreement (within the meaning of § 1.704–1(b)(2)(ii)(*h*)) or written notice provided by the partner to the partnership.

(6) If, pursuant to paragraph (g)(3) of this section, a taxpayer chooses to have this section apply to CAAs occurring on or after January 1, 2011, a foreign basis election will be effective if the election is reflected on a timely filed amended federal income tax return (or tax returns, as applicable) filed no later than March 23, 2021.

(7) The foreign basis election is irrevocable. Relief under § 301.9100–1 is not available for the foreign basis election.

(d) *Determination of basis difference in a section 743(b) CAA*—(1) *In general.* Except as provided in paragraphs (d)(2) and (e) of this section, if there is a section 743(b) CAA, basis difference is the resulting basis adjustment under section 743(b) that is allocated to the RFA under section 755.

(2) *Foreign basis election.* If a foreign basis election is made with respect to a section 743(b) CAA, then, for purposes of paragraph (d)(1) of this section, the section 743(b) adjustment is determined by reference to the foreign basis of the RFA, determined immediately after the CAA.

(e) *Determination of basis difference in an RFA with respect to a CAA with respect to which paragraphs (b), (c), and (d) of this section do not apply.* For CAAs occurring on or after January 1, 2011, and before July 21, 2014, other than CAAs occurring before July 21, 2014, resulting from an entity classification election made under § 301.7701–3 of this chapter that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014, basis difference in an RFA with respect to the CAA is the amount of any basis difference (within the meaning of section 901(m)(3)(C)(i)) that had not been taken into account under section 901(m)(3)(B) either as of July 21, 2014, or, in the case of an entity classification election made under § 301.7701–3 of this chapter that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014, before the transactions that are deemed to occur under § 301.7701–3(g) as a result of the change in classification.

(f) *Examples.* The following examples illustrate the rules of this section:

(1) *Example 1: Scope of basis choice; identifying separate CAAs, RFA owners (U.S.), and foreign payors in an aggregated CAA transaction*—(i) *Facts.* CFC1 wholly owns CFC2, both of which are applicable foreign corporations, organized in Country F, and treated as corporations for Country F tax purposes. CFC1 also wholly owns DE1, and DE1 wholly owns DE2. DE1 and DE2 are entities organized in Country F treated as corporations for Country F tax purposes and as disregarded entities for U.S. income tax purposes. Country F imposes a single tax that is a foreign income tax. All of the stock of CFC1 is acquired in a qualified stock purchase (within the meaning of section 338(d)(3)) to which section 338(a) applies for both CFC1 and CFC2. For Country F tax purposes, the transaction is treated as an acquisition of the stock of CFC1.

(ii) *Result.* (A) The acquisition of CFC1 gives rise to four separate CAAs described in § 1.901(m)–2. Under § 1.901(m)–2(b)(1), the acquisition of the stock of CFC1 and the deemed acquisition of the stock of CFC2 under section 338(h)(3)(B) are each a section 338 CAA. Furthermore, because the deemed acquisition of the assets of each of DE1 and DE2 for U.S. income tax purposes is disregarded for Country F tax purposes, the deemed acquisitions are CAAs under § 1.901(m)–2(b)(2). Because the four CAAs occurred pursuant to a plan, under § 1.901(m)–1(a)(3), all of the CAAs are part of an aggregated CAA transaction. Under § 1.901(m)–1(a)(37), CFC1 is the RFA owner (U.S.) with respect to its assets and the assets of DE1 and DE2 that are RFAs. CFC2 is the RFA owner (U.S.) with respect to its assets that are RFAs. Under § 1.901(m)–1(a)(28), CFC1, CFC2, DE1, and DE2 are each a foreign payor for Country F tax purposes.

(B) Under paragraph (c) of this section, a foreign basis election may be made by the RFA owner (U.S.). The election is made separately with respect to each CAA (for this purpose, treating all CAAs that are part of an aggregated CAA transaction as a single CAA) and with respect to each foreign income tax and foreign payor. Thus, in this case, CFC1 can make a separate foreign basis election for one or more of the following three groups of RFAs: RFAs that are relevant in determining foreign income of CFC1; RFAs that are relevant in determining foreign income of DE1; and RFAs that are relevant in determining foreign income of DE2. Furthermore, CFC2 can make a foreign basis election for all of its RFAs that are relevant in determining its foreign income.

(2) *Example 2: Scope of basis choice; RFA owner (U.S.) is a partnership*—(i) *Facts.* USPS is a domestic partnership for which a section 754 election is in effect. USPS owns two assets, the stock of DE1 and DE2. DE1 is an entity organized in Country X and treated as a corporation for Country X tax purposes. DE2 is an entity organized in Country Y and treated as a corporation for Country Y tax purposes. DE1 and DE2 are disregarded entities. Country X and Country Y each impose a single tax that is a foreign income tax. US1 and US2, unrelated domestic corporations, and FP, a foreign person unrelated to US1 and US2, acquire partnership interests in USPS from existing partners of USPS pursuant to the same plan.

(ii) *Result.* Under § 1.901(m)–2(b)(3), the acquisitions of the partnership interests in USPS by US1, US2, and FP each give rise to separate section 743(b) CAAs, but under § 1.901(m)–1(a)(3), they are treated as an aggregated CAA transaction because they occur as part of a plan. Under § 1.901(m)–1(a)(37), USPS is the RFA owner (U.S.) with respect to the assets of DE1 and DE2 that are RFAs. Under § 1.901(m)–1(a)(28), DE1 is a foreign payor for Country X tax purposes, and DE2 is a foreign payor for Country Y tax purposes. Because the RFA owner (U.S.) is a partnership, paragraph (c)(2) of this section provides that US1, US2, and FP (the relevant partners in USPS) separately choose whether to make a foreign basis election for purposes of determining basis difference. Furthermore, under paragraph (c)(3) of this section, the choice to make the election is made separately by each partner with respect to each foreign payor. Thus, in this case, each partner may make separate elections for the RFAs that are relevant in determining foreign income of DE1 for Country X tax purposes and the RFAs that are relevant in determining foreign income of DE2 for Country Y tax purposes.

(g) *Applicability dates.* (1) Except as provided in paragraph (g)(2) of this section, this section applies to CAAs occurring on or after March 23, 2020.

(2) Paragraphs (a), (b), and (d)(1) of this section apply to CAAs occurring on or after July 21, 2014, and to CAAs occurring before that date resulting from an entity classification election made under § 301.7701–3 that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014. Paragraph (e) of this section applies to CAAs occurring on or after January 1, 2011, and before July 21, 2014, other than CAAs occurring before July 21, 2014, resulting from an entity classification election made under § 301.7701–3 of this chapter that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014. Taxpayers may, however, consistently apply paragraph (d)(1) of this section to all section 743(b) CAAs occurring on or after January 1, 2011. For this purpose, persons that are related (within the meaning of section 267(b) or 707(b)) will be treated as a single taxpayer.

(3) Taxpayers may, however, choose to apply provisions in this section before the date such provisions are applicable pursuant to paragraph (g)(1)

or (2) of this section, provided that they (along with any persons that are related (within the meaning of section 267(b) or 707(b)) to the taxpayer)—

(i) Consistently apply this section (excluding paragraph (e) of this section), § 1.704–1(b)(4)(viii)(*c*)(*4*)(*v*) through (*vii*), § 1.901(m)–1, § 1.901(m)–3, and §§ 1.901(m)–5 through 1.901(m)–8 to all CAAs occurring on or after January 1, 2011, and consistently apply § 1.901(m)–2 (excluding § 1.901(m)–2(d)) to all CAAs occurring on or after December 7, 2016, on any original or amended tax return for each taxable year for which the application of the provisions listed in this paragraph (g)(3)(i) affects the tax liability and for which the statute of limitations does not preclude assessment or the filing of a claim for refund, as applicable;

(ii) File all tax returns described in paragraph (g)(3)(i) of this section for any taxable year ending on or before March 23, 2020, no later than March 23, 2021; and

(iii) Make appropriate adjustments to take into account deficiencies that would have resulted from the consistent application under paragraph (g)(3)(i) of this section for taxable years that are not open for assessment.

§ 1.901(m)–4T [Removed]

■ **Par. 10.** Section 1.901(m)–4T is removed.

■ **Par. 11.** Section 1.901(m)–5 is added to read as follows:

§ 1.901(m)–5 Basis difference taken into account.

(a) *In general.* This section provides rules for determining the amount of basis difference with respect to an RFA that is taken into account in a U.S. taxable year for purposes of determining the disqualified portion of a foreign income tax amount. Paragraph (b) of this section provides rules for determining a cost recovery amount and assigning that amount to a U.S. taxable year of a single section 901(m) payor when the RFA owner (U.S.) is the section 901(m) payor. Paragraph (c) of this section provides rules for determining a disposition amount and assigning that amount to a U.S. taxable year of a single section 901(m) payor when the RFA owner (U.S.) is the section 901(m) payor. Paragraph (d) of this section provides rules for allocating cost recovery amounts and disposition amounts when the RFA owner (U.S.) is a fiscally transparent entity for U.S. income tax purposes. Paragraph (e) of this section provides special rules for allocating cost recovery amounts and disposition amounts with respect to certain section 743(b) CAAs. Paragraph (f) of this section provides special rules for allocating certain disposition amounts when a foreign payor is transferred in a mid-year transaction. Paragraph (g) of this section provides special rules for allocating both cost recovery amounts and disposition amounts in certain cases in which the RFA owner (U.S.) either is a reverse hybrid or a fiscally transparent entity for both U.S. and foreign income tax purposes that is directly or indirectly owned by a reverse hybrid. Paragraph (h) of this section provides examples illustrating the application of this section. Paragraph (i) of this section provides the applicability dates.

(b) *Basis difference taken into account under applicable cost recovery method*—(1) *In general.* When the RFA owner (U.S.) is a section 901(m) payor, all of a cost recovery amount is attributed to the section 901(m) payor and assigned to the U.S. taxable year of the section 901(m) payor in which the corresponding U.S. basis deduction is taken into account under the applicable cost recovery method. This is the case regardless of whether the deduction is deferred or disallowed for U.S. income tax purposes. If instead the RFA owner (U.S.) is a fiscally transparent entity for U.S. income tax purposes, a cost recovery amount is allocated to one or more section 901(m) payors under paragraph (d) of this section, except as provided in paragraphs (e) and (g) of this section. If a cost recovery amount arises from an RFA with respect to a section 743(b) CAA, in certain cases the cost recovery amount is allocated to a section 901(m) payor under paragraph (e) of this section. In certain cases in which the RFA owner (U.S.) either is a reverse hybrid or a fiscally transparent entity for both U.S. and foreign income tax purposes that is directly or indirectly owned by a reverse hybrid, a cost recovery amount is allocated to one or more section 901(m) payors under paragraph (g) of this section.

(2) *Determining a cost recovery amount*—(i) *General rule.* A cost recovery amount for an RFA is determined by applying the applicable cost recovery method to the basis difference rather than to the U.S. basis.

(ii) *U.S. basis subject to multiple cost recovery methods.* If the entire U.S. basis is not subject to the same cost recovery method, the applicable cost recovery method for determining the cost recovery amount is the cost recovery method that applies to the portion of the U.S. basis that corresponds to the basis difference.

(3) *Applicable cost recovery method.* For purposes of section 901(m), an applicable cost recovery method includes any method for recovering the cost of property over time for U.S. income tax purposes (each application of a method giving rise to a *U.S. basis deduction*). Such methods include depreciation, amortization, or depletion, as well as a method that allows the cost (or a portion of the cost) of property to be expensed in the year of acquisition or in the placed-in-service year, such as under section 179. Applicable cost recovery methods do not include any provision allowing the U.S. basis to be recovered upon a disposition of an RFA.

(c) *Basis difference taken into account as a result of a disposition*—(1) *In general.* Except as provided in paragraph (f) of this section, when the RFA owner (U.S.) is a section 901(m) payor, all of a disposition amount is attributed to the section 901(m) payor and assigned to the U.S. taxable year of the section 901(m) payor in which the disposition occurs. If instead the RFA owner (U.S.) is a fiscally transparent entity for U.S. income tax purposes, except as provided in paragraphs (e), (f), and (g) of this section, a disposition amount is allocated to one or more section 901(m) payors under paragraph (d) of this section. If a disposition amount arises from an RFA with respect to a section 743(b) CAA, in certain cases the disposition amount is allocated to a section 901(m) payor under paragraph (e) of this section. If there is a disposition of an RFA in a foreign taxable year of a foreign payor during which there is a mid-year transaction, in certain cases a disposition amount is allocated under paragraph (f) of this section. In certain cases in which the RFA owner (U.S.) either is a reverse hybrid or a fiscally transparent entity for both U.S. and foreign income tax purposes that is directly or indirectly owned by a reverse hybrid, a disposition amount is allocated to one or more section 901(m) payors under paragraph (g) of this section.

(2) *Determining a disposition amount*—(i) *Disposition is fully taxable for purposes of both U.S. income tax and the foreign income tax.* If a disposition of an RFA is fully taxable (that is, results in all gain or loss, if any, being recognized with respect to the RFA) for purposes of both U.S. income tax and the foreign income tax, the disposition amount is equal to the unallocated basis difference with respect to the RFA.

(ii) *Disposition is not fully taxable for purposes of U.S. income tax or the foreign income tax (or both).* If the disposition of an RFA is not fully taxable for purposes of both U.S. income tax and the foreign income tax, the disposition amount is determined under

this paragraph (c)(2)(ii). See § 1.901(m)–6 for rules regarding the continued application of section 901(m) if the RFA has any unallocated basis difference after determining the disposition amount under paragraph (c)(2)(ii)(A) or (B) of this section, as applicable.

(A) *Positive basis difference.* If the disposition of an RFA is not fully taxable for purposes of both U.S. income tax and the foreign income tax, and the RFA has a positive basis difference, the disposition amount equals the lesser of:

(*1*) Any foreign disposition gain plus any U.S. disposition loss (for this purpose, expressed as a positive amount), or

(*2*) Unallocated basis difference with respect to the RFA.

(B) *Negative basis difference.* If the disposition of an RFA is not fully taxable for purposes of both U.S. income tax and the foreign income tax, and the RFA has a negative basis difference, the disposition amount equals the greater of:

(*1*) Any U.S. disposition gain (for this purpose, expressed as a negative amount) plus any foreign disposition loss, or

(*2*) Unallocated basis difference with respect to the RFA.

(iii) *Disposition of an RFA after a section 743(b) CAA.* If an RFA was subject to a section 743(b) CAA and subsequently there is a disposition of the RFA, then, for purposes of determining the disposition amount, foreign disposition gain or foreign disposition loss are specially defined to mean the amount of gain or loss recognized for purposes of the foreign income tax on the disposition of the RFA that is allocable to the partnership interest that was transferred in the section 743(b) CAA. In addition, U.S. disposition gain or U.S. disposition loss are specially defined to mean the amount of gain or loss recognized for U.S. income tax purposes on the disposition of the RFA that is allocable to the partnership interest that was transferred in the section 743(b) CAA, taking into account the basis adjustment under section 743(b) that was allocated to the RFA under section 755.

(d) *General rules for allocating and assigning a cost recovery amount or a disposition amount when the RFA owner (U.S.) is a fiscally transparent entity*—(1) *In general.* Except as provided in paragraphs (e), (f), and (g) of this section, this paragraph (d) provides rules for allocating a cost recovery amount or a disposition amount when the RFA owner (U.S.) is a fiscally transparent entity for U.S. income tax purposes in which a section 901(m) payor directly or indirectly owns an interest, as well as for assigning the allocated amount to a U.S. taxable year of the section 901(m) payor. For purposes of this paragraph (d), unless otherwise indicated, a reference to direct or indirect ownership in an entity means for U.S. income tax purposes. For purposes of this paragraph (d), a person indirectly owns an interest in an entity for U.S. income tax purposes if the person owns the interest through one or more fiscally transparent entities for U.S. income tax purposes, and at least one of the fiscally transparent entities is not a disregarded entity. For purposes of this paragraph (d), a person indirectly owns an interest in an entity for foreign income tax purposes if the person owns the interest through one or more fiscally transparent entities for foreign income tax purposes. If the RFA owner (U.S.) is a lower-tier fiscally transparent entity for U.S. income tax purposes in which the section 901(m) payor indirectly owns an interest, the rules of this section apply in a manner consistent with the application of these rules when the section 901(m) payor directly owns an interest in the RFA owner (U.S.).

(2) *Allocation of a cost recovery amount.* A cost recovery amount is allocated to a section 901(m) payor that directly or indirectly owns an interest in the RFA owner (U.S.) to the extent the U.S. basis deduction that corresponds to the cost recovery amount is (or will be) included in the section 901(m) payor's distributive share of the income of the RFA owner (U.S.) for U.S. income tax purposes.

(3) *Allocation of a disposition amount attributable to foreign disposition gain or foreign disposition loss*—(i) *In general.* Except as provided in paragraph (f) of this section, a disposition amount attributable to foreign disposition gain or foreign disposition loss (as determined under paragraph (d)(5) of this section) is allocated under paragraph (d)(3)(ii) or (d)(3)(iii) of this section to a section 901(m) payor that directly or indirectly owns an interest in the RFA owner (U.S.).

(ii) *First allocation rule.* This paragraph (d)(3)(ii) applies when a section 901(m) payor, or a disregarded entity directly owned by a section 901(m) payor, is the foreign payor whose foreign income includes a distributive share of the foreign income of the RFA owner (foreign) and, therefore, all of the foreign income tax amount of the foreign payor is paid or accrued by, or considered paid by, the section 901(m) payor. Thus, this paragraph (d)(3)(ii) applies when the RFA owner (U.S.) is a fiscally transparent entity for both U.S. and foreign income tax purposes and a section 901(m) payor either directly owns an interest in the RFA owner (U.S.) or directly owns an interest in another fiscally transparent entity for U.S. and foreign income tax purposes, which, in turn, directly or indirectly owns an interest in the RFA owner (U.S.) for both U.S. and foreign income tax purposes. In these cases, the section 901(m) payor is allocated the portion of a disposition amount that is equal to the product of the disposition amount attributable to foreign disposition gain or foreign disposition loss, as applicable, and a fraction, the numerator of which is the portion of the foreign disposition gain or foreign disposition loss recognized by the RFA owner (foreign) for foreign income tax purposes that is (or will be) included in the foreign payor's distributive share of the foreign income of the RFA owner (foreign), and the denominator of which is the foreign disposition gain or foreign disposition loss.

(iii) *Second allocation rule.* This paragraph (d)(3)(iii) applies when neither a section 901(m) payor nor a disregarded entity directly owned by a section 901(m) payor is the foreign payor with respect to the foreign income of the RFA owner (foreign). Instead, a section 901(m) payor directly or indirectly owns an interest in the foreign payor, which is a fiscally transparent entity for U.S. income tax purposes (other than a disregarded entity directly owned by the section 901(m) payor), and, therefore, the section 901(m) payor is considered to pay or accrue only its allocated portion of the foreign income tax amount of the foreign payor. This will be the case when the foreign payor is either the RFA owner (U.S.), another fiscally transparent entity for U.S. income tax purposes (other than a disregarded entity directly owned by a section 901(m) payor) that directly or indirectly owns an interest in the RFA owner (U.S.) for both U.S. and foreign income tax purposes, or a disregarded entity directly owned by the RFA owner (U.S.). In these cases, the section 901(m) payor is allocated the portion of a disposition amount that is equal to the product of the disposition amount attributable to foreign disposition gain or foreign disposition loss, as applicable, and a fraction, the numerator of which is the portion of the foreign disposition gain or foreign disposition loss that is included in the allocable foreign income of the section 901(m) payor, and the denominator of which is the foreign disposition gain or foreign disposition loss. If allocable

foreign income is not otherwise required to be determined because there is no foreign income tax amount, the numerator is the portion of the foreign disposition gain or foreign disposition loss that would be included in the allocable foreign income of the section 901(m) payor if there were a foreign income tax amount.

(4) *Allocation of a disposition amount attributable to U.S. disposition gain or U.S. disposition loss.* A section 901(m) payor that directly or indirectly owns an interest in the RFA owner (U.S.) is allocated the portion of a disposition amount that is equal to the product of the disposition amount attributable to U.S. disposition gain or U.S. disposition loss (as determined under paragraph (d)(5) of this section), as applicable, and a fraction, the numerator of which is the portion of the U.S. disposition gain or U.S. disposition loss that is (or will be) included in the section 901(m) payor's distributive share of income of the RFA owner (U.S.) for U.S. income tax purposes, and the denominator of which is the U.S. disposition gain or U.S. disposition loss.

(5) *Determining the extent to which a disposition amount is attributable to foreign or U.S. disposition gain or loss*—(i) *RFA with a positive basis difference.* When there is a disposition of an RFA with a positive basis difference and the disposition results in either a foreign disposition gain or a U.S. disposition loss, but not both, the entire disposition amount is attributable to foreign disposition gain or U.S. disposition loss, as applicable, even if the disposition amount exceeds the foreign disposition gain or the absolute value of the U.S. disposition loss. If the disposition results in both a foreign disposition gain and a U.S. disposition loss, the disposition amount is attributable first to foreign disposition gain to the extent thereof, and the excess disposition amount, if any, is attributable to the U.S. disposition loss, even if the excess disposition amount exceeds the absolute value of the U.S. disposition loss.

(ii) *RFA with a negative basis difference.* When there is a disposition of an RFA with a negative basis difference and the disposition results in either a foreign disposition loss or a U.S. disposition gain, but not both, the entire disposition amount is attributable to foreign disposition loss or U.S. disposition gain, as applicable, even if the absolute value of the disposition amount exceeds the absolute value of the foreign disposition loss or the U.S. disposition gain. If the disposition results in both a foreign disposition loss and a U.S. disposition gain, the disposition amount is attributable first to foreign disposition loss to the extent thereof, and the excess disposition amount, if any, is attributable to the U.S. disposition gain, even if the absolute value of the excess disposition amount exceeds the U.S. disposition gain.

(6) *U.S. taxable year of a section 901(m) payor to which an allocated cost recovery amount or disposition amount is assigned.* A cost recovery amount or a disposition amount allocated to a section 901(m) payor under paragraph (d) of this section is assigned to the U.S. taxable year of the section 901(m) payor that includes the last day of the U.S. taxable year of the RFA owner (U.S.) in which, in the case of a cost recovery amount, the RFA owner (U.S.) takes into account the corresponding U.S. basis deduction (without regard to whether the deduction is deferred or disallowed for U.S. income tax purposes), or in the case of a disposition amount, the disposition occurs.

(e) *Special rules for certain section 743(b) CAAs.* If a section 901(m) payor acquires a partnership interest in a section 743(b) CAA, including a section 743(b) CAA with respect to a lower-tier partnership that results from a direct acquisition by the section 901(m) payor of an interest in an upper-tier partnership, and subsequently there is a cost recovery amount or a disposition amount that arises from an RFA with respect to that section 743(b) CAA, all of the cost recovery amount or the disposition amount is allocated to that section 901(m) payor. The U.S. taxable year of the section 901(m) payor to which the cost recovery amount or the disposition amount is assigned is the U.S. taxable year in which, in the case of a cost recovery amount, the section 901(m) payor takes into account the corresponding U.S. basis deduction (without regard to whether the deduction is deferred or disallowed for U.S. income tax purposes), or in the case of a disposition amount, the disposition occurs.

(f) *Mid-year transactions*—(1) *In general.* When a disposition of an RFA occurs in the same foreign taxable year that a foreign payor is involved in a mid-year transaction, the portion of the disposition amount that is attributable to foreign disposition gain or foreign disposition loss (as determined under paragraph (d)(5) of this section) is allocated to a section 901(m) payor and assigned to a U.S. taxable year of the section 901(m) payor under this paragraph (f). To the extent the disposition amount is attributable to U.S. disposition gain or U.S. disposition loss (as determined under paragraph (d)(5) of this section), see paragraph (c)(1) or (d) of this section, as applicable.

(2) *Allocation rule.* To the extent a disposition amount is attributable to foreign disposition gain or foreign disposition loss, a section 901(m) payor is allocated the portion of the disposition amount equal to the product of the disposition amount attributable to foreign disposition gain or foreign disposition loss, as applicable, and a fraction, the numerator of which is the portion of the foreign disposition gain or foreign disposition loss that is included in the allocable foreign income of the section 901(m) payor, and the denominator of which is the foreign disposition gain or foreign disposition loss. If allocable foreign income is not otherwise required to be determined because there is no foreign income tax amount, the numerator is the portion of the foreign disposition gain or foreign disposition loss that would be included in the allocable foreign income of the section 901(m) payor if there were a foreign income tax amount.

(3) *Assignment to a U.S. taxable year of a section 901(m) payor.* A disposition amount allocated to a section 901(m) payor under paragraph (f)(2) of this section is assigned to the U.S. taxable year of the section 901(m) payor in which the foreign disposition gain or foreign disposition loss (or portion thereof) is included in allocable foreign income of the section 901(m) payor or, if allocable foreign income is not otherwise required to be determined because there is no foreign income tax amount, the U.S. taxable year in which the foreign disposition gain or foreign disposition loss would be included in allocable foreign income if there were a foreign income tax amount.

(g) *Reverse hybrids*—(1) *In general.* This paragraph (g) provides rules for allocating a cost recovery amount or a disposition amount when the RFA owner (U.S.) is either a reverse hybrid or a fiscally transparent entity for U.S. and foreign income tax purposes that is directly or indirectly owned by a reverse hybrid for U.S. and foreign income tax purposes, and in each case, the foreign payor whose foreign income includes a distributive share of the foreign income of the RFA owner (foreign) directly or indirectly owns an interest in the reverse hybrid for foreign income tax purposes. Application of the allocation rules under paragraphs (g)(2) and (g)(3) of this section depend upon whether a section 901(m) payor or a disregarded entity directly owned by a section 901(m) payor is the foreign payor, or, instead, a section 901(m) payor directly or indirectly owns an interest in the foreign payor. For purposes of this

paragraph (g), unless otherwise indicated, a reference to direct or indirect ownership in an entity means for U.S. income tax purposes. For purposes of this paragraph (g), a person indirectly owns an interest in an entity for U.S. income tax purposes if the person owns the interest through one or more fiscally transparent entities for U.S. income tax purposes, and at least one of the fiscally transparent entities is not a disregarded entity. For purposes of this paragraph (g), a person indirectly owns an interest in an entity for foreign income tax purposes if the person owns the interest through one or more fiscally transparent entities for foreign income tax purposes. If the RFA owner (U.S.) is a lower-tier fiscally transparent entity for U.S. income tax purposes in which the reverse hybrid indirectly owns an interest, the rules of this section apply in a manner consistent with the application of these rules when the reverse hybrid directly owns an interest in the RFA owner (U.S.).

(2) *First allocation rule*—(i) *Allocation to a section 901(m) payor.* This paragraph (g)(2)(i) applies when a section 901(m) payor, or a disregarded entity directly owned by a section 901(m) payor, is the foreign payor whose foreign income includes a distributive share of the foreign income of the RFA owner (foreign), and, therefore, all of the foreign income tax amount of the foreign payor is paid or accrued by, or considered paid or accrued by, the section 901(m) payor. Thus, this paragraph (g)(2)(i) applies when a section 901(m) payor either directly owns an interest in the reverse hybrid or directly owns an interest in a fiscally transparent entity for U.S. and foreign income tax purposes, which, in turn, directly or indirectly owns an interest in the reverse hybrid for both U.S. and foreign income tax purposes. In these cases, the section 901(m) payor is allocated the portions of cost recovery amounts or disposition amounts (or both) with respect to RFAs that are equal to the product of the sum of the cost recovery amounts and the disposition amounts and a fraction, the numerator of which is the portion of the foreign income of the RFA owner (foreign) that is included in the foreign income of the foreign payor, and the denominator of which is the foreign income of the RFA owner (foreign).

(ii) *Assignment to a U.S. taxable year of a section 901(m) payor.* This paragraph (g)(2)(ii) applies when a cost recovery amount or a disposition amount, or portion thereof, is allocated to a section 901(m) payor under paragraph (g)(2)(i) of this section. If the reverse hybrid is the RFA owner (U.S.), a cost recovery amount or disposition amount, or portion thereof, is assigned to the U.S. taxable year of the section 901(m) payor that includes the last day of the U.S. taxable year of the reverse hybrid in which, in the case of a cost recovery amount, the reverse hybrid takes into account the corresponding U.S. basis deduction (without regard to whether the deduction is deferred or disallowed for U.S. income tax purposes), or, in the case of a disposition amount, the disposition occurs. If the reverse hybrid is not the RFA owner (U.S.) but instead the reverse hybrid directly or indirectly owns an interest in the RFA owner (U.S.) for both U.S. and foreign income tax purposes, a cost recovery amount or disposition amount, or portion thereof, is assigned to the U.S. taxable year of the section 901(m) payor that includes the last day of the U.S. taxable year of the reverse hybrid, which, in turn, includes the last day of the U.S. taxable year of the RFA owner (U.S.) in which, in the case of a cost recovery amount, the RFA owner (U.S.) takes into account the corresponding U.S. basis deduction (without regard to whether the deduction is deferred or disallowed for U.S. income tax purposes), or, in the case of a disposition amount, the disposition occurs.

(3) *Second allocation rule*—(i) *Allocation to a section 901(m) payor.* This paragraph (g)(3)(i) applies when neither a section 901(m) payor nor a disregarded entity directly owned by a section 901(m) payor is the foreign payor with respect to the foreign income of the RFA owner (foreign). Instead, a section 901(m) payor directly or indirectly owns an interest in the foreign payor, which is a fiscally transparent entity for U.S. income tax purposes (other than a disregarded entity directly owned by the section 901(m) payor), and, therefore, the section 901(m) payor is considered to pay or accrue only its allocated portion of the foreign income tax amount of the foreign payor. In these cases, the section 901(m) payor is allocated the portions of cost recovery amounts or disposition amounts (or both) with respect to RFAs that are equal to the product of the sum of the cost recovery amounts and the disposition amounts and a fraction, the numerator of which is the portion of the foreign income of the RFA owner (foreign) that is included in the foreign income of the foreign payor and included in the allocable foreign income of the section 901(m) payor, and the denominator of which is the foreign income of the RFA owner (foreign). If allocable foreign income is not otherwise required to be determined for a section 901(m) payor because there is no foreign income tax amount, the numerator is the foreign income of the RFA owner (foreign) that is included in the foreign income of the foreign payor and that would be included in allocable foreign income of the section 901(m) payor if there were a foreign income tax amount.

(ii) *Assignment to a U.S. taxable year of a section 901(m) payor.* A cost recovery amount or a disposition amount, or portion thereof, that is allocated to a section 901(m) payor under paragraph (g)(3)(i) of this section is assigned to the U.S. taxable year of the section 901(m) payor in which the foreign income of the RFA owner (foreign) described in paragraph (g)(3)(i) of this section is included in the allocable foreign income of the section 901(m) payor, or, if there is no foreign income tax amount, the U.S. taxable year of the section 901(m) payor in which the foreign income of the RFA owner (foreign) described in paragraph (g)(3)(i) of this section would be included in allocable foreign income if there were a foreign income tax amount.

(h) *Examples.* The following examples illustrate the rules of this section. In addition to any facts described in a particular example, the following facts apply to all the examples unless otherwise specified: CFC1, CFC2, and DE are organized in Country F and treated as corporations for Country F tax purposes. CFC1 and CFC2 are each an applicable foreign corporation that is wholly owned by the same U.S. corporation, and DE is a disregarded entity. CFC1 and CFC2 each have a U.S. taxable year that is a calendar year, and CFC1, CFC2, and DE each have a foreign taxable year that is a calendar year. Country F imposes a single tax that is a foreign income tax. CFC1, CFC2, and DE each have a functional currency of the u with respect to all activities. At all relevant times, 1u equals $1. All amounts are stated in millions. The examples assume that the applicable cost recovery method for property results in basis being recovered ratably over the life of the property beginning on the first day of the U.S. taxable year in which the property is acquired or placed into service.

(1) *Example 1: CAA followed by disposition: Fully taxable for both U.S. income tax and foreign income tax purposes*—(i) *Facts.* (A) On January 1, Year 1, USP acquires all of the stock of CFC1 in a qualified stock purchase (as defined in section 338(d)(3)) to which section 338(a) applies (Section 338 Acquisition). At the time of the Section 338 Acquisition, CFC1 owns a single asset (Asset A) that is located

in Country F. Asset A gives rise to income that is taken into account for Country F tax purposes. Asset A is tangible personal property that, under the applicable cost recovery method in the hands of CFC1, is depreciable over 5 years. There are no cost recovery deductions available for Country F tax purposes with respect to Asset A. Immediately before the Section 338 Acquisition, Asset A has a U.S. basis of 10u and a foreign basis of 40u. Immediately after the Section 338 Acquisition, Asset A has a U.S. basis of 100u and foreign basis of 40u.

(B) On July 1, Year 2, Asset A is transferred to an unrelated thirdparty in exchange for 120u in a transaction in which all realized gainis recognized for both U.S. income tax and Country F tax purposes(subsequent transaction). For U.S. income tax purposes, CFC1recognizes U.S. disposition gain of 50u (amount realized of 120u, lessU.S. basis of 70u (100u cost basis, less 30u of accumulateddepreciation)) with respect to Asset A. The 30u of accumulateddepreciation is the sum of 20u of depreciation in Year 1 (100u costbasis/5 years) and 10u of depreciation in Year 2 ((100u cost basis/5years) × 6/12). For Country F tax purposes, CFC1 recognizes foreigndisposition gain of 80u (amount realized of 120u, less foreign basisof 40u) with respect to Asset A. Immediately after the subsequenttransaction, Asset A has a U.S. basis and a foreign basis of 120u.

(ii) *Result.* (A) Under § 1.901(m)–2(b)(1), USP's acquisition of the stock of CFC1 in the Section 338 Acquisition is a section 338 CAA. Under § 1.901(m)–2(c)(i), Asset A is an RFA with respect to Country F tax because it is relevant in determining the foreign income of CFC1 for Country F tax purposes. Under § 1.901(m)–4(b), the basis difference with respect to Asset A is 90u (100u − 10u). Under § 1.901(m)–1(a)(37), CFC1 is the RFA owner (U.S.) with respect to Asset A. Under § 1.901(m)–1(a)(28), CFC1 is a foreign payor for Country F tax purposes. Under § 1.901(m)–1(a)(41), CFC1 is the section 901(m) payor with respect to a foreign income tax amount for which CFC1 is the foreign payor (see § 1.901–2(f)(1)).

(B) Under § 1.901(m)–1(a)(5), allocated basis differences are the sum of cost recovery amounts and disposition amounts. In Year 1, Asset A has an allocated basis difference that includes only a cost recovery amount. Under paragraph (b)(2) of this section, the cost recovery amount for Year 1 is determined by applying the applicable cost recovery method of Asset A in the hands of CFC1 to the basis difference with respect to Asset A. Accordingly, the cost recovery amount is 18u (90u basis difference/5 years). Under paragraph (b)(1) of this section, all of the 18u cost recovery amount is attributed to CFC1 and assigned to Year 1, because CFC1 is a section 901(m) payor and RFA owner (U.S.) with respect to Asset A and Year 1 is the U.S. taxable year of CFC1 in which it takes into account the corresponding 20u of depreciation. Immediately after Year 1, under § 1.901(m)–1(a)(47), unallocated basis difference is 72u with respect to Asset A (90u − 18u).

(C) In Year 2, Asset A has an allocated basis difference that includes both a cost recovery amount and a disposition amount. Under paragraph (b)(2) of this section, the cost recovery amount for Year 2, as of the date of the subsequent transaction, is 9u ((90u basis difference/5 years) × 6/12). Under § 1.901(m)–1(a)(15), the subsequent transaction is a disposition of Asset A, because the subsequent transaction is an event that results in an amount of gain being recognized for U.S. income tax and Country F tax purposes. Because all realized gain in Asset A is recognized for U.S. income tax and Country F tax purposes, the rule in paragraph (c)(2)(i) of this section applies to determine the disposition amount. Under that rule, the disposition amount for Year 2 is the unallocated basis difference of 63u (90u basis difference, less total 27u taken into account as cost recovery amounts in Year 1 and Year 2). Accordingly, the allocated basis difference for Year 2 is 72u (9u of cost recovery amount, plus 63u of disposition amount). Under paragraphs (b)(1) and (c)(1) of this section, all of the 72u of allocated basis difference is attributed to CFC1 and assigned to Year 2, because CFC1 is a section 901(m) payor and the RFA owner (U.S.) with respect to Asset A and Year 2 is the U.S. taxable year of CFC1 in which it takes into account the corresponding 10u of depreciation and in which the disposition occurred.

(D) Unallocated basis difference with respect to Asset A, as determined immediately after the subsequent transaction, is 0u (90u basis difference less 90u basis difference taken into account as 27u total cost recovery amount in Year 1 and Year 2 and as a 63u disposition amount in Year 2). Accordingly, because there is no unallocated basis difference with respect to Asset A attributable to the Section 338 Acquisition, the subsequent transaction is not a successor transaction as defined in § 1.901(m)–6(b)(2). Furthermore, the subsequent transaction is not a CAA under § 1.901(m)–2(b). For these reasons, section 901(m) no longer applies to Asset A.

(2) *Example 2: CAA followed by disposition: nontaxable for U.S. income tax purposes and taxable for foreign income tax purposes*—(i) *Facts.* The facts are the same as in paragraph (h)(1)(i)(A) of this section (paragraph (i)(A) of *Example 1*) but the facts in paragraph (h)(1)(i)(B) of this section (paragraph (i)(B) of *Example 1*) are instead that on July 1, Year 2, Asset A is transferred to CFC2, in exchange for 100u of stock of CFC2 (subsequent transaction). For U.S. income tax purposes, CFC1 does not recognize any U.S. disposition gain or U.S. disposition loss with respect to Asset A. For Country F tax purposes, CFC1 recognizes foreign disposition gain of 60u (amount realized of 100u, less foreign basis of 40u) with respect to Asset A. Immediately after the subsequent transaction, Asset A has a U.S. basis of 70u (100u cost basis less 30u accumulated depreciation) and a foreign basis of 100u. The 30u of accumulated depreciation is the sum of 20u of depreciation in Year 1 (100u cost basis/5 years) and 10u in Year 2 ((100u cost basis/5 years) × 6/12).

(ii) *Result.* (A) The results described in paragraph (h)(1)(ii)(A) of this section (paragraph (ii)(A) of *Example 1)* also apply to this paragraph (h)(2)(ii) (the results of this *Example 2*).

(B) The result for Year 1 is the same as in paragraph (h)(1)(ii)(B) of this section (paragraph (ii)(B) of *Example 1*).

(C) In Year 2, Asset A has an allocated basis difference that includes both a cost recovery amount and a disposition amount. Under paragraph (b)(2) of this section, the cost recovery amount for Year 2, as of the date of the subsequent transaction, is 9u ((90u basis difference/5 years) × 6/12). Under § 1.901(m)–1(a)(15), the subsequent transaction is a disposition of Asset A, because the subsequent transaction is an event that results in an amount of gain being recognized for Country F tax purposes. Because the disposition is not also fully taxable for U.S. income tax purposes, the rule in paragraph (c)(2)(ii) of this section applies to determine the disposition amount. Under that rule, the disposition amount is 60u, the lesser of (i) 60u (60u foreign disposition gain plus absolute value of 0u U.S. disposition loss), and (ii) 63u unallocated basis difference (90 basis difference less total 27u taken into account as cost recovery amounts, 18u in Year 1 and 9u in Year 2). Accordingly, the allocated basis difference for the first half of Year 2 is 69u (9u of cost recovery amount, plus 60u of disposition amount). Under paragraphs (b)(1) and (c)(1) of this section, all of the 69u of allocated basis difference is attributed to CFC1 and assigned to Year 2, because CFC1 is a section 901(m) payor and the RFA owner (U.S.) with respect to Asset A and Year 2 is the U.S. taxable year of CFC1 in which it takes into account the corresponding 10u of depreciation and in which the disposition occurred.

(D) Unallocated basis difference with respect to Asset A immediately after the subsequent transaction is 3u (90u basis difference less 87u basis difference taken into account as a 27u total cost recovery amount in Year 1 and Year 2 and as a 60u disposition amount in Year 2). Accordingly, because there is unallocated basis difference of 3u with respect to Asset A attributable to the Section 338 Acquisition, as determined immediately after the subsequent transaction, the subsequent transaction is a successor transaction as defined in § 1.901(m)–6(b)(2). Following the subsequent transaction, the unallocated basis difference of 3u must be taken into account as cost recovery amounts or disposition amounts (or both) by CFC2, the new section 901(m) payor and RFA owner (U.S.) of Asset A. See § 1.901(m)–6(b)(3)(ii). Because the subsequent transaction is not a CAA under § 1.901(m)–2(b), there is no additional basis difference with respect to Asset A as a result of the subsequent transaction.

(3) Example 3: CAA followed by disposition: nontaxable for both U.S. income tax and foreign income tax purposes—(i) *Facts.* The facts are the same as in paragraph (h)(1)(i)(A) of this section (paragraph (i)(A) of *Example 1*) but the facts in paragraph (h)(1)(i)(B) of this section (paragraph (i)(B) of *Example 1*) are instead that on July 1, Year 2, CFC1 transfers Asset A to CFC2, in exchange for 110u of stock of CFC2 (subsequent transaction). For U.S. income tax purposes, CFC1 does not recognize any U.S.

disposition gain or U.S. disposition loss with respect to Asset A as a result of the subsequent transaction. Furthermore, for Country F tax purposes, CFC1 recognizes no foreign disposition gain or foreign disposition loss with respect to Asset A as a result of the subsequent transaction. Immediately after the subsequent transaction, Asset A has a U.S. basis of 70u (100u cost basis less 30u accumulated depreciation) and a foreign basis of 40u. The 30u of accumulated depreciation is the sum of 20u of depreciation in Year 1 (100u cost basis/5 years) and 10u in Year 2 ((100u cost basis/5 years) × 6/12).

(ii) *Result.* (A) The result for Year 1 is the same as in paragraph (h)(1)(ii)(A) of this section (paragraph (ii)(A) of *Example 1*).

(B) The result for Year 1 is the same as in paragraph (h)(1)(ii)(B) of this section (paragraph (ii)(B) of *Example 1*).

(C) In Year 2, Asset A has an allocated basis difference that includes only a cost recovery amount. Under paragraph (b)(2) of this section, the cost recovery amount for Year 2, as of the date of the subsequent transaction, is 9u ((90u basis difference/5 years) x 6/12). Under § 1.901(m)–1(a)(15), the subsequent transaction does not constitute a disposition of Asset A, because the subsequent transaction is not an event that results in an amount of gain or loss being recognized for U.S. income tax or for Country F tax purposes. Therefore, no disposition amount is taken into account for Asset A in Year 2. Under paragraph (b)(1) of this section, all of the 9u of allocated basis difference is attributed to CFC1 and assigned to Year 2, because CFC1 is a section 901(m) payor and RFA owner (U.S.) with respect to Asset A and Year 2 is the U.S. taxable year of CFC1 in which it takes into account the corresponding 10u of depreciation.

(D) Unallocated basis difference with respect to Asset A immediately after the subsequent transaction is 63u (90u basis difference, less 27u total cost recovery amounts, 18u in Year 1 and 9u in Year 2). Accordingly, because there is unallocated basis difference of 63u with respect to Asset A attributable to the CAA, as determined immediately after the subsequent transaction, the subsequent transaction is a successor transaction as defined in § 1.901(m)–6(b)(2). Following the subsequent transaction, the unallocated basis difference of 63u must be taken into account as cost recovery amounts or disposition amounts (or both) by CFC2, the new section 901(m) payor and RFA owner (U.S.) of Asset A. See § 1.901(m)–6(b)(3)(ii). Because the subsequent transaction is not a CAA under § 1.901(m)–2(b), there is no additional basis difference with respect to Asset A as a result of the subsequent transaction.

(i) *Applicability dates.* (1) Except as provided in paragraph (i)(2) of this section, this section applies to CAAs occurring on or after March 23, 2020.

(2) Paragraphs (b)(2)(i) and (c)(2) of this section apply to CAAs occurring on or after July 21, 2014, and to CAAs occurring before that date resulting from an entity classification election made under § 301.7701–3 of this chapter that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014. Paragraphs (b)(2)(i) and (c)(2) of this section also apply to CAAs occurring on or after January 1, 2011, and before July 21, 2014, other than CAAs occurring before July 21, 2014, resulting from an entity classification election made under § 301.7701–3 that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014, but only with respect to basis difference determined under § 1.901(m)–4T(e) with respect to the CAA.

(3) Taxpayers may, however, choose to apply provisions in this section before the date such provisions are applicable pursuant to paragraphs (i)(1) and (2) of this section, provided that they (along with any persons that are related (within the meaning of section 267(b) or 707(b)) to the taxpayer)—

(i) Consistently apply this section, § 1.704–1(b)(4)(viii)(*c*)(*4*)(*v*) through (*vii*), § 1.901(m)–1, § 1.901(m)–3, § 1.901(m)–4 (excluding § 1.901(m)–4(e)), § 1.901(m)–6, § 1.901(m)–7, and § 1.901(m)–8 to all CAAs occurring on or after January 1, 2011, and consistently apply § 1.901(m)–2 (excluding § 1.901(m)–2(d)) to all CAAs occurring on or after December 7, 2016, on any original or amended tax return for each taxable year for which the application of the provisions listed in this paragraph (i)(3)(i) affects the tax liability and for which the statute of limitations does not preclude assessment or the filing of a claim for refund, as applicable;

(ii) File all tax returns described in paragraph (i)(3)(i) of this section for any taxable year ending on or before March 23, 2020, no later than March 23, 2021; and

(ii) Make appropriate adjustments to take into account deficiencies that would have resulted from the consistent application under paragraph (i)(3)(i) of this section for taxable years that are not open for assessment.

§ 1.901(m)–5T [Removed]

■ **Par. 12.** Section 1.901(m)–5T is removed.

■ **Par. 13.** Section 1.901(m)–6 is added to read as follows:

§ 1.901(m)–6 Successor rules.

(a) *In general.* This section provides successor rules applicable to section 901(m). Paragraph (b) of this section provides rules for the continued application of section 901(m) after an RFA that has unallocated basis difference has been transferred, including special rules applicable to successor transactions that are also CAAs or that involve partnerships. Paragraph (c) of this section provides rules for determining when an aggregate basis difference carryover of a section 901(m) payor either becomes an aggregate basis difference carryover of the section 901(m) payor with respect to another foreign payor or is transferred to another section 901(m) payor, and paragraph (d) of this section provides applicability dates.

(b) *Successor rules for unallocated basis difference*—(1) *In general.* Except as provided in paragraph (b)(4) of this section, section 901(m) continues to apply after a successor transaction to any unallocated basis difference attached to a transferred RFA until the entire basis difference has been taken into account as a cost recovery amount or a disposition amount (or both) under § 1.901(m)–5.

(2) *Definition of a successor transaction.* A successor transaction occurs with respect to an RFA if, after a CAA (*prior CAA*), there is a transfer of the RFA for U.S. income tax purposes and the RFA has unallocated basis difference with respect to the prior CAA, determined immediately after the transfer. A successor transaction may occur regardless of whether the transfer of the RFA is a disposition, a CAA, or a non-taxable transaction for purposes of U.S. income tax. If the RFA was subject to multiple prior CAAs, a separate determination must be made with respect to each prior CAA as to whether the transfer is a successor transaction.

(3) *Special considerations.* (i) If an asset is an RFA with respect to more than one foreign income tax, this paragraph (b) applies separately with respect to each foreign income tax.

(ii) Any subsequent cost recovery amount for an RFA transferred in a successor transaction is determined based on the post-transaction applicable cost recovery method, as described in § 1.901(m)–5(b)(3), that applies to the U.S. basis (or portion thereof) that corresponds to the unallocated basis difference.

(4) *Successor transaction is a CAA*—(i) *In general.* An asset may be an RFA with respect to multiple CAAs if a successor transaction is also a CAA (*subsequent CAA*). Except as otherwise provided in this paragraph (b)(4), if there is a subsequent CAA, unallocated basis difference with respect to any prior CAAs will continue to be taken into account under section 901(m) after the subsequent CAA. Furthermore, the subsequent CAA may give rise to additional basis difference subject to section 901(m).

(ii) *Foreign basis election.* If a foreign basis election is made under § 1.901(m)–4(c) with respect to a foreign income tax in a subsequent CAA, any unallocated basis difference with respect to one or more prior CAAs will not be taken into account under section 901(m). The only basis difference that will be taken into account after the subsequent CAA with respect to that foreign income tax is the basis difference with respect to the subsequent CAA.

(iii) *Multiple section 743(b) CAAs.* If an RFA is subject to two section 743(b) CAAs (*prior section 743(b) CAA* and *subsequent section 743(b) CAA*) and the same partnership interest is acquired in both the CAAs, the RFA will be treated as having no unallocated basis difference with respect to the prior section 743(b) CAA if the basis difference for the section 743(b) CAA is determined independently from the prior section 743(b) CAA. In this regard, see generally § 1.743–1(f). If the subsequent section 743(b) CAA results from the acquisition of only a portion of the partnership interest acquired in the prior section 743(b) CAA, then the transferor will be required to equitably apportion the unallocated basis difference attributable to the prior section 743(b) CAA between the portion retained by the transferor and the portion transferred. In this case, with respect to the portion transferred, the RFAs will be treated as having no unallocated basis difference with respect to the prior section 743(b) CAA if basis difference for the subsequent section 743(b) CAA is determined independently from the prior section 743(b) CAA.

(5) *Example.* The following example illustrates the rules of paragraph (b) of this section.

(i) *Facts.* USP, a domestic corporation, wholly owns CFC, a foreign corporation organized in Country A and treated as a corporation for both U.S. and Country A tax purposes. FT is an unrelated foreign corporation organized in Country A and treated as a corporation for both U.S. and Country A tax purposes. FT owns one asset, a parcel of land (Asset). Country A imposes a single tax that is a foreign income tax. On January 1, Year 1, CFC acquires all of the stock of FT in exchange for 300u in a qualified stock purchase (as defined in section 338(d)(3)) to which section 338(a) applies (Acquisition). Immediately before the Acquisition, Asset had a U.S. basis of 100u, and immediately after the Acquisition, Asset had a U.S. basis of 300u. Effective on February 1, Year 1, FT elects to be a disregarded entity pursuant to § 301.7701–3. As a result of the election, FT is deemed, for U.S. income tax purposes, to distribute Asset to CFC in liquidation (Deemed Liquidation) immediately before the closing of the day before the election is effective pursuant to § 301.7701–3(g)(1)(iii) and (3)(ii). The Deemed Liquidation is disregarded for Country A tax purposes. No gain or loss is recognized on the Deemed Liquidation for either U.S. or Country A tax purposes.

(ii) *Result.* Under § 1.901(m)–2(b)(1), the acquisition by CFC of the stock of FT is a section 338 CAA. Under § 1.901(m)–2(c)(1), Asset is an RFA with respect to Country A tax and the Acquisition, because immediately after the Acquisition, Asset is relevant in determining foreign income of FT for Country A tax purposes, and FT owned Asset when the Acquisition occurred. Under § 1.901(m)–4(b), the basis difference with respect to Asset is 200u (300u—100u). Under § 1.901(m)–2(b)(2), the Deemed Liquidation is a CAA (subsequent CAA) because the Deemed Liquidation is treated as an acquisition of assets for U.S. income tax purposes and is disregarded for Country A tax purposes. Because the U.S. basis in Asset is 300u immediately before and after the Deemed Liquidation, the subsequent CAA does not give rise to any additional basis difference. The Deemed Liquidation is not a disposition under § 1.901(m)–1(a)(15) because it did not result in gain or loss being recognized with respect to Asset for U.S. or Country A tax purposes. Accordingly, no basis difference with respect to Asset is taken into account under § 1.901(m)–5 as a result of the Deemed Liquidation, and the unallocated basis difference with respect to Asset immediately after the Deemed Liquidation is 200u (200u—0u). Under paragraph (b)(2) of this section, the Deemed Liquidation is a successor transaction because there is a transfer of Asset for U.S. income tax purposes from FT to CFC and Asset has unallocated basis difference with respect to the Acquisition immediately after the Deemed Liquidation. Accordingly, under paragraph (b)(1) of this section, section 901(m) will continue to apply to the unallocated basis difference with respect to Asset until the entire 200u basis difference has been taken into account under § 1.901(m)–5.

(c) *Successor rules for aggregate basis difference carryover*—(1) *Transfers of a section 901(m) payor's aggregate basis difference carryover to another person.* If a corporation acquires the assets of a section 901(m) payor in a transaction to which section 381 applies, that corporation succeeds to any aggregate basis difference carryovers of the section 901(m) payor.

(2) *Transfers of a section 901(m) payor's aggregate basis difference carryover with respect to a foreign payor to another foreign payor.* If a section 901(m) payor has an aggregate basis difference carryover, with respect to a foreign income tax and a foreign payor, and substantially all of the assets of the foreign payor are transferred to another foreign payor in which the section 901(m) payor owns an interest, the section 901(m) payor's aggregate basis difference carryover with respect to the first foreign payor is transferred to the section 901(m) payor's aggregate basis difference carryover with respect to the other foreign payor. In such a case, the section 901(m) payor's aggregate basis difference carryover with respect to the first foreign payor is reduced to zero.

(3) *Anti-abuse rule.* If a section 901(m) payor has an aggregate basis difference carryover with respect to a foreign income tax and a foreign payor and, with a principal purpose of avoiding the application of section 901(m), assets of the foreign payor are transferred to another foreign payor in a transaction not described in paragraph (c)(1) or (2) of this section, then a portion of the aggregate basis difference carryover of the section 901(m) payor is transferred either to the aggregate basis difference carryover of the section 901(m) payor with respect to the other foreign payor or to another section 901(m) payor, as appropriate. The portion of the aggregate basis difference carryover transferred is determined based on the ratio of fair market value of the assets transferred to the fair market value of all of the assets of the foreign payor that transferred the assets. Similar principles apply when, with a principal purpose of avoiding the application of section 901(m), there is a change in the allocation of foreign income for foreign income tax purposes or the allocation of foreign income tax amounts for U.S. income tax purposes that would otherwise separate foreign income tax amounts from the related aggregate basis difference carryover.

(4) *Ownership.* For purposes of this paragraph (c), a section 901(m) payor owns an interest in a foreign payor if the section 901(m) payor owns the interest directly or indirectly through one or more fiscally transparent entities for U.S. income tax purposes.

(d) *Applicability dates*—(1) Except as provided in paragraph (d)(2) of this section, this section applies to CAAs occurring on or after March 23, 2020.

(2) Paragraphs (a), (b)(1) and (2), (b)(4)(i) and (iii), and (b)(5) of this section apply to CAAs occurring on or after July 21, 2014, and to CAAs occurring before that date resulting from an entity classification election made under § 301.7701–3 of this chapter that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014. Paragraphs (a), (b)(1) and (2), (b)(4)(i) and (iii), and (b)(5) of this section also apply to CAAs occurring on or after January 1, 2011, and before July 21, 2014, other than CAAs occurring before July 21, 2014, resulting from an entity classification election made under § 301.7701–3 that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014, but only with

respect to basis difference determined under § 1.901(m)–4T(e) with respect to the CAA.

(3) Taxpayers may, however, choose to apply provisions in this section before the date such provisions are applicable pursuant to paragraphs (d)(1) and (2) of this section, provided that they (along with any persons that are related (within the meaning of section 267(b) or 707(b)) to the taxpayer)—

(i) Consistently apply this section, § 1.704–1(b)(4)(viii)(*c*)(*4*)(*v*) through (*vii*), § 1.901(m)–1, §§ 1.901(m)–3 through 1.901(m)–5 (excluding § 1.901(m)–4(e)), § 1.901(m)–7, and § 1.901(m)–8 to all CAAs occurring on or after January 1, 2011, and consistently apply § 1.901(m)–2 (excluding § 1.901(m)–2(d)) to all CAAs occurring on or after December 7, 2016, on any original or amended tax return for each taxable year for which the application of the provisions listed in this paragraph (d)(3)(i) affects the tax liability and for which the statute of limitations does not preclude assessment or the filing of a claim for refund, as applicable;

(ii) File all tax returns described in paragraph (d)(3)(i) of this section for any taxable year ending on or before March 23, 2020, no later than March 23, 2021; and

(iii) Make appropriate adjustments to take into account deficiencies that would have resulted from the consistent application under paragraph (d)(3)(i) of this section for taxable years that are not open for assessment.

§ 1.901(m)–6T [Removed]

■ **Par. 14.** Section 1.901(m)–6T is removed.

■ **Par. 15.** Section 1.901(m)–7 is added to read as follows:

§ 1.901(m)–7 De minimis rules.

(a) *In general.* This section provides rules describing basis difference that is not taken into account under section 901(m) because a CAA results in a de minimis amount of basis difference. Paragraph (b) of this section sets forth the general rule for determining whether the de minimis threshold is met. Paragraph (c) of this section modifies the general rule in the case of CAAs that are part of an aggregated CAA transaction. Paragraph (d) of this section provides rules for applying this section, and paragraph (e) of this section provides an anti-abuse rule applicable to related persons. Paragraph (f) of this section provides examples that illustrate the application of this section. Paragraph (g) of this section provides applicability dates.

(b) *General rule*—(1) *In general.* A basis difference with respect to an RFA and a foreign income tax is not taken into account under section 901(m) if the requirements under the cumulative basis difference exemption, the RFA class exemption, or the RFA exemption are satisfied.

(2) *Cumulative basis difference exemption.* Except as provided in paragraph (c) of this section, a basis difference, with respect to an RFA and a foreign income tax, is not taken into account under section 901(m) (*cumulative basis difference exemption*) if the sum of that basis difference and all other basis differences (including negative basis differences), with respect to a single CAA and a single RFA owner (U.S.), is less than the greater of:

(i) $10 million, or

(ii) 10 percent of the total U.S. basis of all the RFAs immediately after the CAA.

(3) *RFA class exemption*—(i) Except as provided in paragraph (c) of this section, a basis difference, with respect to an RFA and a foreign income tax, is not taken into account under section 901(m) (*RFA class exemption*) if the RFA is part of a class of RFAs and the absolute value of the sum of the basis differences (including negative basis differences), with respect to a single CAA and a single RFA owner, for all the RFAs in that class is less than the greater of:

(A) $2 million, or

(B) 10 percent of the total U.S. basis of all the RFAs in that class of RFAs immediately after the CAA.

(ii) For purposes of this paragraph (b)(3), the classes of RFAs are the seven asset classes defined in § 1.338–6(b), regardless of whether the CAA is a section 338 CAA.

(4) *RFA exemption.* A basis difference, with respect to an RFA and a foreign income tax, is not taken into account under section 901(m) (*RFA exemption*) if the absolute value of the basis difference with respect to the RFA is less than $20,000.

(c) *Special rule if a CAA is part of an aggregated CAA transaction.* If a CAA is part of an aggregated CAA transaction and a single RFA owner (U.S.) does not own all the RFAs attributable to the CAAs that are part of the aggregated CAA transaction, the cumulative basis difference exemption and the RFA class exemption apply to such CAA only if, in addition to satisfying the requirements of paragraph (b)(2) or (b)(3) of this section, respectively, determined without regard to this paragraph (c), the cumulative basis difference exemption or the RFA class exemption, as modified by this paragraph (c), is satisfied. Solely for purposes of this paragraph (c), the cumulative basis difference exemption and the RFA class exemption are applied taking into account all the basis differences with respect to all the RFAs owned by all the RFA owners (U.S.) that are attributable to the CAAs that are part of the aggregated CAA transaction.

(d) *Rules of application.* The following rules apply for purposes of this section.

(1) Whether a basis difference qualifies for the cumulative basis difference exemption, the RFA class exemption, or the RFA exemption is determined when an asset first becomes an RFA with respect to a CAA. In the case of a subsequent CAA described in § 1.901(m)–6(b)(4), the application of the cumulative basis difference exemption, the RFA class exemption, and the RFA exemption is based on basis difference, if any, that results from the subsequent CAA.

(2) If there is an aggregated CAA transaction, the cumulative basis difference exemption and each RFA class exemption are applied by treating all CAAs that are part of the aggregated CAA transaction as a single CAA.

(3) Basis difference is computed in accordance with § 1.901(m)–4 except that a foreign basis election need not be evidenced if the cumulative basis difference exemption, an RFA class exemption, or the RFA exemption apply to all RFAs with respect to the CAA.

(4) Basis difference is translated into U.S. dollars (if necessary) using the spot rate determined under the principles of § 1.988–1(d) on the date of the CAA.

(e) *Anti-abuse rule.* The cumulative basis difference exemption, an RFA class exemption, and the RFA exemption are not available if the transferor and transferee in the CAA are related persons (as described in section 267(b) or 707(b)) and the CAA was entered into, or structured, with a principal purpose of avoiding the application of section 901(m). See also § 1.901(m)–8(c), which provides that certain built-in loss assets are not taken into account for purposes of applying this section.

(f) *Examples.* The following examples illustrate the rules of this section:

(1) *Example 1: De minimis; cumulative basis difference exemption*—(i) *Facts.* USP, a domestic corporation, as part of a plan, purchases all of the stock of CFC1 and CFC2 from a single seller. CFC1 and CFC2 are applicable foreign corporations, organized in Country F, and treated as corporations for Country F tax purposes. Country F imposes a single tax that is a foreign income tax. Each acquisition is a qualified stock purchase (as defined in section 338(d)(3)) to which section

338(a) applies. A foreign basis election is not made under § 1.901(m)–4(c). Immediately after the acquisition of the stock of CFC1 and CFC2, the assets of CFC1 and CFC2 give rise to income that is taken into account for Country F tax purposes, and those assets are in a single class, as defined in § 1.338–6(b). Assume that the absolute value of the basis difference with respect to any single RFA is greater than $20,000. At all relevant times, 1u equals $1. All amounts are stated in millions. The additional facts are summarized below.

Relevant foreign assets	Total U.S. basis immediately before	Total U.S. basis immediately after	Total basis difference
Assets of CFC1	48u	60u	12u
Assets of CFC2	100u	96u	(4)u
Total	148u	156u	8u

(ii) *Result.* (A) Under § 1.901(m)–2(b)(1), USP's acquisitions of the stock of CFC1 and CFC2 are each a section 338 CAA. Under 1.901(m)–1(a)(3), the two section 338 CAAs constitute an aggregated CAA transaction because the acquisitions occur as part of a plan. Under § 1.901(m)–2(c)(1), the assets of CFC1 and CFC2 are RFAs for Country F tax purposes because they are relevant in determining foreign income of CFC1 and CFC 2, respectively, for Country F tax purposes. Under § 1.901(m)–1(a)(37), CFC1 is the RFA owner (U.S.) with respect to its assets, and CFC2 is the RFA owner (U.S.) with respect to its assets.

(B) Under paragraph (b)(2) of this section, the application of the cumulative basis difference exemption is based on a single CAA and a single RFA owner (U.S.), subject to the requirements under paragraph (c) of this section that apply when there is an aggregated CAA transaction. In the case of the section 338 CAA with respect to CFC1, without regard to paragraph (c) of this section, the requirements of the cumulative basis difference exemption are satisfied if the sum of the basis differences is less than the threshold of $10 million, the greater of $10 million or $6 million (10% of the total U.S. basis of $60 million (60 million u translated into dollars at the exchange rate of $1 = 1u)). In this case, the sum of the basis differences is $12 million (12 million u translated into dollars at the exchange rate of $1 = 1 u). Because the sum of the basis differences of $12 million is not less than the threshold of $10 million, the requirements of the cumulative basis difference exemption are not satisfied. Because the requirements of the cumulative basis difference exemption are not satisfied, without regard to paragraph (c) of this section, paragraph (c) of this section is not applicable. The RFA class exemption is not relevant because all of the RFAs of CFC1 are in a single class. Finally, because the absolute value with respect to each RFA is greater than $20,000, the RFA exemption does not apply. Accordingly, the basis differences with respect to all of the RFAs of CFC1 must be taken into account under section 901(m).

(C) In the case of the section 338 CAA with respect to CFC2, without regard to paragraph (c) of this section, the requirements of the cumulative basis difference exemption are satisfied if the sum of the basis differences is less than the threshold of $10 million, the greater of $10 million or $ 9.6 million (10% of the total U.S. basis of $96 million (96 million u translated into dollars at the exchange rate of $1 = 1u)) In this case, the sum of the basis differences is ($4) million ((4) million u translated into dollars at the exchange rate of $1 = 1 u). Because the sum of the basis differences of ($4) million is less than the threshold of $10 million, the requirements of the cumulative basis difference exemption are satisfied. However, because the section 338 CAA with respect to CFC2 is part of an aggregated CAA transaction that includes the section 338 CAA with respect to CFC1, paragraph (c) of this section is applicable. Under paragraph (c) of this section, the requirements of the cumulative basis difference exemption must also be satisfied taking into account all of the RFAs of both CFC2 and CFC1. In this case, the requirements of the cumulative basis difference exemption for purposes of paragraph (c) of this section are satisfied if the sum of the basis differences with respect to all of the RFAs of CFC2 and CFC1 is less than the threshold of $15.6 million, the greater of $10 million or $15.6 million (10% of the total U.S. basis of $156 million (156 million u translated into dollars at the exchange rate of $1 = 1u)). In this case, the sum of the basis differences is $8 million (8 million u translated into dollars at the exchange rate of $1 = 1 u). Because the sum of the basis differences of $8 million is less than the threshold of $15.6 million, the requirements of the cumulative basis difference exemption are satisfied in the case of the section 338 CAA with respect to CFC2. Accordingly, none of the basis differences with respect to the RFAs of CFC2 are taken into account under section 901(m).

(2) *Example 2: De minimis; RFA Class Exemption*—(i) *Facts.* USP, a domestic corporation, acquires all the stock of CFC, an applicable foreign corporation organized in Country F and treated as a corporation for Country F tax purposes, in a qualified stock purchase (as defined in section 338(d)(3)) to which section 338(a) applies. Country F imposes a single tax that is a foreign income tax. A foreign basis election is not made under § 1.901(m)–4(c). Immediately after the acquisition of CFC, the assets of CFC give rise to income that is taken into account for Country F tax purposes. Assume that the absolute value of the basis difference with respect to any single RFA is greater than $20,000. At all relevant times, 1u equals $1. All amounts are stated in millions. The additional facts are summarized below.

Relevant foreign assets	Total U.S. basis immediately before	Total U.S. basis immediately after	Total basis difference
Cash (Class I)	10u	10u	0u
Inventory (Class IV)	14u	15u	1u
Buildings (Class V)	19u	30u	11u
Total	43u	55u	12u

(ii) *Result.* (A) Under § 1.901(m)–2(b)(1), USP's acquisition of the stock of CFC is a section 338 CAA. Under § 1.901(m)–2(c)(1), the assets of CFC are RFAs for Country F tax purposes because they are relevant in determining foreign income of CFC for Country F tax purposes.

(B) Under paragraph (b)(2) of this section, the requirements of the cumulative basis difference exemption are satisfied if the sum of the basis differences is less than the threshold of $10 million, the greater of $10 million or $5.5 million (10% of the total U.S. basis of $55 million (55 million u translated into dollars at the exchange rate of $1 = 1u)). In this case, the sum of the basis differences is $12 million (12 million u translated into dollars at the exchange rate of $1 = 1 u). Because the sum of the basis differences of $12 million is not less than the threshold of $10 million, the requirements of the cumulative basis difference exemption are not satisfied.

(C) Under paragraph (b)(3) of this section, each of CFC's assets is allocated to its class under § 1.338–6(b) for purposes of the RFA class exemption. The requirements of the

RFA class exemption with respect to the Class IV RFAs (in this case, inventory) are satisfied if the absolute value of the sum of the basis differences with respect to the Class IV RFAs is less than the threshold of $2 million, the greater of $2 million or $1.5 million (10% of the total U.S. basis of Class IV RFAs of $15 million (15 million u translated into dollars at the exchange rate of $1 = 1u)). In this case, the absolute value of the sum of the basis differences is $1 million (1 million u translated into dollars at the exchange rate of $1 = 1 u). Because the sum of the basis differences of $1 million is less than the threshold of $2 million, the requirements of the RFA class exemption are satisfied. Accordingly, the basis differences with respect to the Class IV RFAs are not taken into account under section 901(m).

(D) The requirements of the RFA class exemption with respect to the Class V RFAs (in this case, buildings) is satisfied if the absolute value of the sum of the basis differences with respect to the Class V RFAs is less than the threshold of $3 million, the greater of $2 million or $3 million (10% of the total U.S. basis of Class V RFAs of $30 million (30 million u translated into dollars at the exchange rate of $1 = 1u)). In this case, the absolute value of the sum of the basis differences is $11 million (11 million u translated into dollars at the exchange rate of $1 = 1 u). Because the sum of the basis differences of $11 million is not less than the threshold of $3 million, the requirements of the RFA class exemption are not satisfied. Finally, because the absolute value with respect to each RFA is greater than $20,000, the RFA exemption does not apply. Accordingly, the basis differences with respect to the Class V RFAs are taken into account under section 901(m).

(E) The Class I RFAs (in this case, cash) are irrelevant because there are no basis differences with respect to those RFAs.

(g) *Applicability dates.* This section applies to CAAs occurring on or after March 23, 2020. Taxpayers may, however, choose to apply this section before the date this section is applicable provided that they (along with any persons that are related (within the meaning of section 267(b) or 707(b)) to the taxpayer)—

(1) Consistently apply this section, § 1.704–1(b)(4)(viii)(*c*)(*4*)(*v*) through (*vii*), § 1.901(m)–1, §§ 1.901(m)–3 through 1.901(m)–6 (excluding § 1.901(m)–4(e)), and § 1.901(m)–8 to all CAAs occurring on or after January 1, 2011, and consistently apply § 1.901(m)–2 (excluding § 1.901(m)–2(d)) to all CAAs occurring on or after December 7, 2016, on any original or amended tax return for each taxable year for which the application of the provisions listed in this paragraph (g)(1) affects the tax liability and for which the statute of limitations does not preclude assessment or the filing of a claim for refund, as applicable;

(2) File all tax returns described in paragraph (g)(1) of this section for any taxable year ending on or before March 23, 2020, no later than March 23, 2021; and

(3) Make appropriate adjustments to take into account deficiencies that would have resulted from the consistent application under paragraph (g)(1) of this section for taxable years that are not open for assessment.

§ 1.901(m)–7T [Removed]

■ **Par. 16.** Section 1.901(m)–7T is removed.

■ **Par. 17.** Section 1.901(m)–8 is added to read as follows:

§ 1.901(m)–8 Miscellaneous.

(a) *In general.* This section provides guidance on other matters under section 901(m). Paragraph (b) of this section provides guidance on the application of section 901(m) to pre-1987 foreign income taxes. Paragraph (c) of this section provides anti-abuse rules relating to built-in loss assets. Paragraph (d) of this section provides guidance on the interaction of section 901(m) and section 909. Paragraph (e) of this section provides applicability dates.

(b) *Application of section 901(m) to pre-1987 foreign income taxes.* Section 901(m) and §§ 1.901(m)–1 through 1.901–8 apply to pre-1987 foreign income taxes (as defined in § 1.902–1(a)(10)(iii)) of an applicable foreign corporation.

(c) *Anti-abuse rule for built-in loss RFAs.* A basis difference with respect to an RFA described in section 901(m)(3)(C)(ii) (*built-in loss RFA*) will not be taken into account for purposes of computing an allocated basis difference for a U.S. taxable year of a section 901(m) payor if any RFA, including an RFA other than built-in loss RFAs, is acquired with a principal purpose of using one or more built-in loss RFAs to avoid the application of section 901(m). Furthermore, a basis difference with respect to a built-in loss RFA will not be taken into account for purposes of the cumulative basis difference exemption or the RFA class exemption under § 1.901(m)–7 if any RFAs, including RFAs other than built-in loss RFAs, are acquired with a principal purpose of avoiding the application of section 901(m).

(d) *Interaction with section 909.* The amount of a foreign income tax that is disqualified under section 901(m) is determined before applying section 909. However, section 909 may apply to suspend a deduction for the amount of a foreign income tax that is disqualified under section 901(m).

(e) *Applicability dates.* This section applies to CAAs occurring on or after March 23, 2020. Taxpayers may, however, choose to apply this section before the date this section is applicable provided that they (along with any persons that are related (within the meaning of section 267(b) or 707(b)) to the taxpayer)—

(1) Consistently apply this section, § 1.704–1(b)(4)(viii)(*c*)(*4*)(*v*) through (*vii*), § 1.901(m)–1, and §§ 1.901(m)–3 through 1.901(m)–7 (excluding § 1.901(m)–4(e)) to all CAAs occurring on or after January 1, 2011, and consistently apply § 1.901(m)–2 (excluding § 1.901(m)–2(d)) to all CAAs occurring on or after December 7, 2016, on any original or amended tax return for each taxable year for which the application of the provisions listed in this paragraph (e)(1) affects the tax liability and for which the statute of limitations does not preclude assessment or the filing of a claim for refund, as applicable;

(2) File all tax returns described in paragraph (e)(1) of this section for any taxable year ending on or before March 23, 2020, no later than March 23, 2021; and

(3) Make appropriate adjustments to take into account deficiencies that would have resulted from the consistent application under paragraph (e)(2) of this section for taxable years that are not open for assessment.

§ 1.901(m)–8T [Removed]

■ **Par. 18.** Section 1.901(m)–8T is removed.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

Approved: February 13, 2020.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2020–05551 Filed 3–20–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0167]

RIN 1625–AA00

Safety Zone; Pacific Ocean, Hilo Harbor, HI—Lightering Operations

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the navigable waters of Hilo Harbor,

Hawaii. The safety zone is needed to protect personnel, vessels and the marine environment from potential hazards associated with ongoing lightering operations of the vessel MIDWAY ISLAND grounded along the northwest side of Hilo Harbor, particularly through helicopter to shore hoisting ops and swimmers in the water. The USCG is overseeing contractor lightering ops to mitigate the pollution threat from the vessel in this area. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Honolulu.

DATES: This rule is effective without actual notice from March 23, 2020 until 8 p.m. on April 10, 2020. For the purposes of enforcement, actual notice will be used from March 12, 2020 through March 23, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–USCG–2020–0167 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Chief Jason R. Olney, Waterways Management Division, U.S. Coast Guard; telephone 808–522–8265, email *Jason.R.Olney@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

On February 6, 2020, a temporary final rule [USCG–2020–0113; 85 FR 8175 (Feb. 13, 2020)] was issued to establish a safety zone around the grounded vessel MIDWAY ISLAND. That rule expired at 8 p.m. on February 12, 2020. An additional temporary final rule [USCG–2020–0121; 85 FR 10981 (Feb. 26, 2020)] was issued on February 12, 2020 to maintain the safety zone around the grounded vessel. That rule expired at 8 p.m. on March 12, 2020. The Coast Guard is issuing this rule to establish the temporary safety zone so the lightering operations can continue.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is needed to respond to the potential safety hazards associated with this lightering operation, and therefore publishing an NPRM is impracticable and contrary to public interest.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the rule's objectives of responding to potential safety hazards associated with the lightering operations and protecting personnel, vessels, and the marine environment within the navigable waters of the safety zone.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. On February 3, 2020, the Coast Guard was informed of a vessel that ran aground along the northwest side of Hilo Harbor, Hawaii. The Coast Guard COTP Sector Honolulu has determined that potential hazards associated with the lightering operations constitute a safety concern for anyone within the designated safety zone. This rule is necessary to protect personnel, vessels, and the marine environment within the navigable waters of the safety zone during ongoing salvage operations.

IV. Discussion of the Rule

This rule establishes a safety zone from March 12, 2020 through 8 p.m. April 10, 2020 or until the lightering operations are complete, whichever is earlier. If the safety zone is terminated prior to 8 p.m. on April 10, 2020, the Coast Guard will provide notice via a broadcast notice to mariners.

The temporary safety zone encompasses all waters extending 100 yards in all directions around the location of ongoing lightering operations near position: 19°44′41.17″ N; 155°05′24.23″ W. This zone extends from the surface of the water to the ocean floor. The zone is intended to protect personnel, vessels, and the marine environment in these navigable waters from potential hazards associated with the lightering operations of a vessel aground in this area. No vessel or person will be permitted to enter the safety zone absent the express authorization of the COTP or his designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the anticipated short duration of the lightering operations and the need to protect personnel, vessels and the marine environment in these navigable waters from potential hazards associated with the lightering operations of the vessel aground in this area. Moreover, the Coast Guard will issue a broadcast notice to mariners on marine channel 16 about the safety zone.

B. Impact on Small Entities

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

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121),

we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 29 days that will prohibit entry into the area during lightering efforts. It is categorically excluded from further review under paragraph L60(d) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T14–0167 to read as follows:

§ 165.T14–0167 Safety Zone; Pacific Ocean, Hilo Harbor, HI—Lightering Operations.

(a) *Location.* The safety zone is located within the Captain of the Port (COTP) Honolulu Zone (See 33 CFR 3.70–10) and will encompass all navigable waters extending 100 yards in all directions from position: 19°44′41.17″ N; 155°05′24.23″ W. This zone extends from the surface of the water to the ocean floor.

(b) *Regulations.* The general regulations governing safety zones contained in § 165.23 apply to the safety zone described in paragraph (a) of this section.

(1) All persons are required to comply with the general regulations governing safety zones found in this part.

(2) Entry into or remaining in this zone is prohibited unless expressly authorized by the COTP or his designated representative.

(3) Persons desiring to transit the safety zone identified in paragraph (a) of this section may contact the COTP at the Command Center telephone number (808) 842–2600 and (808) 842–2601, fax (808) 842–2642 or on VHF channel 16 (156.8 Mhz) to seek permission to transit the zone. If permission is granted, all persons and vessels must comply with the instructions of the COTP or his designated representative and proceed at the minimum speed necessary to maintain a safe course while in the zone.

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

(c) *Notice of enforcement.* The COTP Honolulu will cause Notice of the Enforcement of these safety zones described in this section to be made by Broadcast to the maritime community via marine safety broadcast notice to mariners on VHF channel 16 (156.8 MHz).

(d) *Definitions.* As used in this section, *designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the COTP to assist in enforcing the safety zone described in paragraph (a) of this section.

(e) *Enforcement period.* This section will be enforced from March 12, 2020, through 8 p.m. on April 10, 2020. If the safety zone is terminated prior to 8 p.m. on April 10, 2020, the Coast Guard will provide notice via a broadcast notice to mariners.

Dated: March 12, 2020.

A.B. Avanni,

Captain, U.S. Coast Guard, Captain of the Port Honolulu.

[FR Doc. 2020–05739 Filed 3–20–20; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R06–OAR–2011–0513; FRL–10006–30–Region 6]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; New Mexico and Albuquerque-Bernalillo County, New Mexico; Control of Emissions From Existing Other Solid Waste Incineration Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is withdrawing a direct final rule published on January 15, 2020, because a relevant adverse comment was received. The rule would have amended EPA regulations to notify the public of Clean Air Act (CAA) section 111(d)/129 negative declarations from New Mexico and Albuquerque-Bernalillo County, New Mexico for existing Other Solid Waste Incineration (OSWI) units. The EPA will address the comment received in a subsequent final rulemaking.

DATES: The direct final rule published on January 15, 2020 (85 FR 2316), is withdrawn effective March 23, 2020.

FOR FURTHER INFORMATION CONTACT: Karolina Ruan Lei, (214) 665–7346, *ruan-lei.karolina@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means the EPA. On January 15, 2020, we published a direct final rule notifying the public that we had received CAA section 111(d)/129 negative declarations from New Mexico and Albuquerque-Bernalillo County for existing OSWI units (85 FR 2316). These negative declarations certify that existing OSWI units subject to the requirements of sections 111(d) and 129 of the CAA do not exist within the specified jurisdictions in New Mexico. The direct final rule was published without prior proposal because we anticipated no adverse comments. We stated in the direct final rule that if we received relevant adverse comments by February 14, 2020, we would publish a timely withdrawal in the **Federal Register**. Since we received a relevant adverse comment, we are withdrawing the direct final rule and will address the comment in a subsequent final rulemaking.

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: March 13, 2020.

Kenley McQueen,

Regional Administrator, Region 6.

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

■ Accordingly, the amendments to 40 CFR part 62 published in the **Federal Register** on January 15, 2020 (85 FR 2316), which were to become effective on April 14, 2020, are withdrawn.

[FR Doc. 2020–05776 Filed 3–20–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2020–0002]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

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 *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (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 rule 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 proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. FEMA included flood hazard mapping data dissemination determinations as part of the NFIP Nationwide Programmatic Environmental Impact Statement, published on November 3, 2017, and completed in accordance with the Council on Environmental Quality's National Environmental Policy Act implementing regulations in 40 CFR 1500–1508 and therefore has determined that this action will not have a significant effect on the human environment.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

David I. Maurstad,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) modified	Communities affected
Snohomish County, Washington and Incorporated Areas Docket No.: FEMA–B–7705			
Skykomish River	Approximately 0.5 miles southwest of the intersection of 183rd Avenue SE and 176th Street SE.	+50	City of Monroe.
	Approximately 0.7 miles southwest of the intersection of Highway 2 and 227th Avenue.	+69	
Skykomish River	Approximately 0.9 miles upstream of State Route 522	+47	Unincorporated Areas of Snohomish County.
	Approximately 0.4 miles southeast of the intersection of Highway 2 and Fern Bluff Road.	+89	
Snohomish River	Just upstream of State Route 522	+43	Unincorporated Areas of Snohomish County.
	Approximately 0.9 miles upstream of State Route 522	+47	
Snoqualmie River	Approximately 0.9 miles upstream of State Route 522	+47	Unincorporated Areas of Snohomish County.
	At the boundary with King County	+50	

* National Geodetic Vertical Datum.
\+ North American Vertical Datum.
\# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

Addresses

City of Monroe: Maps are available for inspection at City Hall, Engineering Department, 806 West Main Street, Monroe, WA 98272.

Unincorporated Areas of Snohomish County: Maps are available for inspection at Snohomish County Planning and Development Services, 3000 Rockefeller Avenue, Everett, WA 98201.

[FR Doc. 2020–05501 Filed 3–20–20; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 200221–0062; RTID 0648–XY082]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the 2020 total allowable catch of pollock for Statistical Area 620 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 18, 2020, through 1200 hrs, A.l.t., May 31, 2020.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

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

The B season allowance of the 2020 total allowable catch (TAC) of pollock in Statistical Area 620 of the GOA is 22,222 metric tons (mt) as established by the final 2020 and 2021 harvest specifications for groundfish in the GOA (85 FR 13802, March 10, 2020).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the B season allowance

of the 2020 TAC of pollock in Statistical Area 620 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 22,000 mt and is setting aside the remaining 222 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for pollock in Statistical Area 620 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 17, 2020.

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

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

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

Dated: March 18, 2020.

Hélène M.N. Scalliet,

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

[FR Doc. 2020–06075 Filed 3–18–20; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 200227–0066; RTID 0648–XY088]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the B season apportionment of the 2020 Pacific cod total allowable catch allocated to catcher vessels using trawl gear in the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), April 1, 2020, through 1200 hours, A.l.t., June 10, 2020.

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

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

The B season apportionment of the 2020 Pacific cod total allowable catch (TAC) allocated to catcher vessels using trawl gear in the BSAI is 3,378 metric tons (mt) as established by the final 2020 and 2021 harvest specifications for groundfish in the BSAI (85 FR 13553, March 9, 2020).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the B season apportionment of the 2020 Pacific cod TAC allocated to trawl catcher vessels in the BSAI is necessary to account for the incidental catch in other anticipated fisheries. Therefore, the Regional Administrator is establishing a directed fishing allowance of 0 mt and is setting aside the remaining 3,378 mt as incidental catch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the BSAI.

While this closure is effective, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for Pacific cod by catcher vessels using trawl gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 17, 2020.

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

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

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

Dated: March 18, 2020.

Hélène M.N. Scalliet,

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

[FR Doc. 2020–06070 Filed 3–20–20; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 56
Monday, March 23, 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.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 215, 220, 226, and 235

[FNS–2019–0007]

RIN 0584–AE67

Simplifying Meal Service and Monitoring Requirements in the National School Lunch and School Breakfast Programs; Extension of Comment Period

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This rulemaking proposes changes to simplify meal pattern and monitoring requirements in the National School Lunch and School Breakfast Programs. The proposed changes, including optional flexibilities, are customer-focused and intended to help State and local Program operators overcome operational challenges that limit their ability to manage these Programs efficiently. The original comment period for this rule ends on March 23, 2020. FNS is extending the comment period through April 22, 2020.

DATES: The comment period for the proposed rule published on January 23, 2020 (85 FR 4094) has been extended through April 22, 2020. To be assured of consideration, comments must be received on or before April 22, 2020.

ADDRESSES: The Food and Nutrition Service, USDA, invites interested persons to submit written comments on this proposed rule. Comments may be submitted in writing by one of the following methods:

- *Preferred Method: Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Send comments to School Programs Branch, Policy and Program Development Division, Food and Nutrition Service, 1320 Braddock Place, 4th Floor, Alexandria, Virginia 22314.

All written comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the written comments publicly available on the internet via *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Tina Namian, Chief, School Programs Branch, Policy and Program Development Division, Food and Nutrition Service, 703–305–2590.

SUPPLEMENTARY INFORMATION: The Food and Nutrition Service (FNS) is reopening the public comment period for this proposed rule, which was published on January 23, 2020. The Coronavirus Disease 2019 (COVID–19) outbreaks have had a strong impact on schools, state agencies, stakeholders and others who are working tirelessly to ensure children receive meals in light of school closures. USDA wants to give these parties, and the public at large, additional time to provide feedback on these proposed reforms.

Dated: March 16, 2020.

Pamilyn Miller,

Administrator, Food and Nutrition Service.

[FR Doc. 2020–05979 Filed 3–20–20; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Doc. No. AMS–SC–19–100; SC–20–930–1 PR]

Tart Cherries Grown in the States of Michigan, et al.; Free and Restricted Percentages for the 2019–20 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Cherry Industry Administrative Board (Board) to establish free and restricted percentages for the 2019–20 crop year under the Marketing Order for tart cherries grown in the states of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. This action would establish the proportion of tart cherries from the 2019–20 crop which may be handled in commercial outlets. This action should stabilize marketing conditions by adjusting supply to meet market demand and help improve grower returns. Also, a correction would be made to this section to reflect the correct desirable carry-out inventory not to exceed a maximum of 100 million pounds.

DATES: Comments must be received by April 22, 2020.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or internet: *http://www.regulations.gov.* All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this proposal will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Jennie M. Varela, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: *Jennie.Varela@usda.gov* or *Christian.Nissen@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations

issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Agreement and Order No. 930, both as amended (7 CFR part 930), regulating the handling of tart cherries produced in the states of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin. Part 930 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Board locally administers the Order and is comprised of producers and handlers of tart cherries operating within the production area, and a public member.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 13563 and 13175. This proposed rule falls within a category of regulatory action that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this proposed rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order provisions now in effect, free and restricted percentages may be established for tart cherries handled during the crop year. This proposed rule would establish free and restricted percentages for tart cherries for the 2019–20 crop year, beginning July 1, 2019, through June 30, 2020.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule invites comments on the establishment of free and restricted percentages for the 2019–20 crop year. This proposal would establish the proportion of tart cherries from the 2019–20 crop which may be handled in commercial outlets at 67 percent free and 33 percent restricted. The Secretary of Agriculture (Secretary) has determined that designating free and restricted percentages of tart cherries for the 2019–20 crop year would effectuate the declared policy of the Act to stabilize marketing conditions by adjusting supply to meet market demand and help improve grower returns. A correction would also be made to § 930.151 to reflect the correct desirable carry-out inventory not to exceed a maximum of 100 million pounds (81 FR 63676). These recommendations were made by the Board at meetings on June 27, 2019, and September 12, 2019.

Section 930.51(a) provides the Secretary authority to regulate volume by designating free and restricted percentages for any tart cherries acquired by handlers in a given crop year. Section 930.50 prescribes procedures for computing an optimum supply based on sales history and for calculating these free and restricted percentages. Free percentage volume may be shipped to any market, while restricted percentage volume must be held by handlers in a primary or secondary reserve, or be diverted or used for exempt purposes as prescribed in §§ 930.159 and 930.162. Exempt purposes include, in part, the development of new products, sales into new markets, the development of export markets, and charitable contributions. Sections 930.55 through 930.57 prescribe procedures for inventory reserve. For cherries held in reserve, handlers would be responsible for storage and would retain title of the tart cherries.

Under § 930.52, only districts with an annual average production over the prior three years of at least six million pounds are subject to regulation, and any district producing a crop that is less than 50 percent of its annual average of the previous five years is exempt. The regulated districts for the 2019–20 crop year would be: District 1—Northern Michigan; District 2—Central Michigan; District 3—Southern Michigan; District 7—Utah; District 8—Washington; and District 9—Wisconsin. Districts 4, 5, and 6 (New York, Oregon and Pennsylvania, respectively) would not be regulated for the 2019–20 season.

Demand for tart cherries and tart cherry products tends to be relatively stable from year to year. Conversely, annual tart cherry production can vary greatly. In addition, tart cherries are processed and can be stored and carried over from crop year to crop year, further impacting supply. As a result, supply and demand for tart cherries are rarely in balance.

Because demand for tart cherries is inelastic, total sales volume is not very responsive to changes in price. However, prices are very sensitive to changes in supply. As such, an oversupply of cherries would have a sharp negative effect on prices, driving down grower returns. Aware of this economic relationship, the Board focuses on using the volume control provisions in the Order to balance supply and demand to stabilize industry returns.

Pursuant to § 930.50, the Board meets on or about July 1 to review sales data, inventory data, current crop forecasts, and market conditions for the upcoming season and, if necessary, to recommend preliminary free and restricted percentages if anticipated supply would exceed demand. After harvest is complete, but no later than September 15, the Board meets again to update its calculations using actual production data, consider any necessary adjustments to the preliminary percentages, and determine if final free and restricted percentages should be recommended to the Secretary.

The Board uses sales history, inventory, and production data to determine whether there is a surplus and, if so, how much volume should be restricted to maintain optimum supply. The optimum supply represents the desirable volume of tart cherries that should be available for sale in the coming crop year. Optimum supply is defined as the average free sales of the prior three years plus desirable carry-out inventory. Desirable carry-out is the amount of fruit needed by the industry to be carried into the succeeding crop year to meet market demand until the new crop is available. In June 2015, after considering market circumstances and needs; the Board recommended a desirable carry-out inventory not to exceed a maximum of up to 100 million pounds beginning with the 2016 crop year. That action was subsequently approved by the Secretary (81 FR 63676). Therefore, a correction would be made to § 930.151 to reflect the correct desirable carry-out inventory not to exceed a maximum of 100 million pounds.

In addition, USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' (*http://www.ams.usda.gov/publications/content/1982-guidelines-fruit-vegetable-*

marketing-orders) specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This requirement is codified in § 930.50(g), which specifies that in years when restricted percentages are established, the Board shall make available tonnage equivalent to an additional 10 percent of the average sales of the prior three years for market expansion (market growth factor).

After the Board determines optimum supply, desirable carry-out, and market growth factor, it must examine the current year's available volume to determine whether there is an oversupply situation. Available volume includes carry-in inventory (any inventory available at the beginning of the season) along with that season's production. If production is greater than the optimum supply minus carry-in, the difference is considered surplus. This surplus tonnage is divided by the sum of production in the regulated districts to reach a restricted percentage. This percentage must be held in reserve or used for approved diversion activities, such as exports.

The Board met on June 27, 2019, and computed an optimum supply of 313 million pounds for the 2019–20 crop year using the average of free sales for the three previous seasons and desirable carry-out. To determine the carry-out figure, the Board discussed and considered a range of alternatives. One member suggested a carry-out value of 20 million pounds, noting high carry-out puts downward pressure on grower prices. Another member agreed, noting the actual carry-out is often twice what the Board has estimated as desirable. Some members favored a carry-out of 50 million pounds. Other members were concerned that too low of a carry-out may push the restricted percentage too high for the industry to implement and suggested repeating the carry-out of 80 million pounds from the previous season. The Board's executive director noted average sales are about 21 million pounds a month. Using that average, it would take 84 million pounds to supply the industry for four months. After considering the alternatives, the Board determined a carry-out of 85 million pounds would be enough to supply the industry's needs at the beginning of the next season.

The Board subtracted the estimated carry-in of 174 million pounds from the optimum supply to calculate the production quantity needed from the 2019–20 crop to meet optimum supply. This number, 139 million pounds, was subtracted from the Board's estimated 2019–20 total production (from regulated and unregulated districts) of 248.2 million pounds to calculate a surplus of 109.2 million pounds of tart cherries. The Board also complied with the market growth factor requirement by removing 22.8 million pounds (average sales for prior three years of 228 million times 10 percent) from the surplus. The adjusted surplus of 86.4 million pounds was then divided by the expected production in the regulated districts (240 million pounds) to reach a preliminary restricted percentage of 36 percent for the 2019–20 crop year.

The Board then discussed whether this calculation would supply enough cherries to grow sales and fulfil orders that have not yet shipped. Some members reported there had been excessive rainfall, especially in Michigan, during the growing season. This could lead to poor fruit quality and handlers would need additional available tonnage to meet sales needs. As a result, the Board recommended an additional economic adjustment of 20 million pounds, which is subtracted from the surplus. The Board also anticipated orchard diversion would be about 50 million pounds, which is subtracted from the expected production. With these modifications, the preliminary restricted percentage was calculated at 35 percent.

The Board met again on September 12, 2019, to consider final volume regulation percentages for the 2019–20 season. The final percentages are based on the Board's reported production figures and the supply and demand information available in September.

The total production for the 2019–20 season was 257.2 million pounds, 9 million pounds above the Board's June estimate. In addition, growers diverted 18.3 million pounds in the orchard, about a third of what had been anticipated. As a result 238.9 million pounds would be available to market, 230.2 million pounds of which are in the restricted districts. Using the actual production numbers, and accounting for the recommended desirable carry-out and economic adjustment, as well as the market growth factor, the restricted percentage was recalculated.

The Board subtracted the carry-in figure used in June of 174 million pounds, from the optimum supply of 313 million pounds to determine 139 million pounds of 2019–20 production would be necessary to reach optimum supply. The Board subtracted the 139 million pounds from the actual production of 257.2 million pounds, resulting in a surplus of 118.2 million pounds of tart cherries.

The recalculated surplus was reduced by subtracting the revised economic adjustment of 20 million pounds and the market growth factor of 22.8 million pounds, resulting in an adjusted surplus of 75.4 million pounds. The Board then divided this final surplus by the available production of 230.2 million pounds in the regulated districts (248.5 million pounds minus 18.3 million pounds of in-orchard diversion) to calculate a restricted percentage of 33 percent with a corresponding free percentage of 67 percent for the 2019–20 crop year, as outlined in the following table:

	Millions of pounds
Final Calculations:	
(1) Average sales of the prior three years	228
(2) Plus desirable carry-out	85
(3) Optimum supply calculated by the Board	313
(4) Carry-in as of July 1, 2019	174
(5) Adjusted optimum supply (item 3 minus item 4)	139
(6) Board reported production	257.2
(7) Surplus (item 6 minus item 5)	118.2
(8) Total economic adjustments	20
(9) Market growth factor	22.8
(10) Adjusted Surplus (item 7 minus items 8 and 9)	75.4
(11) Production in regulated districts	248.5
(12) In-Orchard Diversion	18.3
(13) Production minus in orchard diversion	230.2
Final Percentages:	Percent
Restricted (item 10 divided by item 13 × 100)	33
Free (100 minus restricted percentage)	67

The final restriction of 33 percent is lower than the preliminary restriction percentage of 35 percent. The change is due to the increase in production from the June estimate and lower in-orchard diversion volume. The desired carry-out remained the same at 85 million pounds. In discussing the calculation, members indicated the quality concerns that led to the adjustment were accurate. Members did not propose any changes to the adjustment following harvest.

During the preliminary and final discussions, attendees raised concerns about the age of free inventory and the impact of imported tart cherry products. The Board voted to form a committee to develop a proposal for collecting additional data regarding inventory. Regarding the impact of imports, the Board approved a research proposal to gather additional data. The Board anticipates these actions would help

provide additional data for future volume regulation discussions.

Establishing free and restricted percentages is an attempt to bring supply and demand into balance. If the primary market is oversupplied with cherries, grower prices decline substantially. Restricted percentages have benefited grower returns and helped stabilize the market as compared to those seasons prior to the implementation of the Order. The Board, based on its discussion of this issue and the result of the above calculations, believes the available information indicates a restricted percentage should be established for the 2019–20 crop year to avoid oversupplying the market with tart cherries.

Consequently, the Board recommended final percentages of 67 percent free and 33 percent restricted by a vote of 15 in favor, and 3 opposed. The Board could meet and recommend the release of additional volume during the crop year if conditions so warranted. The Secretary finds, from the recommendation and supporting information supplied by the Board, that designating final percentages of 67 percent free and 33 percent restricted would tend to effectuate the declared policy of the Act, and so designates these percentages.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 400 producers of tart cherries in the regulated area and approximately 40 handlers of tart cherries who are subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than $1,000,000, and small agricultural service firms have been defined as those whose annual receipts are less than $30,000,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS) and Board data, the average annual grower price for tart cherries utilized for processing during the 2018–19 season was approximately $0.196 per pound. With total utilization at 288.8 million pounds for the 2018–19 season, the total 2018–19 value of the crop utilized for processing is estimated at $56.6 million. Dividing the crop value by the estimated number of producers (400) yields an estimated average receipt per producer of $141,500. This is well below the SBA threshold for small producers.

A free on board (FOB) price of $0.80 per pound for frozen tart cherries was reported by the Food Institute during the 2018–19 season. Based on utilization, this price represents a good estimate of the price for processed cherries. Multiplying this FOB price by total utilization of 288.8 million pounds results in an estimated handler-level tart cherry value of $231 million. Dividing this figure by the number of handlers (40) yields estimated average annual handler receipts of $5.8 million, which is below the SBA threshold for small agricultural service firms. Assuming a normal distribution, the majority of producers and handlers of tart cherries may be classified as small entities.

The tart cherry industry in the United States is characterized by wide annual fluctuations in production. According to NASS, the pounds of utilized tart cherry production for the years 2014 through 2018 were 301 million, 251 million, 319 million, 254 million, and 289 million, respectively. Because of these fluctuations, supply and demand for tart cherries are rarely in balance.

Demand for tart cherries is inelastic, meaning changes in price have a minimal effect on total sales volume. However, prices are very sensitive to changes in supply, and grower prices vary widely in response to the large swings in annual supply. Grower prices per pound for processed utilization have ranged from a low of $0.073 in 1987 to a high of $0.588 per pound in 2012 when a weather event substantially reduced supply.

Because of this relationship between supply and price, oversupplying the market with tart cherries would have a sharp negative effect on prices, driving down grower returns. Aware of this economic relationship, the Board focuses on using the volume control authority in the Order to align supply with demand and stabilize industry returns. This authority allows the industry to set free and restricted percentages as a way to bring supply and demand into balance. Free percentage cherries can be marketed by handlers to any outlet, while restricted percentage volume must be held by handlers in reserve, diverted, or used for exempted purposes.

This proposal would control the supply of tart cherries by establishing percentages of 67 percent free and 33 percent restricted for the 2019–20 crop year. These percentages should stabilize marketing conditions by adjusting supply to meet market demand and help improve grower returns. The proposal would regulate tart cherries handled in Michigan, Utah, Washington, and Wisconsin. The authority for this proposed action is provided in §§ 930.50, 930.51(a), and 930.52. The Board recommended this action at a meeting on September 12, 2019.

This proposal would result in some fruit being diverted from the primary domestic markets. However, as mentioned earlier, the USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' (*http://www.ams.usda.gov/publications/content/1982-guidelines-fruit-vegetable-marketing-orders*) specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. Under this proposal, the available quantity (337.5 million pounds) would be 148 percent of the average sales for the last three years (228 million pounds).

In addition, there are secondary uses available for restricted fruit, including the development of new products, sales into new markets, the development of export markets, and being placed in reserve. While these alternatives may provide different levels of return than the sales to primary markets, they play an important role for the industry. The areas of new products, new markets, and the development of export markets utilize restricted fruit to develop and expand the markets for tart cherries. In 2018–19, these activities accounted for over 88 million pounds in sales, a 6-million-pound increase from the previous season.

Placing tart cherries into reserves is also a key part of balancing supply and demand. Although handlers bear the handling and storage costs for fruit in reserve, reserves stored in large crop years are used to supplement supplies in short crop years. The reserves help the industry to mitigate the impact of oversupply in large crop years, while allowing the industry to supply markets in years when production falls below demand. Further, storage and handling costs are more than offset by the increase in price when moving from a large crop to a short crop year.

The Board recommended a carry-out of 85 million pounds and made a demand adjustment of 20 million pounds in order to make the regulation less restrictive to account for fruit quality concerns. With 174 million pounds of carry-in, 8.7 million pounds of production in the unregulated districts, and 154.8 million pounds of free tonnage from the regulated districts, 337.5 million pounds of fruit would be available for the domestic market. This amount is comparable to the 336.9 million pounds made available in the previous season. Even with the recommended restriction, the domestic market would have an ample supply of tart cherries. Further, should marketing conditions change, and market demand exceed existing supplies, the Board could meet and recommend the release of an additional volume of cherries. Consequently, it is not anticipated that this proposal would unduly burden growers or handlers.

While this proposal could result in some additional costs to the industry, these costs are outweighed by the benefits. The purpose of setting restricted percentages is to attempt to bring supply and demand into balance. If the primary market (domestic) is oversupplied with cherries, grower prices decline substantially. Without volume control, the primary market would likely be oversupplied, resulting in lower grower prices.

An econometric model has been developed to assess the impact volume control has on the price growers receive for their product. Based on the model, the use of volume control would have a positive impact on grower returns for this crop year. With volume control, grower prices are estimated to be approximately $0.04 per pound higher than without restrictions. In addition, absent volume control, the industry could start to build large amounts of unwanted inventories. These inventories would have a depressing effect on grower prices.

Retail demand is assumed to be highly inelastic, which indicates changes in price do not result in significant changes in the quantity demanded. Consumer prices largely do not reflect fluctuations in cherry supplies. Therefore, this proposal should have little or no effect on consumer prices and should not result in a reduction in retail sales.

The free and restricted percentages established by this proposal would provide the market with optimum supply and would apply uniformly to all regulated handlers in the industry, regardless of size. As the restriction represents a percentage of a handler's volume, the costs, when applicable, are proportionate and should not place an extra burden on small entities as compared to large entities.

The stabilizing effects of this proposal would benefit all handlers by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all growers and handlers by allowing them to better anticipate the revenues their tart cherries would generate. Growers and handlers, regardless of size, would benefit from the stabilizing effects of the volume restriction.

As noted earlier, the Board had extensive discussions on carry-out inventory alternatives. The alternatives ranged from 20 million pounds to 100 million pounds. Some expressed a concern that the relatively low reserves compared to high carry-in signaled that not enough fruit had been put in reserve in previous seasons. Some attendees indicated excess carry-in over the past few seasons has had a negative effect on returns and growers are seeking relief. The Board noted if the carry-out number was too large, it could have a negative impact on grower returns, but enough fruit was needed to supply processors before the new harvest. After consideration of the alternatives, the Board recommended a carry-out of 85 million pounds.

The Board also weighed alternatives when discussing the economic adjustment. Some member suggested making no adjustment to the formula. However, at its June meeting, the Board recommended a 20-million-pound adjustment to account for fruit quality concerns. When fruit is too large or too small, it does not move as efficiently through the pitting process. The Board was concerned excessive rainfall would result in large, soft, fruit that would not process as well as average-sized fruit. As a result, more fruit would be necessary to get the needed final product. Following harvest, Board members confirmed weather had indeed affected the size of fruit, and that the recommended adjustment was accurate and should not be changed.

In discussing the preliminary recommendation, the Board heard a report from a committee that examined import issues. During the discussion there was a suggestion that the Board might consider using the previous year's import numbers to estimate imported volume in the coming year. However, there was no motion to make an adjustment for imports. To better address these issues, the Board did allocated funds to a research project to provide additional information on the volume and impact of imported cherry products.

Given the concerns with regulation expressed by Board members and industry members in attendance, the Board also considered recommending no volume regulation. However, the data indicated a high carryover from previous seasons has created a substantial surplus. During this discussion, attendees questioned the age of the products in inventory. While all types of products can be stored for multiple years, their value does diminish over time. Reserve inventory must be under two years old, but there are no restrictions on free inventory. Industry members expressed concern that not all inventory is of equal value and suggested the Board should collect information on the age and quality of free inventory. A vote to recommend no volume regulation failed, but the Board did agree to form a committee to investigate potential reporting requirements to provide the industry better data regarding the available inventory. Thus, the alternatives were rejected.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0177, Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. No changes are necessary in those requirements as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This proposal would not impose any additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

In addition, the Board's meetings were widely publicized throughout the tart cherry industry, and all interested persons were invited to attend the meetings and participate in Board deliberations on all issues. Like all Board meetings, the June 27, 2019, and

September 12, 2019, meetings were public meetings, and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and information collection impacts of this proposal on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is proposed to be amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

■ 1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Revise § 930.151 to read as follows:

§ 930.151 Desirable Carry-out inventory.

Beginning with the crop year starting July 1, 2016, for the purposes of determining an optimum supply volume, the Board may recommend a desirable carry-out inventory not to exceed 100 million pounds.

■ 3. Revise § 930.256 and the heading to read as follows:

§ 930.256 Free and restricted percentages for the 2019–20 crop year.

The percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2019, which shall be free and restricted, respectively, are designated as follows: Free percentage, 67 percent and restricted percentage, 33 percent.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–05825 Filed 3–20–20; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

[NRC–2018–0142]

Backfitting, Forward Fitting, and Issue Finality Guidance

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft NUREG–1409, ''Backfitting Guidelines,'' Revision 1. This draft NUREG provides guidance on the implementation of the backfitting and issue finality provisions of the NRC's regulations and the NRC's forward fitting policy in accordance with Management Directive and Handbook 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests.''

DATES: Submit comments by May 22, 2020. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

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

- Federal Rulemaking website: Go to *https://www.regulations.gov* and search for Docket ID NRC–2018–0142. 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: Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Tim Reed, telephone: 301–415–1462, email: *Timothy.Reed@nrc.gov;* or Audrey Klett, telephone: 301–415–0489, email: *Audrey.Klett@nrc.gov.* Both are staff of the Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0142 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2018–0142.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in 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.

B. Submitting Comments

Please include Docket ID NRC–2018–0142 in your comment submission.

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

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

before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

Backfitting occurs when the NRC imposes new or changed regulatory requirements or staff interpretations of the regulations or requirements on nuclear power reactor licensees, select nuclear power reactor applicants, or select nuclear materials licensees. Backfitting is an integral part of the regulatory process and may be needed when the NRC staff addresses safety or security issues. The NRC would only take a backfitting action after conducting a formal, systematic review to ensure that the action is defined and justified. This process ensures discipline, predictability, and optimal use of NRC and licensee resources. The backfitting requirements are located in title 10 of the *Code of Federal Regulations* (10 CFR) sections 50.109, ''Backfitting,'' 70.76, ''Backfitting,'' 72.62, ''Backfitting,'' and 76.76, ''Backfitting.'' Provisions analogous to the backfitting requirements, referred to as issue finality provisions, are set forth in 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.''

Forward fitting occurs when the NRC conditions its approval of a licensee-initiated request for a licensing action on the licensee's compliance with a new or modified requirement or staff interpretation of a requirement that the licensee did not request. The new or modified requirement or staff interpretation must result in, generally, a change to the licensee's systems, structures, components, design, approval, procedures, or organization.

In accordance with the NRC Principles of Good Regulation and the Administrative Procedure Act, the backfitting rules and policies and the forward fitting policies provide the following: (a) Regulatory stability, by ensuring that the changes the NRC makes are necessary or provide a substantial safety enhancement; (b) reasoned and informed NRC decisionmaking, by requiring the proposed action be properly justified; and (c) transparency of NRC decisionmaking, by requiring that the NRC document and make publicly available its analyses and evaluations.

The NRC has drafted NUREG–1409, ''Backfitting Guidelines,'' Revision 1 (ADAMS Accession No. ML18109A498), to be consistent with recent updates to Management Directive and Handbook 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests,'' dated September 20, 2019 (ADAMS Accession No. ML18093B087). NUREG–1409, Revision 1, would supersede NUREG–1409, Revision 0 (ADAMS Accession No. ML032230247), which was issued in 1990 and did not address the backfitting requirements in 10 CFR part 70, ''Domestic Licensing of Special Nuclear Material,'' 10 CFR part 72, ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste,'' or 10 CFR part 76, ''Certification of Gaseous Diffusion Plants,'' or the 10 CFR part 52 issue finality provisions. NUREG–1409, Revision 1, would address all the backfitting and issue finality regulations and policies and the forward fitting policies. The NRC's intent in revising NUREG–1409 is to ensure consistency in implementing backfitting, forward fitting, and issue finality requirements across the NRC.

III. Public Meeting

The NRC will conduct a public meeting to describe the draft NUREG and answer questions from the public. The NRC will publish a notice of the location, time, and agenda of the meeting on the NRC's public meeting website at least 10 calendar days before the meeting. Stakeholders should monitor the NRC's public meeting website for information about the public meeting at: *https://www.nrc.gov/public-involve/public-meetings/index.cfm.*

Dated at Rockville, Maryland, this 18th day of March 2020.

For the Nuclear Regulatory Commission.

Mohamed K. Shams,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–06081 Filed 3–20–20; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0271; Product Identifier 2017–SW–017–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Helicopters Model AS350B2 helicopters. This proposed AD would require performing a test of the main rotor RPM (NR) indicator, and depending on the results, altering the wiring. This proposed AD is prompted by reports of some NR indicators displaying incorrect information. The actions of this proposed AD are intended to address an unsafe condition on these products.

DATES: The FAA must receive comments on this AD by May 22, 2020.

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

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

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0271; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the European Union Aviation Safety Agency (previously European Aviation Safety Agency) (EASA) AD, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed rule, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: George Schwab, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *george.schwab@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Discussion

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2016–0260, dated December 21, 2016, to correct an unsafe condition for Airbus Helicopters Model AS350B2 helicopters with a certain part-numbered NR sensor installed. EASA advises of several occurrences where the NR indicator has displayed incorrect data. According to EASA, an investigation determined that whenever the emergency cut-out control was activated, such as during a practice autorotation, electrical power to the NR indicator was lost. The EASA AD states that this condition, if not detected and corrected, could result in a significant increase in pilot workload, disruption of the autorotation training, and subsequent reduced control of the helicopter. To address this unsafe condition, the EASA AD requires a functional check of the NR indicator display, and, if required, altering the wiring to ensure a dual power supply to the NR indicator.

FAA's Determination

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Airbus Helicopters Alert Service Bulletin No. AS350–63.00.27, Revision 0, dated May 17, 2016. This service information contains procedures for performing a functional check of the NR indicator, and, if necessary, altering the wiring to add a direct battery supply to the NR indicator. Airbus Helicopters identifies this alteration as Modification 350A084886.00.

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.

Proposed AD Requirements

This proposed AD would require compliance with certain procedures described in the manufacturer's service bulletins. For Model AS350B2 helicopters with an NR sensor part number 704A37614007 installed, this proposed AD would require, before further flight, performing a test to determine if the NR indicator display changes or drops to zero when the emergency cut-out control is activated. If the NR display changes or drops to zero during the ground run, this proposed AD would require, before further flight, altering the NR sensor wiring.

Differences Between This Proposed AD and the EASA AD

The EASA AD requires compliance within 75 flight hours, within 90 days, or before the next autorotation training flight, whichever occurs first. This proposed AD would require compliance before further flight due to the critical nature of NR information for the pilot during an autorotation.

Costs of Compliance

The FAA estimates that this proposed AD affects 352 helicopters of U.S. Registry. The FAA estimates that operators may incur the following costs in order to comply with this AD. Labor costs are estimated at $85 per work-hour.

Performing a functional test of the NR indicator would require about 0.5 work-hours for an estimated cost of $43 per helicopter and $15,136 for the U.S. fleet. If required, altering the NR sensor wiring would take about 2 work-hours, and parts would cost about $154, for an estimated cost of $324 per helicopter.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Will not affect intrastate aviation in Alaska; 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 Helicopters: Docket No. FAA–2020–0271; Product Identifier 2017–SW–017–AD.

(a) Applicability

This AD applies to Airbus Helicopters Model AS350B2 helicopters, certificated in any category, with a main rotor RPM (NR) sensor part number 704A37614007 installed.

(b) Unsafe Condition

This AD defines the unsafe condition as loss of electrical power to the NR indicator when the emergency cutout control is activated. This condition could result in increased pilot workload and reduced helicopter control.

(c) Comments Due Date

The FAA must receive comments by May 22, 2020.

(d) Compliance

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

(e) Required Actions

Before further flight, perform a ground run-up with the fuel flow control lever in the flight gate with the collective control in the down/locked position. While at flight NR speed, activate the emergency cut-out control and observe the NR indicator display value. If the NR indicator display changes or drops to zero, before further flight, do the following:

(1) Alter the NR indicator wiring as depicted in Figures 1 and 2 of Airbus Helicopters Alert Service Bulletin No. AS350–63.00.27, Revision 0, dated May 17, 2016; and, Note 1 to paragraph (e)(1) of this AD: Airbus Helicopters identifies the alteration of the wiring as Modification 350A084886.00.

(2) Conduct a continuity test to confirm correct alteration of the wiring.

(f) Alternative Methods of Compliance (AMOCs)

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

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

(g) Additional Information

The subject of this AD is addressed in European Union Aviation Safety Agency (previously European Aviation Safety Agency) (EASA) AD No. 2016–0260, dated December 21, 2016. You may view the EASA AD on the internet at *https://www.regulations.gov* in the AD Docket.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6340 Main Rotor Drive Indicating System.

Issued on March 13, 2020.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–05774 Filed 3–20–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0204; Product Identifier 2018–SW–082–AD]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.A (Type Certificate Previously Held by Agusta S.p.A) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2018–07–08, which applies to certain Leonardo S.p.A (type certificate previously held by Agusta S.p.A) Model A109E, A109K2, A109S, AW109SP, A119, and AW119 MKII helicopters. AD 2018–07–08 requires reducing the life limit of the tail rotor blade retention bolt and an inspection of that bolt for cracking, and replacement of any cracked bolt. Since issuing AD 2018–07–08, the FAA has determined that repetitive inspections of the tail rotor blade retention bolt are needed to address the unsafe condition. This proposed AD would continue to require reducing the life limit of the tail rotor blade retention bolt, inspecting that bolt for cracking, and replacing any cracked bolt. In addition, this proposed AD would require repetitive inspections of the tail rotor blade retention bolt for cracking. 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 May 7, 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 Leonardo S.p.A. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G.Agusta 520, 21017 C.Costa di Samarate (Va) Italy; telephone +39–0331–225074; fax +39–0331–229046; or at *https://www.leonardocompany.com/en/home.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177. For information about the availability of this material at the FAA, call (817) 222–5110.

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–2020–0204; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the European Union Aviation Safety Agency (previously European Aviation Safety Agency) (EASA) AD, 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: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5161; email *matthew.fuller@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0204; Product Identifier 2018–SW–082–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all

comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA Emergency AD, 2016–0173–E, dated August 24, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Leonardo S.p.A. Model A109E, A109K2, A109LUH, A109S, A119, AW109SP and AW119 MKII helicopters.

EASA advises that a crack was found in a tail rotor blade retention bolt having part number (P/N) 709–0160–57–101, during a preflight inspection of a Model A109E helicopter. Tail rotor blade retention bolts having that part number are also installed on Model A109K2, A109LUH, A109S, A119, AW109SP, and AW119 MKII helicopters. A subsequent investigation did not identify the cause of the crack. EASA also advises cracked tail rotor blade retention bolts, if not detected and corrected, could lead to failure of the tail rotor, possibly resulting in loss of control of the helicopter. As a precautionary measure, pending the completion of the investigation and to address the unsafe condition, the MCAI requires reducing the life limit of these tail rotor blade retention bolts and repetitively inspecting the bolts. The MCAI is considered an interim action and further AD action may follow.

The FAA issued AD 2018–07–08, Amendment 39–19239 (83 FR 15495, April 11, 2018) (''AD 2018–07–08''), for certain Model A109E, A109K2, A109S, AW109SP, A119, and AW119 MKII helicopters. AD 2018–07–08 requires reducing the life limit of and inspecting the tail rotor blade retention bolts. AD 2018–07–08 resulted from the discovery of a cracked tail rotor blade retention bolt. The FAA issued AD 2018–07–08 to address failure of the tail rotor, possibly resulting in loss of control of the helicopter. AD 2018–07–08 did not require repetitive inspections of the tail rotor blade retention bolts at intervals not to exceed 200 flight hours as specified in the MCAI, as this time interval would allow for sufficient time for notice and comment.

Actions Since AD 2018–07–08 Was Issued

Since the FAA issued AD 2018–07–08, the FAA determined that repetitive inspections of the tail rotor blade retention bolts are needed to address the unsafe condition.

Also, since the FAA issued AD 2018–07–08, Agusta S.p.A changed its name to Leonardo S.p.A. This proposed AD reflects that change and updates the contact information to obtain service documentation.

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–2020–0204.

Related Service Information Under 1 CFR Part 51

This proposed AD would require the following service information, which the Director of the Federal Register approved for incorporation by reference as of April 26, 2018 (83 FR 15495, April 11, 2018).

- Leonardo Helicopters Mandatory Bollettino Tecnico No. 109EP–149, dated August 19, 2016.
- Leonardo Helicopters Mandatory Bollettino Tecnico No. 109K–72, dated August 19, 2016.
- Leonardo Helicopters Mandatory Bollettino Tecnico No. 109S–072, dated August 19, 2016.
- Leonardo Helicopters Mandatory Bollettino Tecnico No. 109SP–105, dated August 19, 2016.
- Leonardo Helicopters Mandatory Bollettino Tecnico No. 119–080, dated August 19, 2016.

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

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's 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 proposing this AD after evaluating all the relevant information and determining the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between this Proposed AD and the MCAI or Service Information.''

Differences Between This Proposed AD and the MCAI or Service Information

The MCAI does not specify life limits for a tail rotor blade retention bolt having P/N 709–0160–57–101 that has been interchanged between model helicopter installations, while this proposed AD does.

The MCAI applies to Model A109LUH helicopters. Model A109LUH helicopters are not certified by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those helicopters in the applicability.

Interim Action

The FAA considers this proposed AD to be an interim action. The design approval holder is currently developing a modification that will address the unsafe condition identified in this proposed AD. Once this modification is developed, approved, and available, the FAA might consider additional rulemaking.

Costs of Compliance

The FAA estimates that this proposed AD affects 219 helicopters of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2018–07–08	4 work-hours × $85 per hour = $340	$0	$340	$74,460
New proposed actions	4 work-hours × $85 per hour = $340	0	340	74,460

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
2 work-hour × $85 per hour = $170	$500	$670

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2018–07–08, Amendment 39–19239 (83 FR 15495, April 11, 2018), and adding the following new AD:

Leonardo S.p.A. (type certificate previously held by Agusta S.p.A.): Docket No. FAA–2020–0204; Product Identifier 2018–SW–082–AD.

(a) Comments Due Date

The FAA must receive comments by May 7, 2020.

(b) Affected ADs

This AD replaces AD 2018–07–08, Amendment 39–19239 (83 FR 15495, April 11, 2018) (''AD 2018–07–08'').

(c) Applicability

This AD applies to Leonardo S.p.A. (type certificate previously held by Agusta S.p.A.) Model A109E, A109K2, A109S, AW109SP, A119, and AW119 MKII helicopters, certificated in any category, with a tail rotor blade retention bolt (bolt) having part number (P/N) 709–0160–57–101 installed.

(d) Subject

Joint Aircraft Service Component (JASC) Code 6500, Tail Rotor Drive System.

(e) Reason

This AD was prompted by the discovery of a cracked bolt, and a determination that repetitive inspections of the bolt are needed to address the unsafe condition. The FAA is issuing this AD to address cracked bolts, which could result in failure of the tail rotor and loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) Before further flight:

(i) For Model A109E and A109K2 helicopters, remove from service any bolt having P/N 709–0160–57–101 that has 800 or more hours time-in-service (TIS). If the hours TIS is unknown, remove the bolt from service. Thereafter, remove from service any bolt having P/N 709–0160–57–101 before accumulating 800 hours TIS.

(ii) For Model A109S, AW109SP, A119, and AW119 MKII helicopters, remove from service any bolt having P/N 709–0160–57–101 that has 3,200 or more landings. If the number of landings is unknown, remove the bolt from service. Thereafter, remove from service any bolt having P/N 709–0160–57–101 before accumulating 3,200 landings. For purposes of this AD, a landing is counted anytime a helicopter lifts off into the air and then lands again regardless of the duration of the landing and regardless of whether the engine is shutdown.

(iii) Remove from service any bolt having P/N 709–0160–57–101 that has been interchanged between different model helicopters listed in paragraphs (g)(1)(i) and (ii) of this AD that has 800 or more hours TIS or 3,200 or more landings. If the hours TIS or number of landings is unknown, remove the bolt from service. Thereafter, remove from service any bolt having P/N 709–0160–57–101 that has been interchanged between different model helicopters listed in paragraphs (g)(1)(i) and (ii) of this AD before accumulating 800 hours TIS or 3,200 landings, whichever occurs first.

(2) Within 25 hours TIS after the effective date of this AD, and thereafter at intervals not to exceed 200 hours TIS, remove each bolt having P/N 709–0160–57–101. Prior to cleaning, using a 10X or higher power magnifying glass, inspect each bolt having P/N 709–0160–57–101 for any crack in the area depicted in Figure 1 of Leonardo Helicopters Mandatory Bollettino Tecnico No. 109EP–149, 109K–72, 109S–072, 109SP–105, or 119–080, all dated August 19, 2016, as applicable to your model helicopter.

(i) If there is any crack, replace the bolt with an airworthy bolt before further flight.

(ii) If there are no cracks, before further flight, clean and degrease the inspection area of the bolt with solvent, and using a 10X or higher power magnifying glass, inspect each bolt having P/N 709–0160–57–101 for any crack in the area depicted in Figure 1 of Leonardo Helicopters Mandatory Bollettino Tecnico No. 109EP–149, 109K–72, 109S–072, 109SP–105, or 119–080, all dated August 19, 2016, as applicable to your model helicopter. If there is any crack, replace the bolt with an airworthy bolt before further flight.

(3) As of the effective date of this AD, installation of a bolt having P/N 709–0160–57–101 is allowed, provided that the bolt has passed an inspection as required by paragraph (g)(2) of this AD.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Section, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5161; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

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

(i) Related Information

(1) The subject of this AD is addressed in European Union Aviation Safety Agency (previously European Aviation Safety Agency) (EASA) Emergency AD 2016–0173–E, dated August 24, 2016. This EASA AD may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket FAA–2020–0204.

(2) For service information identified in this AD, contact Leonardo S.p.A. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G.Agusta 520, 21017 C.Costa di Samarate (Va) Italy; telephone +39–0331–225074; fax +39–0331–229046; or at *https://www.leonardocompany.com/en/home.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

Issued on March 16, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–05851 Filed 3–20–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0203; Product Identifier 2019–NM–142–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier, Inc., Model CL–600–1A11 (600), CL–600–2A12 (601), and CL–600–2B16 (601–3A, 601–3R, and 604 Variants) airplanes. This proposed AD was prompted by a report that fast and easy access to the portable oxygen bottle may be prevented by the portable oxygen bottle installation's upper bracket latch assembly catching on the pressure gauge tube or on the pressure gauge bezel of the portable oxygen bottle. This proposed AD would require a check to identify the manufacturer and part number of the portable oxygen bottle installation, and, if necessary, modification of the portable oxygen bottle installation. 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 May 7, 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 Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; email *ac.yul@aero.bombardier.com;* internet *https://www.bombardier.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0203; 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: Darren Gassetto, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7323; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

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–2020–0203; Product Identifier 2019–NM–142–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2019–26, dated July 9, 2019 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model CL–600–1A11 (600), CL–600–2A12 (601), and CL–600–2B16 (601–3A, 601–3R, and 604 Variants) airplanes.

This proposed AD was prompted by a report that fast and easy access to the portable oxygen bottle may be prevented by the portable oxygen bottle installation's upper bracket latch assembly catching on the pressure gauge tube or on the pressure gauge bezel of the portable oxygen bottle. The FAA is proposing this AD to address this condition, which, if not detected and corrected, could prevent fast and easy access to the portable oxygen bottle in an emergency situation. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

Bombardier has issued the following service information:

- Bombardier Service Bulletin 600–0772, dated June 29, 2018;
- Bombardier Service Bulletin 601–0646, dated June 29, 2018;
- Bombardier Service Bulletin 604–35–006, dated June 29, 2018;

• Bombardier Service Bulletin 605–35–005, dated June 29, 2018;

• Bombardier Service Bulletin 650–35–001, dated June 29, 2018.

This service information describes procedures for a check to identify the manufacturer and part number of the portable oxygen bottle installation, and, if necessary, modification of the portable oxygen bottle installation. These documents are distinct since they apply to different airplane models. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to 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 proposing this AD because the agency evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between this Proposed AD and the MCAI or Service Information.''

Differences Between This Proposed AD and the MCAI or Service Information

The MCAI specifies that airplanes having serial numbers not listed in the applicable service information must do certain actions in accordance with the applicable service information. This proposed AD would require airplanes having serial numbers not listed in the applicable service information to do those actions in accordance with the procedures specified in paragraph (j)(2) of this proposed AD.

Costs of Compliance

The FAA estimates that this proposed AD affects 188 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
3 work-hours × $85 per hour = $255 per installation..	$1,530 per installation	$1,785 per installation	$335,580 per installation

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed 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):

Bombardier, Inc.: Docket No. FAA–2020–0203; Product Identifier 2019–NM–142–AD.

(a) Comments Due Date

We must receive comments by May 7, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Bombardier, Inc., airplanes identified in paragraphs (c)(1) through (3), certificated in any category, equipped with Scott (Avox/Zodiac) 5500 or 5600 series 11 cubic foot portable oxygen bottle(s) with upper bracket part number (P/N) 36758–02, P/N 36758–12 or P/N H3–2091–1 installed at the neck of the bottle(s).

(1) Model CL–600–1A11 (600) airplanes, serial numbers 1004 through 1085 inclusive.

(2) Model CL–600–2A12 (601) airplanes, serial numbers 3001 through 3066 inclusive.

(3) Model CL–600–2B16 (601–3A, 601–3R, and 604 Variants) airplanes, serial numbers 5001 through 5194 inclusive, 5301 through 5665 inclusive, 5701 through 5988 inclusive, and 6050 through 6119 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Reason

This AD was prompted by a report that fast and easy access to the portable oxygen bottle may be prevented by the portable oxygen bottle installation's upper bracket latch assembly catching on the pressure gauge tube or on the pressure gauge bezel of the portable oxygen bottle. The FAA is proposing this AD to address this condition, which, if not detected and corrected, could prevent fast and easy access to the portable oxygen bottle in an emergency situation.

(f) Compliance

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

(g) Portable Oxygen Bottle Check

For airplanes with a serial number listed in Section 1.A of the applicable Bombardier service information specified in figure 1 to paragraphs (g), (h), and (i) of this AD: Within 60 months after the effective date of this AD, check each portable oxygen bottle installation to determine the manufacturer and P/N, in accordance with paragraph 2.B. of the Accomplishment Instructions of the applicable Bombardier service information specified in figure 1 to paragraphs (g), (h), and (i) of this AD.

Figure 1 to paragraphs (g), (h), and (i) – *Service Information References*

Airplane Model	Bombardier Service Information
Model CL-600-1A11	Bombardier Service Bulletin 600-0772, dated June 29, 2018
Model CL-600-2A12	Bombardier Service Bulletin 601-0646, dated June 29, 2018
Model CL-600-2B16	Bombardier Service Bulletin 601-0646, dated June 29, 2018
Model CL-600-2B16	Bombardier Service Bulletin 604-35-006, dated June 29, 2018
Model CL-600-2B16	Bombardier Service Bulletin 605-35-005, dated June 29, 2018
Model CL-600-2B16	Bombardier Service Bulletin 650-35-001, dated June 29, 2018

(h) Bracket Modifications

If, during the inspection specified in paragraph (g) of this AD, any portable oxygen bottle is found to be manufactured by Scott (Avox/Zodiac) and is a 5500 or 5600 series 11 cubic foot bottle, with upper bracket P/N 36758–02, 36758–12, or H3–2091–1 installed at the neck of the bottle: Modify the portable oxygen bottle brackets in accordance with the paragraph 2.C. of the Accomplishment Instructions of the applicable Bombardier service information specified in figure 1 to paragraphs (g), (h), and (i) of this AD.

(i) Portable Oxygen Bottle Check and Corrective Actions for Airplanes Not Listed in the Service Information

For airplanes with a serial number that is not listed in section 1.A of the applicable Bombardier service information specified in figure 1 to paragraphs (g), (h), and (i) of this AD: Within 60 months after the effective date of this AD, check each portable oxygen bottle installation to determine the manufacturer and part number and accomplish corrective actions in accordance with the procedures specified in paragraph (j)(2) of this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2019–26, dated July 9, 2019, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0203.

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

(3) For service information identified in this AD, contact Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; email *ac.yul@aero.bombardier.com*; internet *https://www.bombardier.com*. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on March 13, 2020.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–05771 Filed 3–20–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0189; Airspace Docket No. 19–AGL–2]

RIN 2120–AA66

Proposed Amendment of V–55, V–271, T–215, and T–265, and Revocation of V–215 and V–450 in the Vicinity of Muskegon, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend two VHF Omnidirectional Range (VOR) Federal airways, V–55 and V–271; amend two low altitude Area Navigation (RNAV) routes, T–215 and T–265; and remove two VOR Federal airways, V–215 and V–450, in the vicinity of Muskegon, MI. The air traffic service (ATS) route modifications are necessary due to the planned decommissioning of the VOR portion of the Muskegon, MI, VOR/Tactical Air Navigation (VORTAC) navigation aid (NAVAID). The NAVAID provides navigation guidance for portions of the affected ATS routes. This VOR is being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Comments must be received on or before May 7, 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–2020–0189; Airspace Docket No. 19–AGL–2 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–2020–0189; Airspace Docket No. 19–AGL–2) 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–2020–0189; Airspace Docket No. 19–AGL–2.'' 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 Muskegon, MI, VORTAC in September, 2020. The VOR portion of the Muskegon NAVAID is a candidate VOR 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 Muskegon, MI, VORTAC is planned for decommissioning, the co-located DME portion of the NAVAID is being retained.

The ATS route dependencies to the Muskegon VORTAC are VOR Federal airways V–55, V–215, V–271, and V–450. However, as result of the proposed amendments to those airways, this action also addresses proposed amendments to RNAV routes T–217 and T–265.

With the planned decommissioning of the VOR portion of the Muskegon VORTAC, 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 two of the airways, V–55 and V–271, and revocation of the other two airways, V–215 and V–450. To overcome the airway gaps and revocations, instrument flight rules (IFR) traffic could use adjacent ATS routes, including V–26, V–30, V–133, V–193, V–217, V–285, and V–420, to circumnavigate the affected area. IFR traffic could also file point to point through the affected area using 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–217 and T–265 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 one of performance-based navigation. The editorial amendments to the existing T–217 and T–265 descriptions would not change the route structure, operational use, or charted depiction of the routes.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to modify VOR Federal airways V–55 and V–271, modify low altitude RNAV routes T–217 and T–265, and remove VOR Federal airways V–215 and V–450. The planned decommissioning of the VOR portion of the Muskegon, MI, VORTAC has made this action necessary. The proposed VOR Federal airway changes are outlined below.

V–55: V–55 currently extends between the Dayton, OH, VOR/Distance Measuring Equipment (VOR/DME) and the intersection of the Green Bay, WI, VORTAC 270° and Oshkosh, WI, VORTAC 339° radials (BIPID fix); 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 between the Pullman, MI, VOR/DME and the intersection of the Green Bay, WI, VORTAC 270° and Oshkosh, WI, VORTAC 339° radials (BIPID fix). Additional changes to other portions of the airway have been proposed in a separate NPRM. The unaffected portions of the existing airway would remain as charted.

V–215: V–215 currently extends between the intersection of the Muskegon, MI, VORTAC 208° and Pullman, MI, VOR/DME 261° radials (JYBEE fix) and the Gaylord, MI, VOR/DME. The FAA proposes to remove the airway in its entirety.

V–271: V–271 currently extends between the Muskegon, MI, VORTAC and the Escanaba, MI, VOR/DME. The FAA proposes to remove the airway segment between the Muskegon, MI, VORTAC and the Manistee, MI, VOR/DME. The unaffected portions of the existing airway would remain as charted.

V–450: V–450 currently extends between the Escanaba, MI, VOR/DME and the Flint, MI, VORTAC. The FAA proposes to remove the airway in its entirety.

The proposed low altitude RNAV route changes are outlined below.

T–217: T–217 currently extends between the Lexington, KY, VOR/DME and the BONEE, OH, fix. The FAA proposes to extend the route northwestward from the BONEE, OH, fix to the GAYLE, MI, waypoint. The extension of T–217 would replace the loss of a portion of V–450 west of the Muskegon VORTAC. Additionally, the type of NAVAID facility for the Lexington, KY, route point would be corrected from ''VORTAC'' to ''VOR/DME'' and the geographic coordinates of each of the new route points would be expressed in degrees, minutes, seconds, and hundredths of a second.

T–265: T–265 currently extends between the AHMED, IL, fix and the VEENA, WI, fix. The FAA proposes to amend the existing route and extend it eastward and northward so the route would begin at the JAYBE, WI, fix and end at the PINES, MI, waypoint. The extension of T–265 would establish enroute low altitude structure to overcome the loss of the V–55 airway segment south of the Muskegon VORTAC and the loss of the V–215 airway segments north of the Muskegon VORTAC. Additionally, the geographic coordinates of each route point would be expressed in degrees, minutes, seconds, and hundredths of a second.

The radials listed in the VOR Federal airway V–55 description below are unchanged and stated in True degrees.

VOR Federal airways are published in paragraph 6010(a) and low altitude RNAV T-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–55 [Amended]

From Dayton, OH; Fort Wayne, IN; Goshen, IN; Gipper, MI; Keeler, MI; to Pullman, MI. From Eau Claire, WI; to Siren, WI. From Park Rapids, MN; Grand Forks, ND; INT Grand Forks 239° and Bismarck, ND, 067° radials; to Bismarck.

* * * * *

V–215 [Removed]

* * * * *

V–271 [Amended]

From Manistee, MI; to Escanaba, MI.

* * * * *

V–450 [Removed]

* * * * *

6011. United States Area Navigation Routes

* * * * *

T–217 LEXINGTON, KY (HYK) TO GAYLE, MI [AMENDED]

Lexington, KY (HYK)	VOR/DME	(Lat. 37°57′58.86″ N, long. 84°28′21.06″ W)
BOSTR, OH	FIX	(Lat. 38°53′08.13″ N, long. 84°04′58.02″ W)
HEDEN, OH	FIX	(Lat. 39°16′44.88″ N, long. 84°02′02.37″ W)
PRUDE, OH	FIX	(Lat. 39°25′44.92″ N, long. 83°56′58.60″ W)
Springfield, OH (SGH)	DME	(Lat. 39°50′11.55″ N, long. 83°50′41.84″ W)
BONEE, OH	FIX	(Lat. 40°03′08.85″ N, long. 83°56′56.15″ W)
SJAAY, IN	WP	(Lat. 40°58′44.05″ N, long. 85°11′17.17″ W)
DERRF, IN	WP	(Lat. 41°39′56.73″ N, long. 85°23′58.59″ W)
GETCH, MI	WP	(Lat. 43°10′07.15″ N, long. 86°03′03.06″ W)
GAYLE, MI	WP	(Lat. 43°29′37.62″ N, long. 87°00′13.08″ W)

* * * * *

T–265 JAYBE, WI TO PINES, MI [AMENDED]

JAYBE, WI	FIX	(Lat. 42°38′39.36″ N, long. 88°38′19.60″ W)
GRIFT, IL	WP	(Lat. 42°17′28.14″ N, long. 88°53′41.42″ W)
START, IL	WP	(Lat. 41°45′24.83″ N, long. 89°00′21.81″ W)
MEITZ, IL	FIX	(Lat. 41°23′30.87″ N, long. 88°38′53.19″ W)
COYAP, IL	WP	(Lat. 41°13′26.93″ N, long. 87°41′20.30″ W)
MAPPS, IN	WP	(Lat. 41°10′53.94″ N, long. 86°56′32.63″ W)
KLROY, IN	WP	(Lat. 41°19′19.37″ N, long. 86°38′57.44″ W)
SMUUV, MI	WP	(Lat. 42°27′58.77″ N, long. 86°07′38.37″ W)
GETCH, MI	WP	(Lat. 43°10′07.15″ N, long. 86°03′03.06″ W)
LADIN, MI	WP	(Lat. 44°22′25.44″ N, long. 85°09′38.61″ W)
CARGA, MI	WP	(Lat. 44°38′28.29″ N, long. 84°58′15.15″ W)
BUDHA, MI	WP	(Lat. 44°58′24.33″ N, long. 84°45′23.22″ W)
RONDO, MI	WP	(Lat. 45°16′43.24″ N, long. 84°31′06.32″ W)
PINES, MI	WP	(Lat. 46°01′49.61″ N, long. 84°29′12.25″ W)

* * * * *

Issued in Washington, DC, on March 11, 2020.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–05858 Filed 3–20–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0187; Airspace Docket No. 19–ASO–27]

RIN 2120–AA66

Proposed Amendment and Removal of Air Traffic Service (ATS) Routes; Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend 9 jet routes, remove 22 jet routes, and remove 1 high altitude area navigation (RNAV) route in the eastern United States. This action is in support of the Northeast Corridor Atlantic Coast Route Project to improve the efficiency of the National Airspace System (NAS) and reduce dependency on ground-based navigational systems.

DATES: Comments must be received on or before May 7, 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: 1 (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2020–0187; Airspace Docket No. 19–ASO–27 at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.*

FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://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: Sean Hook, 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 NAS.

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–2020–0187; Airspace Docket No. 19–ASO–27) 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–2020–0187; Airspace Docket No. 19–ASO–27.'' 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 Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

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.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to amend 9 jet routes, remove 22 jet routes, and remove 1 high altitude area navigation (RNAV) route in the eastern United States. This action would support the Northeast Corridor Atlantic Coast Route Project by amending and removing certain jet route segments that are being replaced by RNAV routing. Additionally, the proposed jet route changes would reduce aeronautical chart clutter by removing unneeded route segments.

In this NPRM, where new navigation aid radials are proposed in an amended jet route description, both ''True'' (T) and ''Magnetic'' (M) degrees will be stated. Existing radials in the descriptions are expressed only in True degrees. Some jet routes discussed in this preamble include points that are identified by the intersection of radials from two VOR or VORTAC navigation facilities. In some cases, those intersections are assigned a specific fix name that is depicted on aeronautical charts (*e.g.,* TYDOE, GA). While these fix names are not stated in the regulatory descriptions of jet routes, they are noted in the preamble text below to assist readers in locating that point on aeronautical charts.

The proposed route changes are as follows:

J–2: J–2 currently extends between the Mission Bay, CA, VORTAC, and the Taylor, FL, VORTAC. This action proposes to remove the segment of the route between the Seminole, FL, VORTAC and the Taylor, FL, VORTAC. As amended, J–2 would extend between the Mission Bay VORTAC and intersection of the Crestview, FL, 091° and Seminole, FL, 290° radials (depicted on aeronautical charts as the OJHAP, FL, INT).

J–14: J–14 currently extends between the Panhandle, TX, VORTAC, and the Patuxent, MD, VORTAC. This action proposes to remove the segment between the Greensboro VORTAC, and the Patuxent 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.

J–24: J–24 currently extends, in two parts: Between the Myton, UT, VOR/DME, and the Hayden, CO, VOR/DME; and between the Hugo, CO VOR/DME, and the Harcum, VA, VORTAC. This action proposes to remove the segments between the Montebello, VA, VOR/DME, and the Harcum VORTAC. As amended, J–24 would extend, in two parts: Between Myton, UT, and Hayden, CO; and between Hugo, CO, and Montebello, VA.

J–37: J–37 currently consist of three separate segments: Between Hobby, TX, VOR/DME and Montgomery, AL, VORTAC; followed by a gap; and then between Lynchburg, VA, VOR/DME and Coyle, NJ, VORTAC; followed by a gap; and then between Kennedy, NY, VOR/

DME, and Massena, NY, VORTAC. As amended, J–37 would just consist of a single segment between Hobby, TX and Montgomery, AL.

J–39: J–39 currently extends between the Crestview, FL, VORTAC, and the Rosewood, OH, VORTAC. This action would remove the portion of the route between the Crestview, FL and the Montgomery, AL, VORTAC. The amended route would extend between Montgomery, AL and Rosewood, OH.

J–42: J–42 currently extends between the Delicias, Mexico, VOR/DME, and the Boston, MA, VOR/DME. This action would remove the segment between Nottingham, MD, VORTAC, and Boston, MA. The amended route would extend between Delicias, Mexico and Gordonsville, VA, VORTAC. The portion within Mexico is excluded.

J–52: J–52 currently extends in two parts: Between Vancouver, BC, Canada, VOR/DME, and the Columbia, SC, VORTAC; followed by a gap in the route, and resuming between the intersection of the Columbia, SC, 042° and the Flat Rock, VA, 212° radials (TUBAS Fix) and Richmond, VA, VOR/DME. This action would remove the segment from Atlanta, GA, VORTAC, and Richmond, VA. The amended route would extend between Vancouver, BC and Vulcan, AL, VORTAC. The portion within Canada is excluded.

J–55: J–55 currently extends in two parts: Between the Charleston, SC, VORTAC, and INT Hopewell, VA, 030° and Nottingham, MD, 174° radials; followed by a gap in the route, and resuming between Sea Isle, NJ, VORTAC, and Presque Isle, ME, VOR/DME. The FAA proposes to remove the entire route.

J–61: J–61 currently extends between the WETRO, NC, WP (defined by the intersection of the Dixon, NC, NDB 023° and Nottingham, MD, VORTAC 174° radials), and the Philipsburg, PA, VORTAC. This action would remove the segment between the WETRO WP and the Nottingham VORTAC. The amended route would extend from the Westminster, MD, VORTAC, and the Philipsburg VORTAC.

J–62: J–62 currently extends between the Robbinsville, NJ, VORTAC, and INT Hopewell, VA, 030° and Nottingham, MD, 174° radials; followed by a gap in the route, and resuming between Sea Isle, NJ, VORTAC, and Presque Isle, ME, VOR/DME. The FAA proposes to remove the entire route. Alternative routing is available via J–222 to J–79.

J–68: J–68 currently extends in two parts: Between Gopher, MN, VORTAC, and Flint, MI, VORTAC; followed by a gap in the route, and resuming between Hancock, NY, VOR/DME, and Nantucket, MA, VOR/DME. The FAA proposes to remove the latter section from Hancock to Nantucket. The amended route would extend from Gopher VORTAC to Flint VORTAC.

J–79: J–79 currently extends between Charleston, SC, VORTAC, and Bangor, ME, VORTAC. The FAA proposes to delete the entire route.

J–109: J–109 currently extends between the Wilmington, NC, VORTAC, and the Linden, VA, VORTAC. The FAA proposes to remove the entire route.

J–121: J–121 currently extends between the Charleston, SC, VORTAC, and the Kennebunk, ME, VOR/DME. The FAA proposes to remove the entire route.

J–150: J–150 extends between the Gordonsville, VA, VORTAC and STOOL INT (defined as the Marconi, MA, 082° and the Boston, MA, 097° radials). The FAA proposes to remove the entire route.

J–165: J–165 currently extends between the intersection of the Charleston, SC, VORTAC 025° and the Florence, SC, VORTAC 085° radials (DWYTE Fix) and the Richmond, VA, VOR/DME. The FAA proposes to remove the entire route.

J–174: J–174 currently extends between Charleston, SC, VORTAC, and the intersection of the Marconi, MA, VOR/DME 090° and the Nantucket, MA, VOR/DME 066° radials. The FAA proposes to remove the entire route.

J–191: J–191 currently extends between the Robbinsville, NJ, VORTAC, and the Wilmington, NC, VORTAC. The FAA proposes to remove the entire route.

J–193: J–193 currently extends between the Wilmington, NC, VORTAC, and the Harcum, VA, VORTAC 006° and Hopewell, VA, VORTAC 030° radials (HUBBS INT). The FAA proposes to remove the entire route.

J–207: J–207 currently extends between the Florence, SC, VORTAC, and the Franklin, VA, VORTAC. The FAA proposes to remove the entire route.

J–209: J–209 currently extends between the Raleigh-Durham, NC, VORTAC, and the intersection of the Coyle, NJ, VORTAC 036° and the Robbinsville, NJ, VORTAC 136° radials. The FAA proposes to remove the entire route.

J–222: J–222 currently extends between the Robbinsville, NJ, VORTAC, and the Cambridge, NY, VOR/DME. The FAA proposes to remove the entire route.

J–225: J–225 currently extends between the Cedar Lake, NJ, VOR/DME, and the Providence, RI, VOR/DME. The FAA proposes to remove the entire route.

J–230: J–230 currently extends between the Robbinsville, NJ, VORTAC, and the Bellaire, OH, VOR/DME. The FAA proposes to remove the entire route.

J–506: J–506 currently extends between the Millinocket, ME, VOR/DME and the intersection of the St John, NB, Canada, VOR/DME 267° radial with the United States/Canadian border. The FAA proposes to remove the entire route.

J–561: J–561 currently extends between the Presque Isle, ME, VOR/DME, and the Mont Joli, PQ, Canada, VOR/DME, excluding the portion outside of the United States. The FAA proposes to remove the entire route.

J–563: J–563 currently extends between the Albany, NY, VORTAC, and the Sherbrooke, BC, Canada, VOR/DME, excluding the portion outside of the United States. The FAA proposes to remove the entire route.

J–570: J–570 currently extends between the Albany, NY, VORTAC, and the Mirabel, PQ, Canada, VOR/DME, excluding the portion outside of the United States. The FAA proposes to remove the entire route.

J–573: J–573 currently extends between the Kennebunk, ME, VOR/DME, and the St John, NB, Canada, VOR/DME, excluding the portion outside of the United States. The FAA proposes to remove the entire route.

J–582: J–582 currently extends between the Presque Isle, ME, VOR/DME, and the Sept Isle, PQ, Canada, VOR/DME, excluding the portion outside of the United States. The FAA proposes to remove the entire route.

J–585: J–585 currently extends between the Nantucket, MA, VOR/DME, and the Yarmouth, NS, Canada, VOR/DME, excluding the portion outside of the United States. The FAA proposes to remove the entire route.

In addition to the above jet route changes, the FAA proposes to remove one high altitude RNAV route as follows:

Q–108: Q–108 currently extends between the GADAY, FL, WP and the HKUNA, FL, fix. The FAA proposes to remove the entire route.

Jet routes are published in paragraph 2004; and United States Area Navigation Routes are published in paragraph 2006; 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 routes and RNAV route listed in this document would be subsequently amended in, or removed, respectively, from 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–2

From Mission Bay, CA; Imperial, CA; Bard, AZ; INT Bard 089° and Gila Bend, AZ, 261°radials; Gila Bend; Tucson, AZ; El Paso, TX; Fort Stockton, TX; Junction, TX; San Antonio, TX; Humble, TX; Lake Charles, LA; Fighting Tiger, LA; Semmes, AL; Crestview, FL; to INT Crestview 091°and Seminole, FL, 290°radials.

J–14

From Panhandle, TX; via Will Rogers, OK; Little Rock, AR; to Vulcan, AL.

J–24

From Myton, UT, to Hayden, CO. From Hugo, CO, Hays, KS; via Salina, KS; Kansas City, MO; St. Louis, MO; Brickyard, IN; Falmouth, KY; Charleston, WV; to Montebello, VA.

J–37

From Hobby, TX, via INT of the Hobby 090° and Harvey, LA, 266° radials; Harvey; Semmes, AL; to Montgomery, AL.

J–39

From Montgomery, AL; Vulcan, AL, Nashville, TN; Louisville, KY, to Rosewood, OH.

J–42

From Delicias, Mexico, via Fort Stockton, TX; Abilene, TX; Ranger, TX; Texarkana, AR; Memphis, TN; Nashville, TN; Beckley, WV; Montebello, VA; to Gordonsville, VA.

J–52

From Vancouver, BC, Canada; via Spokane, WA; Salmon, ID; Dubois, ID; Rock Springs, WY; Falcon, CO; Hugo, CO; Lamar, CO; Liberal, KS; INT Liberal 137° and Ardmor, OK 309° radials; Ardmore; Texarkana, AR; Sidon, MS; Bigbee, MS; to Vulcan, AL.

J–55 [Remove]

J–61

From Westminster, MD; to Philipsburg, PA.

J–62 [Remove]

J–68

From Gopher, MN, INT Gopher 109° and Dells, WI, 310° radials; Dells; Badger, WI; INT Badger 086° and Flint, MI, 278° radials; to Flint.

J–79 [Remove]

J–109 [Remove]

J–121 [Remove]

J–150 [Remove]

J–165 [Remove]

J–174 [Remove]

J–191 [Remove]

J–193 [Remove]

J–222 [Remove]

J–225 [Remove]

J–230 [Remove]

J–506 [Remove]

J–561 [Remove]

J–563 [Remove]

J–570 [Remove]

J–573 [Remove]

J–582 [Remove]

J–585 [Remove]

Paragraph 2006 United States Area Navigation Routes.

Q–108 [Remove]

Issued in Washington, DC, on March 11, 2020.

Scott M. Rosenbloom,

Acting Manager, Airspace Policy Group.

[FR Doc. 2020–05857 Filed 3–20–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301 and 1318

[Docket No. DEA–506]

RIN 1117–AB54

Controls To Enhance the Cultivation of Marihuana for Research in the United States

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Drug Enforcement Administration is proposing to amend its regulations to comply with the requirements of the Controlled Substances Act, including consistency with treaty obligations, in order to facilitate the cultivation of marihuana for research purposes and other licit purposes. Specifically, this proposed rule would amend the provisions of the regulations governing applications by persons seeking to become registered with DEA to grow marihuana as bulk manufacturers and add provisions related to the purchase and sale of this marihuana by DEA.

DATES: Comments must be submitted electronically or postmarked on or before May 22, 2020.

ADDRESSES: To ensure proper handling of comments, please reference ''[RIN 1117–AB54/Docket No. DEA–506]'' on all electronic and written correspondence, including any attachments.

• *Electronic Comments:* DEA encourages that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the

online instructions at that site for submitting comments. Upon completion of your submission, you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. Commenters should be aware that the electronic Federal Docket Management System will not accept any comments after 11:59 p.m. Eastern Time on the last day of the comment period.

• *Paper Comments:* Paper comments that duplicate electronic submissions are not necessary. Should you wish to mail a paper comment *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA **Federal Register** Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152–2639.

• *Paperwork Reduction Act Comments:* All comments concerning collections of information under the Paperwork Reduction Act must be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for DOJ, Washington, DC 20503. Please state that your comment refers to RIN 1117–AB54/Docket No. DEA–506.

FOR FURTHER INFORMATION CONTACT:

Scott A. Brinks, Regulatory Drafting and Policy Support Section (DPW), Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152–2639; Telephone: (571) 362–3261.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received in response to this docket are considered part of the public record. They will, unless reasonable cause is given, be made available by DEA for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) that you voluntarily submit. The Freedom of Information Act applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all of the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify the confidential business information to be redacted within the comment.

Comments containing personal identifying information or confidential business information identified as directed above will be made publicly available in redacted form. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as your name, address, etc.) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this proposed rule is available at *http://www.regulations.gov* for ease of reference.

Background and Purpose of This Proposed Rule

Under the Controlled Substances Act (CSA), all persons who seek to manufacture a controlled substance must apply for and obtain a DEA registration.[1] 21 U.S.C. 822(a)(1). The CSA defines ''manufacture'' to include the ''production'' of a controlled substance, which includes, among other things, the planting, cultivation, growing, or harvesting of a controlled substance. 21 U.S.C. 802(15), (22). Thus, any person who seeks to plant, cultivate, grow, or harvest marihuana[2] to supply researchers or for other uses permissible under the CSA (such as product development) must obtain a DEA manufacturing registration. Because marihuana is a schedule I controlled substance, applications by persons seeking to become registered to manufacture marihuana are governed by 21 U.S.C. 823(a). *See generally* 76 FR 51403 (2011); 74 FR 2101 (2009), *pet. for rev. denied, Craker* v. *DEA,* 714 F.3d 17 (1st Cir. 2013). Under section 823(a), for DEA to grant a registration, the DEA Administrator must determine that two conditions are satisfied: (1) The registration is consistent with the public interest (based on the enumerated criteria in section 823(a)), and (2) the registration is consistent with U.S. obligations under the Single Convention on Narcotic Drugs, 1961 (''Single Convention'' or ''Treaty''), 18 U.S.T. 1407.[3]

In 2016, DEA issued a policy statement aimed at expanding the number of manufacturers who could produce marihuana for research purposes. *See* Applications to Become Registered under the Controlled Substances Act to Manufacture Marijuana to Supply Researchers in the United States, 81 FR 53846 (Aug. 12, 2016). Subsequently, the Department of Justice (DOJ) undertook a review of the CSA, including the provisions requiring consistency with obligations under international treaties such as the Single Convention, and determined that certain changes to its 2016 policy were needed. The pertinent Treaty provisions are found in articles 23 and 28 of the Single Convention, which are summarized below. Additionally, DEA believes that these changes will enhance and improve research with marihuana and facilitate research that could result in the development of marihuana-based medicines approved by the Food and Drug Administration (FDA).

This proposed rule is being issued pursuant to the Administrator's authority under the CSA ''to promulgate rules and regulations and to charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances,'' 21 U.S.C. 821, and to ''promulgate and enforce any rules, regulations, and procedures which he may deem necessary and appropriate for the efficient execution of his functions under [the CSA],'' 21 U.S.C. 871(b).

A. Relevant Provisions of the Single Convention

Because the terminology used in the Single Convention is somewhat different from that in the CSA, a brief explanation is warranted. The Single Convention uses the terms ''cannabis,'' ''cannabis plant,'' and ''cannabis

[1] All functions vested in the Attorney General by the CSA have been delegated to the Administrator of DEA. 28 CFR 0.100(b).

[2] This document uses both the CSA spelling ''marihuana'' and the modern spelling ''marijuana'' interchangeably.

[3] Section 823(a) provides that the registrations to manufacture controlled substances in schedule I or II must be ''consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971.'' The Single Convention entered into force for the United States on June 24, 1967. *See* Single Convention, 18 U.S.T. 1407.

resin''—all of which are generally encompassed by the CSA definition of ''marihuana'' in 21 U.S.C. 802(16)).[4] The Single Convention defines ''cannabis plant'' as ''any plant of the genus Cannabis.'' Single Convention art. 1(1)(c). The Single Convention defines ''cannabis'' as the ''flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops) from which the resin has not been extracted.'' *Id.* art. 1(1)(b). The Single Convention defines ''cannabis resin'' as the ''separated resin, whether crude or purified, obtained from the cannabis plant.'' *Id.* art. 1(1)(d).

Article 28 of the Single Convention states in paragraph 1: ''If a Party permits the cultivation of the cannabis plant for the production of cannabis or cannabis resin, it shall apply thereto the system of controls as provided in article 23 respecting the control of the opium poppy.'' Paragraph 2 of that article excludes from the Convention the cultivation of cannabis for industrial or horticultural purposes. Because the United States permits the cultivation of marihuana for the production of cannabis and cannabis resin currently only for research purposes, it is obligated under the Treaty to apply to the marihuana plant cultivated for these purposes the ''system of controls'' provided in article 23 respecting the control of the opium poppy.

The Commentary to the Single Convention contains the following explanation of articles 23 and 28 within the overall framework of the Treaty:

> The system of control over all stages of the drug economy which the Single Convention provides has two basic features: Limitation of narcotic supplies of each country . . . to the quantities that it needs for medical and scientific purposes, and authorization of each form of participation in the drug economy, that is, licensing of producers, manufacturers and traders . . . . *In the case of the production of opium, coca leaves, cannabis and cannabis resin, this régime is supplemented by the requirement of maintaining government monopolies for the wholesale and international trade in these drugs in countries which produce them* . . . .

Secretary-General of the United Nations, Commentary on the Single Convention on Narcotic Drugs, 1961, 263 (1973) (emphasis added) (footnotes omitted).[5]

Article 23(2) of the Single Convention, made applicable to marijuana cultivation by Article 28, contains five requirements for the supervision, licensing, and distribution of marijuana.[6]

(a) Designate the areas in which, and the plots of land on which, cultivation of the cannabis plant for the purpose of producing cannabis or cannabis resin shall be permitted.

(b) Ensure that only cultivators licensed by the agency shall be authorized to engage in such cultivation.

(c) Ensure that each license shall specify the extent of the land on which the cultivation is permitted.

(d) Require all cultivators of the cannabis plant to deliver their total crops of cannabis and cannabis resin to the agency and ensure that the agency purchases and takes physical possession of such crops as soon as possible, but not later than four months after the end of the harvest.

(e) Have the exclusive right of importing, exporting, wholesale trading, and maintaining stocks of cannabis and cannabis resin, except that this exclusive right need not extend to medicinal cannabis, cannabis preparations, or the stocks of cannabis and cannabis resin held by manufacturers of such medicinal cannabis and cannabis preparations.[7]

DEA already directly performs functions (a), (b), and (c) by virtue of the CSA registration system as applied to manufacturers of marihuana. In order to ensure that DEA complies with the CSA and grants registrations that are consistent with relevant treaty provisions, namely articles 23 and 28 of the Single Convention, DEA proposes to directly perform functions (d) and (e) as well. This proposed rule would amend DEA's regulations so that DEA directly carries out these remaining two functions.

DEA also recognizes that the Department of Health and Human Services (HHS) has, for nearly 50 years, maintained an essential program aimed at ensuring that marihuana is available to meet the research and scientific needs of the United States. The regulations proposed here, if finalized, will require some changes to this program, but DEA is committed to ensuring that the National Institute on Drug Abuse (NIDA) program continues with minimal disruption and there is no impact on the availability of marihuana through the NIDA Drug Supply Program (DSP).

After the publication of the 2016 policy statement, DOJ advised DEA that it must adjust its policies and practices to ensure compliance with the CSA, including the CSA's requirement that registrations be consistent with the Single Convention. Therefore, the regulations being proposed herein, if finalized, would ensure that DEA regulations comply with applicable law. Within that framework, DEA is proposing changes to support using marihuana (including extracts and substances derived therefrom) cultivated in the United States to perform research which, among other things, may lead to the approval of FDA-approved medicines. Thus, the proposed rule, if adopted, would supersede the 2016 policy statement.

To address the foregoing considerations, the proposed rule would add regulations stating:

(1) All registered manufacturers who cultivate cannabis shall deliver their total crops of cannabis to DEA. DEA shall purchase and take physical possession of such crops as soon as possible, but not later than four months after the end of the harvest. DEA may accept delivery and maintain possession of such crops at the registered location of the registered manufacturer authorized to cultivate cannabis consistent with the maintenance of effective controls against diversion. In such cases, DEA shall designate a secure storage mechanism at the registered location in which DEA may maintain possession of the cannabis, and DEA will control access to the stored cannabis. If DEA determines that no suitable location exists at the registered location of the registered manufacturer authorized to cultivate cannabis, then DEA shall designate a location for the

[4] As discussed below, the Agriculture Improvement Act of 2018, Public Law 115–334, removed hemp from the CSA definition of marihuana. This proposed rule applies only to cannabis that is included in the CSA definition of marihuana.

[5] The United Nations' Economic and Social Council requested that the Secretary-General prepare the Commentary ''in the light of the relevant conference proceedings and other material'' in order to aid governments in applying the Single Convention. The Commentary (1973) is not binding on Parties to the Convention. Economic and Social Council Resolution 1962/914(XXXIV) D (Aug. 3, 1962).

[6] The Single Convention provides that the five functions of article 23, paragraph 2 ''shall be discharged by a single government agency if the constitution of the Party concerned permits it.'' Single Convention art. 23(3). Nothing in the Constitution would preclude the United States from discharging all of those controls through one government agency. The Commentary to the Single Convention notes that this is in order to facilitate national planning and coordinated management of the various tasks imposed upon a country by Article 23, and that in countries where more than one agency is needed on constitutional grounds, administrative arrangements should be made to ensure the required coordination.

[7] The meanings of the terms ''medicinal cannabis'' and ''cannabis preparations'' are addressed later in this document. Article 23, paragraph 2(e) also refers to ''opium alkaloids.'' However, due to distinctions between the opiates derived from the opium poppy and the cannabinoids derived from the cannabis plant, the notion of ''cannabis alkaloids'' is inapplicable.

authorized grower to deliver the crop as soon as possible, but not later than four months after the end of the harvest. However, in all cases the registrant must comply with the security requirements specified in 21 CFR part 1301.

(2) DEA shall, with respect to cannabis, have the exclusive right of importing, exporting, wholesale trading, and maintaining stocks other than those held by registered manufacturers and distributors of medicinal cannabis or cannabis preparations. Such exclusive right shall not extend to medicinal cannabis or cannabis preparations. DEA may exercise its exclusive right by authorizing the performance of such activities by appropriately registered persons. DEA will require prior written notice of each proposed importation, exportation, or distribution of cannabis that specifies the quantity of cannabis to be imported, exported, or distributed and the name, address, and registration number of the registered manufacturer or researcher to receive the cannabis before authorizing the importation, exportation, or distribution. All importation and exportation shall be performed in compliance with 21 CFR part 1312, as applicable. Under no circumstance shall a registered manufacturer authorized to grow cannabis import, export, or distribute cannabis without the express written authorization of DEA.

(3) A registered manufacturer authorized to grow cannabis shall notify DEA in writing of its proposed date of harvest at least fifteen days before the commencement of the harvest.

It should be noted that the timing of when DEA would take physical possession of the crops, if delayed, would not only increase the risk of diversion, but would also adversely impact the quality of the crop. Whereas DEA is proposing to take physical possession not later than four months from the time of harvest, it is DEA's intent to take physical possession as soon as possible and to distribute marihuana as soon as is practical to those who are authorized to receive it.

The exceptions made for ''medicinal cannabis or cannabis preparations'' also warrant explanation. In view of the text of the Single Convention, and taking into account the current wording of Federal law,[8] the regulations being proposed would define these terms as follows:

• Medicinal cannabis means a drug product made from the cannabis plant, or derivatives thereof that can be legally marketed under the Federal Food, Drug, and Cosmetic Act. However, such term does not include any material, compound, mixture, or preparation that falls outside the CSA definition of marihuana.

• Cannabis preparation means cannabis that was delivered to DEA and subsequently converted by a registered manufacturer into a mixture (solid or liquid) containing cannabis, cannabis resin, or extracts of cannabis. However, such term does not include any material, compound, mixture, or preparation that falls outside the CSA definition of marihuana.

Thus, under the proposed rule, DEA would have the exclusive right of importing, exporting, wholesale trading, and maintaining stocks of marihuana other than those held by DEA-registered manufacturers and distributors of medicinal cannabis or cannabis preparations. Further, this exclusive right would not apply to medicinal cannabis or cannabis preparations.

To summarize those provisions of the proposed rule that are intended to ensure that registrations are granted in compliance with the CSA as the number of registered manufacturers increases, all marihuana grown by DEA-registered manufacturers in the United States would be delivered by such registrants to DEA no later than four months after the end of the harvest. Thereafter, DEA would authorize exportation, distribution, and maintenance of stocks of such marihuana with two important exceptions:

(1) DEA-registered manufacturers of (a) an FDA-approved marihuana-derived drug (*i.e.,* ''medicinal cannabis''), and (b) ''cannabis preparations'' would be permitted to maintain stocks of cannabis materials obtained from DEA for the purpose of producing such drugs or preparations;[9] and

(2) Once marihuana material that was previously purchased by DEA is subsequently converted by a DEA-registered manufacturer into (a) an FDA-approved drug (''medicinal cannabis'') or (b) a ''cannabis preparation,'' the material no longer would be subject to the foregoing exclusive right and could be further distributed or dispensed by a DEA registrant in any manner authorized under the CSA. DEA is committed to ensuring this new requirement is implemented in a manner that supports the policy goal of facilitating research involving marijuana and its chemical constituents.

B. Activities Performed by Bulk Manufacturers of Marihuana and the Application of These Proposed Regulations on Those Activities

Based on approximately 35 pending applications resulting from publication of its 2016 policy statement, DEA anticipates that those bulk manufacturers who would obtain a registration from DEA to grow marihuana would be one (or more) of three different types. In this section, DEA describes each type and how the proposed regulations, if finalized as proposed, would impact those registrants with regard to functions (1) and (2) described in the previous section.

(1) A Bulk Manufacturer Who Grows Marihuana for Its Own Research or Drug Development Purposes

A number of applicants seek to grow marihuana for their own research endeavors, including some who wish to develop an FDA-approved medicine from extracts or derivatives of the marihuana plant. Based on the accompanying information supplied by the applicant to DEA in connection with their application, these applicants would list themselves as a ''purchaser,'' meaning that once their crop was harvested, they would seek to use the marihuana for their internal research purposes. Applicants must obtain a separate schedule I research registration from DEA to perform research with marihuana in accordance with 21 CFR 1301.13 and 1301.32. However, bulk marihuana growers may manufacture marihuana for use by other researchers under a manufacturing registration (and pursuant to a quota granted to them by DEA for that purpose under 21 CFR 1303.21(a)).

For applicants within this category, within four months of harvest, DEA would travel to the DEA-registered location, purchase, and take title to the crop by issuing the grower a DEA Form 222.[10] Once DEA has taken title to the

[8] Among other things, these definitions take into account the current CSA definition of marihuana (21 U.S.C. 802(16)), which was amended in 2018 to exclude ''hemp'' as defined in section 297A of the Agricultural Marketing Act of 1946 (7 U.S.C. 1639*o*(1)).

[9] As indicated above, the requirement that registered growers deliver all cannabis to DEA no later than four months after the end of the harvest applies in *all* situations—even where the cannabis will later be distributed by DEA back to the grower for further use. Thus, the above exception that allows DEA-registered manufacturers of medicinal cannabis and cannabis preparations to maintain stocks of cannabis materials for the purpose of producing such drugs or preparations only applies where the raw cannabis material was previously delivered to DEA.

[10] DEA would take title to an amount up to the applicant's manufacturing quota. Growing marihuana in excess of a manufacturing quota is a violation of federal law. 21 U.S.C. 842(b). Thus, any marihuana grown in excess of a manufacturing

Continued

crop, it would then distribute a quantity of marihuana that does not exceed the company's DEA-issued procurement quota back to that same manufacturer. In this way, DEA would take physical possession of the crop and control its distribution. Additionally, the material owned by the government will be maintained at the DEA-registered manufacturer's location and DEA would maintain its ability to access the storage location at which such crops are located as it deemed necessary.

(2) A Bulk manufacturer Who Supplies Marihuana to Other DEA Registrants, Including National Institutes of Health Funded and Non-National Institutes of Health Funded Researchers

Some applicants are seeking to grow marihuana for use by other DEA registrants including ''non-bulk'' manufacturers and schedule I researchers, including National Institutes of Health (NIH) funded and non-NIH funded researchers. This sub-set of bulk manufacturers would be required to obtain from each customer a bona fide supply agreement, listing the name and address of the end user, the end user's DEA registration number, the quantity of marihuana to be supplied, and the price that the end user and grower have mutually agreed upon. DEA will consider this information, along with additional information, when establishing an individual manufacturing quota for the grower.

For applicants that fall within this sub-set, within four months of harvest, DEA would travel to the DEA-registered location, purchase, and take title to the crop by issuing the grower a DEA Form 222.[11] For this reason, each grower must provide written notice to DEA of its proposed date of harvest at least fifteen days prior to the commencement of the harvest. Once DEA has purchased and taken title to the crop, the material would be maintained, under seal, in DEA's possession in the manufacturer's schedule I vault until such time that a distribution is necessary. In this scenario, DEA may distribute (or export) the marihuana directly or may choose to authorize the grower to distribute marihuana on the government's behalf. Again, marihuana owned by the government is maintained at the DEA-registered manufacturer's site where DEA would maintain its ability to access the storage location at which such crops are located as it deemed necessary.

(3) A Bulk Manufacturer Who Supplies Marihuana To Support NIDA's Drug Supply Program

Over the last several decades, NIDA has administered a contract to produce high quality marihuana for use by researchers who have obtained federal funding (grants) for such research.[12] This contract has been awarded to the National Center for Natural Products Research at the University of Mississippi (National Center). In accordance with that contract and DEA regulations, NIDA assesses the quantity of marihuana that is necessary to be grown for research purposes in a given year and communicates that information to both the National Center and DEA. The National Center applies for, and must first obtain, a manufacturing quota from DEA and is then authorized to grow marihuana up to the limit established by their DEA-issued quota. At the time of harvest, a portion of that material is held in inventory at the National Center while other portions are distributed to another DEA registrant, Research Triangle Institute (RTI). Currently, at the direction of NIDA, both RTI and the National Center may prepare marihuana in a manner which is suitable for research studies and ship it to researchers. In these instances, marihuana held in inventory at the National Center and RTI are the property of NIDA. The regulations proposed in this notice of proposed rulemaking (NPRM) are intended to enhance and improve upon existing DEA regulations that supported the NIDA DSP and will facilitate research that may lead to the development of FDA-approved medicines.

This regulation, if finalized, would require changes to the current scheme described above. Although NIDA can, and would, continue to administer the contract in support of its DSP and the National Center (or other NIDA contract holder) could continue to grow and produce marihuana in support of research pursuant to that contract (for as long as that contract is renewed), within four months of harvest, DEA would travel to the National Center at the time of harvest and take title and possession to the crop by issuing the National Center a DEA Form 222.[13] Once DEA has taken title and possession of the crop, the material would be maintained, under seal, in DEA's possession in the National Center's schedule I vault until such time that a distribution to another DEA registrant is authorized. In this scenario, DEA may distribute (or export) the marijuana directly or may choose to authorize the National Center to distribute marihuana on the government's behalf. In both situations, DEA's distributions would be in accordance with NIDA's recommendation. And, as such, DEA does not envision a scenario in which it would deny or delay a distribution to a duly registered schedule I researcher authorized to handle marihuana. Marihuana owned by DEA would be maintained at the National Center, where DEA would maintain its ability to access the storage location at which its crops are located.

C. Application of the Public Interest Factors

As indicated, in addition to the foregoing treaty considerations, DEA may grant a registration to manufacture a schedule I or II controlled substance only where the Administrator determines that the registration is consistent with the public interest, based on the criteria listed in 21 U.S.C. 823(a). The first of those criteria, set forth in subsection 823(a)(1), provides that, for the purpose of maintaining effective controls against diversion, the number of registered bulk manufacturers of a given schedule I or II controlled substance should be limited to that which can produce an adequate and uninterrupted supply of marihuana under adequately competitive conditions.[14]

The proposed rule would explain how DEA will evaluate whether a particular application is consistent with the public interest factors of 21 U.S.C. 823(a), including factor 823(a)(1). As discussed above, a bona fide supply agreement between a grower and a duly registered schedule I researcher or manufacturer provides evidence that an applicant's registration is necessary to produce an adequate and uninterrupted supply of marihuana under adequately competitive conditions. An applicant proposing to grow marihuana to supply its own research may also be deemed to have satisfied the public interest factor of 823(a)(1) upon the presentation of evidence that it possesses a registration to conduct research with marihuana under 21 CFR 1301.32. Such a researcher will only be granted quota to

quota would be subject to seizure and destruction. *See id.* 881(g).

[11] As in the first scenario, DEA only would take title to an amount up to the applicant's manufacturing quota. Any marihuana grown in excess of a manufacturing quota would be subject to seizure and destruction. *See* 21 U.S.C. 842(b), 881(g).

[12] The Department of Health and Human Services maintains procedures for providing this same marihuana to non-NIH funded researchers as well.

[13] As above, DEA only would take title to an amount up to the National Center's manufacturing quota, with amount grown in excess of the manufacturing quota subject to seizure and destruction. *See* 21 U.S.C. 842(b), 881(g).

[14] For a detailed explanation of subsection 823(a)(1), see 74 FR at 2127–33.

the extent authorized by its approved research protocol.

The proposed rule further provides that the Administrator's determination of which applicants to select will be consistent with the public interest factors in section 823(a), with particular emphasis on the criteria discussed in the preceding paragraph as well as the following:

(1) The applicant's ability to consistently produce and supply marihuana of a high quality and defined chemical composition; and

(2) Whether the applicant has demonstrated prior compliance with the CSA and DEA regulations.

The preceding criteria are designed to result in registration of those manufacturers of marihuana that can most efficiently supply the lawful needs of the U.S. market in terms of quantity and quality.[15] These criteria are further aimed at selecting applicants that can be entrusted with the responsibility of a DEA registration and complying with the corresponding obligations under the CSA and DEA regulations.

As indicated above, following the publication of the 2016 policy statement, DEA received numerous applications by persons seeking to become registered as bulk manufacturers of marihuana. There are approximately 35 such applications currently pending. As explained above, the CSA requires DEA to limit the total number of registered bulk manufacturers of a given schedule I or II controlled substance to that necessary to produce an adequate and uninterrupted supply under adequately competitive conditions. In consultation with HHS, DEA wishes to avoid a situation in which the agency is in the midst of evaluating these applications and has to begin an evaluation anew each time it accepts a new marihuana grower application for filing. Thus, the proposed rule provides that, with a limited exception, applications accepted for filing after the date the final rule becomes effective will not be considered pending until all applications accepted for filing on or before the date the final rule becomes effective have been granted or denied by the Administrator.

D. Consideration of the Amendments to the CSA Made by the Hemp Provisions of the Agriculture Improvement Act of 2018

The Agriculture Improvement Act of 2018 (AIA), Public Law 115–334, which became effective December 20, 2018, contained various provisions regarding the cultivation of hemp. The AIA definitions hemp as the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis. 7 U.S.C. 1639*o*(1). The AIA amended the CSA definition of marihuana to exclude hemp. Thus, anything that falls within the foregoing definition of hemp is no longer a controlled substance, and the CSA's requirements no longer apply to such substances. Accordingly, this proposed rule would apply only to persons seeking authorization under the CSA (*i.e.,* seeking a DEA registration) to manufacture marihuana that involves the planting, cultivation, growing, or harvesting of marihuana as that term is currently defined in the CSA (21 U.S.C. 802(16)).[16]

E. Factors Affecting Prices for the Purchase and Sale of Marihuana by DEA

As stated above, under articles 23 and 28 of the Single Convention, the government agency must—in addition to taking physical possession—*purchase* all lawfully grown cannabis crops within four months of harvest. Thus, under the proposed rule, DEA will purchase marihuana grown by DEA-registered manufacturers and subsequently sell the marihuana to DEA registrants who seek to acquire it for research, product development, or other lawful purposes under the CSA.

In purchasing such marihuana, DEA intends to use the Diversion Control Fee Account, as established in 21 U.S.C. 886a. Thus, DEA would, under the proposed rule, need to take into account its obligation under 21 U.S.C. 886a(1)(C) to charge fees under its diversion control program ''at a level that ensures the recovery of the full costs of operating the various aspects of that program.'' There are two potential categories of fees that could be used to recover the costs of carrying out the proposed new aspects of the diversion control program relating to cannabis: (1) Fees charged to persons who apply for, and seek to renew, a DEA registration to manufacture marihuana, and (2) fees charged for the sale of marihuana by DEA.

DEA believes that economic forces will not only drive the types, varieties and strains of marihuana materials that will be produced by growers, but that such forces will also drive the fees that DEA-registrants will be willing to pay for marihuana used for research purposes. Accordingly, DEA proposes to allow market forces to direct prices for marihuana grown by the manufacturer and purchased by DEA. As we have stated elsewhere in this proposal, DEA will establish limits on individual production based on bona fide supply agreements between the grower and the end user (a DEA registered manufacturer or a schedule I researcher). Accordingly, DEA will use these terms as the basis for purchasing marijuana from the grower and additionally, for the basis by which it will sell that same marihuana to an end user.

In addition to that negotiated fee, DEA is proposing to add a variable administrative cost (per kilogram (kg)) which it intends to add onto the sales price of the marihuana it sells to end users. The purpose of this administrative fee is to ensure the full recovery by DEA of the costs of administering the program as required by 21 U.S.C. 886a(1)(C). DEA will calculate this variable cost annually by taking the preceding fiscal year's cost to operate the program and dividing it by the quantity in kg of the manufacturing quota for marihuana issued during the current quota year. For example, based on the economic analysis provided below, DEA would calculate an administrative fee of $304 per kg for marihuana distributed to end users. The calculation below is illustrative:

Variable Administrative Fee = $607,644/2,000 kg = $304 per kg [17]

DEA proposes to establish this fee no less than annually and proposes to publish this rate on its website by December 15th of the year preceding the year in which the administrative fee will be collected.

[15] The proposed rule provides that, in determining the legitimate demand for marihuana and its derivatives in the United States, the Administrator shall consult with the Department of Health and Human Services, including its components.

[16] The United States Department of Agriculture has issued regulations and guidance to implement a program for the commercial production of industrial hemp in the United States under the framework of the AIA. *See Establishment of a Domestic Hemp Production Program,* 84 FR 58522 (Oct. 31, 2019).

[17] Rounded to nearest whole dollar. The cost of $607,644 is explained below.

Regulatory Analyses

Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 13771 (Reducing Regulation and Controlling Regulatory Costs)

This proposed rule was developed in accordance with the principles of Executive Orders 12866, 13563, and 13771. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety, and other advantages; distributive impacts; and equity). Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. Section 3(f) of Executive Order 12866 classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB), as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

DEA has determined that, although this proposed rule is not economically significant, it is a significant regulatory action under section 3(f) of Executive Order 12866, thus subjecting it to review by OMB.

I. Need for the Rule

This rule is needed to ensure that DEA complies with the CSA and grants registrations that are consistent with relevant treaty provisions as DEA seeks to increase the number of registered growers of marihuana. Specifically, this proposed rule would amend the provisions of the regulations governing applications by persons seeking to become registered with DEA to grow marihuana as bulk manufacturers and add provisions related to the purchase and sale of this marihuana by DEA. These amendments will ensure that DEA carries out all five functions under Article 23 and Article 28 of the Single Convention pertaining to marihuana, thus facilitating the planning and coordinated management of marihuana production necessary as the number of registered marihuana manufacturers increases.

II. Alternative Approaches

This proposed rule would amend DEA regulations only to the extent necessary to comply with the CSA and to ensure DEA grants registrations that are consistent with the Single Convention as it pertains to marihuana. In areas where DEA has discretion, such as in setting a fee structure to recover the cost of this proposed rule, alternative approaches would be discussed. However, because DEA does not have sufficient information at this time to discuss alternatives for either the future registration fees or the fees for the sale of marihuana, the alternative approaches for such provisions are not included in this proposed rule. Consistent with past agency practice, any proposed changes to registration fees will be the subject of a separate rulemaking proceeding, including a discussion of alternative approaches.

III. Analysis of Benefits and Costs

There are two key benefits associated with this proposed rule. First, DEA believes it is possible that the approval of new growers may increase the variety (quality, potency, etc.) of bulk marihuana for research, leading to more effective research and potentially resulting in the development of FDA-approved drug products. Second, this rule would ensure that DEA's regulations comply with the requirements of the CSA by granting registrations that are consistent with the Single Convention relating to marihuana. DEA is unable to quantify these benefits at this time.

DEA analyzed the costs of this proposed rule and estimates an annual cost of $607,644. The details of the analysis are below.

This proposed rule would amend the provisions of the regulations governing applications by persons seeking to become registered with DEA to grow marihuana as bulk manufacturers and add provisions related to the purchase and sale of this marihuana by DEA. If this proposed rule is promulgated, the following key changes are anticipated: More persons will be authorized to grow marihuana, DEA will purchase and take title to the crops of marihuana, and DEA will, with respect to marihuana, have the exclusive right of importing, exporting, wholesale trading, and maintaining stocks. These changes would mean that authorized purchasers of bulk marihuana to be used for research, product development, and other purposes permitted by the CSA may only purchase from DEA, except that DEA's exclusive rights would not extend to medicinal cannabis or cannabis preparations. The changes described above would affect three primary groups of entities: Growers and prospective growers, the authorizing agencies,[18] and purchasers (generally medical and scientific researchers). To examine the impact of the proposed rule, DEA first reviewed the current system for growing and distributing bulk marihuana, then examined the impact on each of the three affected groups.

Current System

Under current regulations, DEA has authorized one grower, the National Center, to cultivate marihuana for research. NIDA contracts with the National Center to grow marihuana from seeds supplied initially by NIDA for use in research studies.[19] The National Center has designated a secure plot of land or indoor grow facility where marihuana crops are grown every few years, based on current and expected demand. The marihuana is grown, harvested, stored, and made available as bulk marihuana or other purified elements of marihuana to use for research.[20] NIDA obligated approximately $1.5 million in Fiscal Year 2015 under this contract.[21] This amount included costs unrelated to growing and cultivating marihuana, such as extracting chemical components and producing marihuana cigarettes and other marihuana-related material. However, based on recent discussion with NIDA,[22] DEA estimates NIDA's expenses under the contract with the National Center (and any related

[18] The ''authorizing agency'' refers to federal government agencies, including NIDA and DEA.

[19] Production, Analysis, and Distribution of Cannabis and Related Materials, Federal Business Opportunities (Apr. 12, 2015), *https://www.fbo.gov/spg/HHS/NIH/NIDA-01/N01DA-15-7793/listing.html*.

[20] NIDA's Role in Providing Marijuana for Research, National Institute on Drug Abuse, *https://www.drugabuse.gov/drugs-abuse/marijuana/nidas-role-in-providing-marijuana-research*.

[21] Information on Marijuana Farm Contract, National Institute on Drug Abuse, *https://www.drugabuse.gov/drugs-abuse/marijuana/nidas-role-in-providing-marijuana-research/information-marijuana-farm-contract*.

[22] Conference call between DEA Regulatory Drafting and Policy Support section and members of NIDA's Marijuana Drug Supply Program, July 30, 2019.

subcontracts) for the bulk marihuana for 2019 are approximately $2.9 million.[23] The $2.9 million includes compensation for the cultivating and the 2019 manufacturing quota (MQ) of 2,000 kgs for NIDA (National Center) as well as all other duties required in the contract.[24]

Researchers may obtain marihuana for use in research through NIDA's DSP. Bulk marihuana plant material produced under the NIDA DSP is currently available at no cost to research investigators supported by a NIH grant. Marihuana is also available to research investigators who are funded through non-federal sources. Although NIDA considered charging for marihuana on a ''cost-reimbursement basis,'' [25] the current policy is to provide the marihuana at no charge.[26]

Changes to Growers

If this proposed rule is implemented, DEA anticipates approving more than one person to cultivate and harvest bulk marihuana. As explained earlier in this document, the CSA imposes limitations on the number of registrations that DEA may issue to bulk manufacturers of a given schedule I or II controlled substance. In addition, in deciding whether to grant an application for any such registration, the CSA requires DEA to consider the other public interest factors of 21 U.S.C. 823(a), which must be evaluated on an applicant-by-applicant basis. Further, DEA cannot accurately predict in advance which particular applications will be granted, or how many. Accordingly, DEA is unable to accurately estimate the number of registered bulk marihuana growers. As a result, to allow for this analysis, DEA will estimate the economic impact of this proposed rule under two different hypothetical scenarios, the first in which the number of growers expands to three growers, and the second in which the number of growers expands to 15 growers. It should be understood that this range of potential registrants is not necessarily reflective of the actual number of applications that DEA will grant.

In 2016, DEA issued a policy statement regarding applications to become registered to manufacture marihuana to supply research.[27] Since the publication of the 2016 policy statement, DEA has received approximately 35 pending applications for registration as bulk manufacturer of marihuana for research. As indicated above, the CSA requires DEA to limit the total number of registered bulk manufacturers of a given schedule I or II controlled substance to that necessary to produce an adequate and uninterrupted supply under adequately competitive conditions. Therefore, DEA believes a range of 3 to 15 growers is a reasonable estimate for purposes of this economic analysis, with the understanding that the actual number could vary considerably.

The Aggregate Production Quota (APQ), which includes the MQ, represents the annual quantity of marihuana that is necessary for the estimated medical, scientific, research and industrial needs of the United States, for lawful export requirements, and for the establishment and maintenance of reserve stocks.[28] Therefore, given a constant MQ, if more growers are approved to produce bulk marihuana, the quantities of bulk marihuana produced and the cost of production (and the reimbursement of production cost through sales) is transferred from the single incumbent grower to new growers. This means that there is only a transfer of economic activity rather than any new cost. The estimated economic activity of $2.9 million is transferred from the existing single grower to multiple growers.[29]

Transitioning from one large grower to multiple growers may introduce inefficiencies, driving up production or facility costs. Some growers may introduce more costly growing techniques to produce certain traits. Alternatively, some growers may introduce more efficient growing methods, driving down costs. Additionally, having more growers may spur more demand in bulk marihuana for research, pushing up the MQ. In particular, one of the goals of this new rule is to enhance marijuana availability for product development, which may have the effect of increasing the MQ. However, DEA does not have a basis to estimate the impact of these possibilities. Therefore, for the purposes of this analysis, DEA estimates that an increase in the number of approved growers does not impact the MQ. In summary, there is no new cost to growers.

Changes to Authorizing Agencies—Cost to DEA

DEA anticipates that there will be a transfer of economic activity from NIDA to DEA as well as several new costs as a result of this rule. This analysis should in no way be construed as a proposal to modify agency funding or funding sources.

As discussed above, assuming a constant MQ for bulk marihuana of 2,000 kgs, DEA estimates the cost of all the activities the National Center performs under its contract with NIDA and the purchase of the entire aggregate crop, regardless of the number of growers, is $2.9 million. This $2.9 million is not a new cost; it is a transfer. Rather than NIDA paying the current single grower, DEA would pay the multiple new growers. In practice, DEA anticipates crops from multiple growers will be purchased at different times of the year, allowing funds from sales of earlier purchases to pay for subsequent purchases. Therefore, to purchase and distribute $2.9 million in bulk marihuana, a working capital of a lesser amount is likely needed. However, due to many unknowns and to be conservative, for the purposes of this analysis, the estimated transfer and working capital requirement is $2.9 million.

DEA anticipates incurring new costs associated with the following activities: Taking title to the crops and employing personnel to administer the program. The growers, purchasers, and DEA would already understand prior to growing and harvesting, the quantities of marihuana to be distributed and to whom the distribution would be made because the bona fide supply agreements presented during the registration application process would provide such information. In most instances, DEA is expected to purchase and take title to the crop, then sell and distribute the crop to the purchaser on the same day at the grower's registered location. For the purposes of this analysis, DEA assumes the following process:

1. After marihuana is harvested and prepared for delivery to DEA, the registered manufacturer will contact

[23] Anticipated spending for the marihuana DSP for 2019 is $3.3 million to $3.4 million, of which 10%–15% meet the definition of ''hemp'' under the provisions of the AIA. Using the midpoint of these ranges, the estimated spending is $2.9 million for marihuana, excluding hemp. The figures are based on a general discussion, and actual figures may differ.

[24] The 2019 Aggregate Production Quota for all marihuana is 2,450 kgs. 2,000 of the 2,450 kgs are for the NIDA (National Center) cultivating and manufacturing quota of bulk marihuana. *See* 83 FR 67348.

[25] Marijuana Plant Material Available from the NIDA Drug Supply Program, National Institute on Drug Abuse, *https://www.drugabuse.gov/research/research-data-measures-resources/nida-drug-supply-program/marijuana-plant-material-available-nida-drug-supply-program.*

[26] *See* note 22.

[27] Applications to Become Registered Under the Controlled Substances Act to Manufacture Marijuana to Supply Researchers in the United States, 81 FR 53846 (Aug. 12, 2016). This proposed rule, if adopted, would supersede the 2016 policy statement.

[28] 21 CFR 1303.11(a).

[29] The phrase ''multiple growers'' includes the possibility that the current grower is one of ''multiple growers.''

DEA to inform it that the marihuana is ready for collection.

2. Within a reasonable timeframe, but in no event later than four months after the harvest, DEA will purchase and take title to the marihuana. Two DEA Special Agents (or Deputized Task Force Officers) from the nearest local DEA field office will drive an estimated 100 miles (200 miles roundtrip) to the registered manufacturer to take title. Any marihuana that is not immediately distributed is stored in a designated secure storage mechanism at the grower's registered location for later distribution. The number of trips by the two DEA Special Agents equals the number of harvests.

3. For marihuana distributed from storage at the grower's registered location, the grower distributes marihuana on DEA's behalf. If DEA deems it necessary to be present at such distribution, the distribution is scheduled to coincide with DEA's visit to take title to the next crop, requiring no additional trips by DEA to the grower.

4. Each grower has three harvests, requiring DEA to collect three times per year per grower.

For each collection, DEA estimates $2,071 of labor cost [30] and $116 of vehicle cost [31] for a total of $2,187 per collection. DEA understands that some growers, employing certain growing methods, may have more harvests per year. However, DEA does not have a basis to estimate these growers' methods or the number of harvests per year. Therefore, DEA believes three harvests per year is a reasonable estimate. Assuming three collections per year per grower, there would be nine collections with three approved growers and 45 collections with 15 approved growers. Applying the estimated cost of $2,187 per collection, DEA estimates a transport cost of $19,683 and $98,415 for scenarios with three and 15 growers, respectively.

Additionally, DEA anticipates it would need additional personnel resources to operate this program. There are many unknowns and no decisions have been made on hiring. However, for the purposes of this analysis, DEA estimates three full-time-equivalent (FTE) professional staff in the Diversion Control Division would be needed, consisting of one FTE diversion investigator (DI), and two FTE professional/administrative (PA) resources.

Applying the fully loaded annual cost of $211,981 per DI and $168,307 per PA, the estimated total cost of the three FTE employees is $548,595. For the purposes of this analysis, this cost does not vary with the number of growers. Table 1 below summarizes the costs associated with increased staffing.

TABLE 1—COST OF PERSONNEL RESOURCES

Position	Job category	Modular cost/ unit cost ($)	Number of FTEs	Cost ($)
Staff Coordinator	DI	211,981	1	211,981
Program Analyst	PA	168,307	2	336,614
Total	N/A	N/A	3	548,595

In summary the estimated cost to DEA is:

- $19,683 or $98,415 per year to purchase and take title to the bulk marihuana for scenarios with 3 or 15 authorized growers, respectively;
- $548,595 per year for three DEA FTE employees;
- The estimated total annual cost is $568,278 with three growers and $647,010 with 15 growers and no offsetting cost savings at NIDA. Using the average of the two values, the estimated cost to DEA is $607,644. Table 2 summarizes the costs.

TABLE 2—DEA COST SUMMARY

	Low ($)	High ($)	Average ($)
Transport Cost	19,683	98,415	N/A
Personnel Cost	548,596	548,595	N/A
Total Cost	568,278	647,010	607,644

Changes Affecting Researchers

DEA anticipates minimal procedural change for authorized researchers who plan to acquire bulk marihuana for research. The only anticipated procedural change is that some researchers would acquire the bulk marihuana from DEA, rather than from NIDA. As discussed earlier, the only new cost associated with this proposed regulation is the cost to DEA of $607,644, an average of high and low scenarios, which would be recovered by adding an administrative fee of $304 per kg. As discussed earlier, the administrative fee would be adjusted annually.

While the purchaser would purchase marihuana from DEA, this rule does not in any way affect the purchaser's source of funds to purchase from DEA. If marihuana for research is funded by a third party, the researcher may not experience any cost increase. In particular, NIH has long served as a third-party funder for research through grants, including grants to researchers studying marihuana. Nothing in this rule prohibits NIH from continuing to fund such research by continuing to cover the cost of marihuana materials

[30] DEA's loaded hourly rate of a Special Agent is $103.54. Assuming 10 hours each (full work-day) for two agents, the total labor cost associated with collection from a registered manufacturer is $2,071. ''Loaded hourly rate'' includes wages, benefits, and ''loading'' of ''non-productive'' hours, *i.e.,* leave, training, travel, etc.

[31] $116 is based on IRS standard mileage rates for 2019 of $0.58 per mile multiplied by the estimated 200 miles driven, roundtrip.

used in research, via grants to researchers.

Cost Summary

DEA estimates the cost of producing the 2019 MQ for bulk marihuana of 2,000 kgs and operating NIDA's marihuana DSP is $2.9 million per year. Under the proposed rule, DEA anticipates more bulk marihuana producers would be approved. DEA estimates the $2.9 million in economic activity would be transferred across multiple growers, without introducing new costs.

DEA's purchase of bulk marihuana is not a new cost (to the economy); it is a transfer from NIDA to DEA. However, $568,278 to $647,010 in operating costs would be incurred by DEA. DEA will recover the costs of carrying out the proposed new aspects of the diversion control program relating to marihuana by selling the marihuana to the buyer at the negotiated sale price, between the grower and the buyer, plus the administrative fee assessed on a per kg basis.

The net present values (NPVs) of the low cost estimate of $568,278 per year over 10 years are $4.8 million and $4.0 million at a three percent discount rate and 7 percent discount rate, respectively. The NPVs of the high cost estimate of $647,010 over 10 years are $5.5 million and $4.5 million at a three percent discount rate and seven percent discount rate, respectively. The average of the estimated low and high costs is $607,644. The NPVs of the average of $607,644 over 10 years are $5.2 million and $4.3 million at three percent and seven percent discount rates, respectively. Table 3 summarizes the estimated annual effect and NPVs calculation for each of the transfers and the three scenarios.

TABLE 3—SUMMARY OF ANNUAL EFFECT AND NPVS

	Annual effect ($)	NPVs at 3% ($M)	NPVs at 7% ($M)
Cost (Low)	568,278	4.8	4.0
Cost (Average)	607,644	5.2	4.3
Cost (High)	647,010	5.5	4.5

Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

This proposed rule is expected to be a deregulatory action for the purposes of Executive Order 13771. The rule is an enabling rule which, coincidentally with other provisions, expands the number of authorized bulk marihuana growers.

Executive Order 12988 (Civil Justice Reform)

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burdens on regulated parties and the court system.

Executive Order 13132 (Federalism)

This proposed rule does not have federalism implications warranting the application of Executive Order 13132. The proposed rule does 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.

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This proposed rule does not have tribal implications warranting the application of Executive Order 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA), DEA evaluated the impact of this rule on small entities. DEA's evaluation of economic impact by size category indicates that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of these small entities.

The RFA requires agencies to analyze options for regulatory relief of small entities unless the agency can certify that the rule will not have a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. DEA evaluated the impact of this rule on small entities and a discussion of its findings is below.

As discussed in the section of this proposed rulemaking relating to Executive Orders 12866, 13565, and 13771, this proposed rule would amend the provisions of the regulations governing applications by persons seeking to become registered with DEA to grow marihuana as bulk manufacturers, and add provisions related to the purchase and sale of this marihuana by DEA. If this proposed rule is promulgated, the following key changes are anticipated: More persons will be authorized to grow marihuana; DEA will purchase and take physical possession of crops; and DEA will, with respect to marihuana, have the exclusive right of importing, exporting, wholesale trading, and maintaining stocks. These changes, as explained above, would mean that authorized purchasers of bulk marihuana may only purchase from DEA, except that DEA's exclusive right would not extend to medicinal cannabis or cannabis preparations as these terms are defined in paragraphs (b) and (c), respectively, of proposed § 1318.02 of this proposed rule.

The changes described above would affect three primary groups of entities: Growers and prospective growers, the authorizing agencies (including NIDA and DEA), and purchasers (generally researchers). Because any economic impact on federal agencies is outside the scope of the RFA, the transfer of economic activity between the agencies is excluded from this discussion. To examine the impact of the proposed rule, DEA first reviewed the current system for growing and distributing bulk marihuana, then examined the impact on each of the two affected non-federal groups: Growers (bulk manufacturers of marihuana) and researchers.

Current System

Under current regulations, DEA has authorized one grower, the National Center, to cultivate marihuana for research. NIDA contracts with the National Center to grow marihuana for

use in research studies.[32] The National Center designates a secure plot of land where marihuana crops are grown every few years, based on current and expected demand. The marihuana is grown, harvested, stored, and made available as bulk marihuana or other purified elements of marihuana to use for research.[33] As explained previously, DEA estimates NIDA's expenses under the contract with the National Center (and any related subcontracts) for the bulk marihuana for 2019 are approximately $2.9 million.[34] The $2.9 million includes compensation for the cultivating and the 2019 MQ of 2,000 kgs for NIDA as well as all other duties required in the contract.[35]

Researchers may obtain marihuana for use in research through NIDA's DSP. Bulk marihuana plant material produced under the NIDA DSP is available at no cost to research investigators who are supported by an NIH grant. Marihuana is also available to research investigators who are funded through non-federal sources. Although NIDA considered charging for marihuana on a ''cost-reimbursement basis,'' [36] the current policy is to provide the marihuana at no charge.[37]

Impact on Growers

If this proposed rule is implemented, DEA anticipates approving more than one person to cultivate and harvest bulk marihuana. In 2016, DEA issued a policy statement regarding applications to become registered to manufacture marihuana to supply research.[38] Since the publication of the 2016 policy statement, there are approximately 35 pending applications for registration as bulk manufacturer of marihuana for research. Additionally, some applicants may not meet the statutory and regulatory criteria for holding a registration as a bulk manufacture and will be denied. Therefore, for the purposes of this analysis, DEA will estimate the economic impact of this proposed rule at three and 15 growers with the understanding that the actual number could vary considerably.

The APQ, which includes the MQ, represents the annual quantity of marihuana that is necessary for the estimated medical, scientific, research and industrial needs of the United States, for lawful export requirements, and for the establishment and maintenance of reserve stocks.[39] Therefore, given a constant MQ, if more growers are approved to produce bulk marihuana, the quantities of bulk marihuana produced and the cost of production (and reimbursement of their production cost through sales) is transferred from the incumbent grower to new growers. This means that there is no new cost; instead, there is only a transfer of economic activity. The estimated economic activity of $2.9 million is transferred from the existing single grower to multiple growers.[40]

Transitioning from one large grower to multiple smaller growers may reduce production efficiency, driving up cost. Some growers may introduce more costly growing techniques in order to produce certain traits. Alternatively, some growers may introduce more efficient growing methods, driving down cost. Additionally, having more growers may spur more demand in bulk marihuana for research, pushing up the MQ. However, DEA does not have a basis to estimate the impact of these possibilities.

Impact on Researchers

DEA anticipates minimal procedural change for authorized researchers who plan to acquire bulk marihuana for research. The only anticipated procedural change is that the researcher would acquire the bulk marihuana from DEA, rather than from NIDA or the National Center. As discussed earlier, the only new cost associated with this proposed regulation is the cost to DEA of $607,644, which would be recovered by adding an administrative fee of $304 per kg. As discussed earlier, the administrative fee would be adjusted annually. While purchasers would purchase marihuana from DEA, this rule does not in any way affect the purchasers' source of funds to purchase from DEA. If marihuana for research is funded by a third party, the researcher may not experience any cost increase.

Affected Number of Small Entities

This proposed rule affects the current and prospective bulk manufacturers of marihuana for research and researchers. Based on the discussion above, DEA anticipates up to 15 bulk manufacturers are affected by this proposed rule. Additionally, based on a discussion with NIDA,[41] DEA estimates 40 researchers are affected by this proposed rule. The 40 researchers represent the approximate number of researchers that receive marihuana from NIDA's marihuana DSP.

Based on a review of representative North American Industry Classification System (NAICS) codes for bulk manufacturers and researchers, the following number of firms may be affected:[42]

- 421 firms related to 'Medicinal and Botanical Manufacturing' (325411)[43]
- 9,634 firms related to 'Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology)' (541712)[44]

The United States Small Business Administration (SBA) sets size standards that determine how large an entity can be and still qualify as a small business for federal government programs. For the most part, size standards are based on the average annual receipts or the average number of employees of a firm. The SBA size standard for both industries identified by the NAICS codes above is 1,000 employees.[45]

Comparing the SBA size standards to the U.S. Census Bureau, Statistics of U.S. Businesses (SUSB) detailed data on establishment size by NAICS code for each affected industry, DEA estimates

[32] Production, Analysis, and Distribution of Cannabis and Related Materials, Federal Business Opportunities (Apr. 12, 2015), *https://www.fbo.gov/spg/HHS/NIH/NIDA-01/N01DA-15-7793/listing.html*.

[33] NIDA's Role in Providing Marijuana for Research, National Institute on Drug Abuse, *https://www.drugabuse.gov/drugs-abuse/marijuana/nidas-role-in-providing-marijuana-research*.

[34] Anticipated spending for the marihuana DSP for 2019 is $3.3 million to $3.4 million, of which 10 percent to 15 percent meet the definition of ''hemp'' under the provisions of the AIA. Using the midpoint of these ranges, the estimated spending is $2.9 million. The figures are based on a general discussion, and actual figures may differ.

[35] The 2019 APQ for all manufacturers of marihuana is 2,450 kgs. 2,000 kgs are for cultivating and manufacturing of bulk marihuana. *See* 83 FR 67348.

[36] Marijuana Plant Material Available from the NIDA Drug Supply Program, National Institute on Drug Abuse, *https://www.drugabuse.gov/research/research-data-measures-resources/nida-drug-supply-program/marijuana-plant-material-available-nida-drug-supply-program*.

[37] *See* note 22.

[38] Applications to Become Registered under the Controlled Substances Act to Manufacture Marijuana to Supply Researchers in the United States, 81 FR 53846 (2016). This proposed rule, if adopted, would superseded the 2016 policy statement.

[39] 21 U.S.C. 826(a).

[40] The phrase ''multiple growers'' includes the possibility that the current grower is one of the ''multiple growers.''

[41] *See* note 22.

[42] For the purposes of this analysis, the term ''firms'' is synonymous with ''entities.''

[43] 2015 SUSB Annual Datasets by Establishment Industry, U.S. & States, NAICS, Detailed Employment Sizes (U.S., 6-digit and States, NAICS Sectors), United States Census Bureau, *https://www.census.gov/data/datasets/2015/econ/susb/2015-susb.html*.

[44] *Ibid.*

[45] Table of Small Business Size Standards Matched to North American Industry Classification System Codes, United States Small Business Association (Oct. 1, 2017). The NAICS code was updated for 'Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology)' from 541712 to 541715. The 2015 SUSB data uses 541712 and the 2017 SBA size standard uses 541715 for the same industry.

the following number of small entities and percent of firms that are small entities by industry:

- 392 (93.1 percent of total) firms in the area of 'Medicinal and Botanical Manufacturing' (325411)
- 9,090 (94.4 percent of total) firms in the area of 'Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology)' (541712)

Table 4 details the calculation for the number of small entities by industry.

TABLE 4—NUMBER OF SMALL ENTITIES BY INDUSTRY

NAICS description	Firm size by average employees	Firms	SBA size standard	Small entities	% Small entities
325411—Medicinal and Botanical Manufacturing	<500	384	1,000	384	100
	500–749	3		3	100
	750–999	5		5	100
	1,000–1,499	6			0
	1,500–1,999	2			0
	2,000–2,499	1			0
	2,500–4,999	7			0
	5,000+	13			0
Total		421		392	93.1
541712—Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology)	<500	8,972	1,000	8,972	100
	500–749	68		68	100
	750–999	50		50	100
	1,000–1,499	70			0
	1,500–1,999	40			0
	2,000–2,499	35			0
	2,500–4,999	132			0
	5,000+	267			0
Total		9,634		9,090	94.4

Applying the calculated respective percentage for small entities to the number of affected bulk manufacturers and researchers, DEA estimates 14 (15 × 93.1 percent) bulk manufacturers and 38 (40 × 94.4 percent) researchers, for a total of 52 small entities, will be affected by this proposed rule. The 14 affected small entity bulk manufacturers represent four percent of the estimated 392 small entities in the 'Medicinal and Botanical Manufacturing' (325412) industry, and the 38 affected small entity researchers represent 0.4 percent of the estimated 9,090 small entities in the 'Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology)' (541712) industry. Table 5 summarizes the calculations for the percentage of small entities that are affected by the proposed rule.

TABLE 5—PERCENT OF SMALL ENTITIES AFFECTED BY INDUSTRY

NAICS description	Number of firms	SBA size standard	Estimated number of small entities	Estimated number of affected small entities	Percentage of small entities affected
325411—Medicinal and Botanical Manufacturing	421	1,000	392	14	4
541712—Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology)	9,634	1,000	9,090	38	0.4
Total	10,055	N/A	9,482	52	N/A

DEA generally uses a threshold of 30 percent as a ''substantial'' number of affected small entities. Thus, the above analysis reveals that a non-substantial amount of small bulk manufacturer entities (4 percent) and of small researcher entities (0.4 percent) will be affected by this proposed rule.

DEA generally considers impacts that are greater than three percent of annual revenue to be a ''significant economic impact'' on an entity. As discussed earlier, DEA estimates that there will be a new cost to DEA of $568,278 to $647,010 per year, or the average of the high and low estimates of $607,644 per year. DEA will recover the costs of carrying out the proposed new aspects of the diversion control program relating to marihuana by selling the marihuana to the buyer at the negotiated sale price, between the grower and the buyer, plus the administrative fee assessed on a per kg basis. Based on the average of the high and low estimates of $607,644 and MQ of 2,000 kgs, the administrative fee is $304 per kg, adjusted annually.

Furthermore, NIH-funded or other third-party funded researchers are likely to request and receive enough funding

for the full price of marihuana, including the administrative fee. There would be no impact to these researchers. However, DEA does not have sufficient information to estimate the number of small entity researchers that would fall under this category. Although DEA is unable to quantify the economic impact for the estimated 14 small entity bulk manufacturers and 38 small entity researchers, the number of affected small entity manufacturers and researchers is not a substantial number of small entities in their respective industries.

Based on the analysis above, and because of these facts, DEA believes this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1501 *et seq.,* DEA has determined that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year.'' *See* 2 U.S.C. 1532(a). Therefore, neither a Small Government Agency Plan nor any other action is required under the UMRA.

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* DEA has identified the following collections of information related to this proposed rule. A person is not required to respond to a collection of information unless it displays a valid OMB control number. Copies of existing information collections approved by OMB may be obtained at *https://www.reginfo.gov/.*

A. Collections of Information Associated With the Proposed Rule

Title: Application for Registration (DEA Form 225); Renewal Application for Registration (DEA Form 225A); Affidavit for Chain Renewal (DEA Form 225B).

OMB control number: 1117–0012.

Form numbers: DEA–225, DEA–225A, DEA–225B.

Type of information collection: Revision of a currently approved collection.

Applicable component of the department sponsoring the collection: Department of Justice/Drug Enforcement Administration, Diversion Control Division.

Affected public who will be asked or required to respond: Business or other for-profit.

Abstract: The Controlled Substances Act requires all businesses and individuals who manufacture, distribute, import, export, or conduct research and laboratory analysis with controlled substances to register with DEA. 21 U.S.C. 822; 21 CFR 1301.11, 1301.13. Registration is a necessary control measure that helps to detect and prevent diversion by ensuring that the closed system of distribution of controlled substances can be monitored by DEA, and that the businesses and individuals handling controlled substances are accountable.

If adopted, this proposed rule would amend the regulations governing applications by persons seeking to become registered with DEA to grow marihuana as bulk manufacturers and add provisions related to the purchase and sale of this marihuana by DEA. Persons seeking to become registered with DEA to grow marihuana as bulk manufacturers would still apply for registration using the same DEA Form 225 as other bulk manufacturers, but DEA would use a new supplemental questionnaire unique to marihuana manufacturers in order to gather additional information about applicants. There would also be new questionnaires used for importer applicants and non-marihuana bulk manufacturer applicants. Forms 225, 225A, and 225B would all receive minor revisions to improve clarity and usability for registrants.

DEA estimates the following number of respondents and burden associated with this collection of information:

- *Number of respondents:* 15,919.
- *Frequency of response:* 1 per respondent per year.
- *Number of responses:* 15,919.
- *Burden per response:* 0.1304 hours.
- *Total annual burden in hours:* 2,076.

B. Request for Comments Regarding the Proposed Collections of Information

Written comments and suggestions from the public and affected entities concerning the proposed collections of information are encouraged. Under the PRA, DEA is required to provide a notice regarding the proposed collections of information in the **Federal Register** with the notice of proposed rulemaking and solicit public comment. Pursuant to section 3506(c)(2) of the PRA (44 U.S.C. 3506(c)(2)), DEA solicits comment on the following issues:

- Whether the proposed collection of information is necessary for the proper performance of the functions of DEA, including whether the information shall have practical utility.
- The accuracy of DEA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Recommendations to enhance the quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for DOJ, Washington, DC 20503. Please state that your comments refer to RIN 1117–AB54/Docket No. DEA–506. All comments must be submitted to OMB on or before May 22, 2020. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposed rule.

If you need a copy of the proposed information collection instrument(s) with instructions or additional information, please contact the Regulatory Drafting and Policy Support Section (DPW), Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152–2639; Telephone: (571) 362–3261.

List of Subjects

21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Security measures.

21 CFR Part 1318

Administrative practice and procedure, Drug traffic control.

For the reasons stated in the preamble, DEA proposes to amend 21 CFR chapter II as follows:

PART 1301—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 831, 871(b), 875, 877, 886a, 951, 952, 956, 957, 958, 965 unless otherwise noted.

■ 2. In § 1301.33, revise paragraph (c) and add paragraph (d) to read as follows:

§ 1301.33 Application for bulk manufacture of Schedule I and II substances.

* * * * *

(c) Except as provided in paragraph (d) of this section, this section shall not apply to the manufacture of basic classes of controlled substances listed in Schedule I or II as an incident to research or chemical analysis as authorized in § 1301.13(e)(1).

(d) An application for registration to manufacture marihuana that involves the planting, cultivating, growing, or harvesting of marihuana shall be subject to the requirements of this section and the additional requirements set forth in part 1318 of this chapter.

■ 3. Add part 1318 to read as follows:

PART 1318—CONTROLS TO SATISFY THE REQUIREMENTS OF THE ACT APPLICABLE TO THE MANUFACTURING OF MARIHUANA

Sec.

1318.01 Scope of this part.
1318.02 Definitions.
1318.03 Implementation of statutory requirements.
1318.04 Specific control measures applicable to the bulk manufacture of marihuana.
1318.05 Application of the public interest factors.
1318.06 Factors affecting prices for the purchase and sale by the Administration of cannabis.
1318.07 Non-liability of the Drug Enforcement Administration.

Authority: 21 U.S.C. 801(7), 821, 822(a)(1), (b), 823(a), 871(b), 886a.

§ 1318.01 Scope of this part.

Procedures governing the registration of manufacturers seeking to plant, grow, cultivate, or harvest marihuana are set forth by this part.

§ 1318.02 Definitions.

(a) Except as provided in paragraph (e) of this section, the term *cannabis* means any plant of the genus Cannabis.

(b) Except as provided in paragraph (e) of this section, the term *medicinal cannabis* means a drug product made from the cannabis plant, or derivatives thereof, that can be legally marketed under the Federal Food, Drug, and Cosmetic Act.

(c) Except as provided in paragraph (e) of this section, the term *cannabis preparation* means cannabis that was delivered to the Administration and subsequently converted by a registered manufacturer into a mixture (solid or liquid) containing cannabis, cannabis resin, or extracts of cannabis.

(d) Except as provided in paragraph (e) of this section, the term *cannabis resin* means the separated resin, whether crude or purified, obtained from the cannabis plant.

(e) As used in this part, the terms *cannabis, medicinal cannabis,* and *cannabis preparation* do not include any material, compound, mixture, or preparation that falls outside the definition of marihuana in section 102(16) of the Controlled Substances Act (the Act) (21 U.S.C. 802(16)).

(f) The term *Single Convention* means the Single Convention on Narcotic Drugs, 1961 (18 U.S.T. 1407).

(g) The term *bona fide supply agreement* means a letter of intent, purchase order or contract between an applicant and a researcher or manufacturer registered under the Act.

(h) The term *registered researcher or manufacturer* means a person registered under the Act to perform research or manufacture of marihuana in Schedule I.

§ 1318.03 Implementation of statutory requirements.

(a) As provided in section 303(a) of the Act (21 U.S.C. 823(a)), the Administrator may grant an application for a registration to manufacture marihuana, including the cultivation of cannabis, only if he determines that such registration is consistent with the public interest and with United States obligations under the Single Convention.

(b) In accordance with section 303(a) of the Act and § 1301.44(a) of this chapter, the burden shall be on the applicant to demonstrate that the requirements for such registration have been satisfied.

§ 1318.04 Specific control measures applicable to the bulk manufacture of marihuana.

For a registration to manufacture marihuana that involves the cultivation of cannabis, the following provisions must be satisfied:

(a) All registered manufacturers who cultivate cannabis shall deliver their total crops of cannabis to the Administration. The Administration shall purchase and take physical possession of such crops as soon as possible, but not later than four months after the end of the harvest. The Administration may accept delivery and maintain possession of such crops at the registered location of the registered manufacturer authorized to cultivate cannabis consistent with the maintenance of effective controls against diversion. In such cases, the Administration shall designate a secure storage mechanism at the registered location in which the Administration may maintain possession of the cannabis, and the Administration will control access to the stored cannabis. If the Administration determines that no suitable location exists at the registered location of the registered manufacturer authorized to cultivate cannabis, then the Administration shall designate a location for the authorized grower to deliver the crop as soon as possible, but not later than four months after the end of the harvest. However, in all cases the registrant must comply with the security requirements specified in part 1301 of this chapter.

(b) The Administration shall, with respect to cannabis, have the exclusive right of importing, exporting, wholesale trading, and maintaining stocks other than those held by registered manufacturers and distributors of medicinal cannabis or cannabis preparations. Such exclusive right shall not extend to medicinal cannabis or cannabis preparations. The Administration may exercise its exclusive right by authorizing the performance of such activities by appropriately registered persons. The Administration shall require prior written notice of each proposed importation, exportation, or distribution of cannabis that specifies the quantity of cannabis to be imported, exported, or distributed and the name, address, and registration number of the registered manufacturer or researcher to receive the cannabis before authorizing the importation, exportation, or distribution. All importation and exportation shall be performed in compliance with part 1312 of this chapter, as applicable. Under no circumstance shall a registered manufacturer authorized to grow cannabis import, export, or distribute cannabis without the express written authorization of the Administration.

(c) A registered manufacturer authorized to grow cannabis shall notify in writing the Administration of its proposed date of harvest at least 15 days before the commencement of the harvest.

§ 1318.05 Application of the public interest factors.

(a) In accordance with section 303(a) of the Act (21 U.S.C. 823(a)), the Administrator shall consider the public interest factors set forth in paragraphs (a)(1) through (6) of this section:

(1) Maintenance of effective controls against diversion of particular controlled substances and any controlled substance in schedule I or II compounded therefrom into other than legitimate medical, scientific, research, or industrial channels, by limiting the importation and bulk manufacture of such controlled substances to a number of establishments which can produce an adequate and uninterrupted supply of these substances under adequately

competitive conditions for legitimate medical, scientific, research, and industrial purposes;

(2) Compliance with applicable State and local law;

(3) Promotion of technical advances in the art of manufacturing these substances and the development of new substances;

(4) Prior conviction record of applicant under Federal and State laws relating to the manufacture, distribution, or dispensing of such substances;

(5) Past experience in the manufacture of controlled substances, and the existence in the establishment of effective control against diversion; and

(6) Such other factors as may be relevant to and consistent with the public health and safety.

(b) The Administrator's determination of which applicants to select will be consistent with the public interest factors set forth in section 303(a), with particular emphasis on the following criteria:

(1) Whether the applicant has demonstrated prior compliance with the Act and this chapter;

(2) The applicant's ability to consistently produce and supply cannabis of a high quality and defined chemical composition; and

(3)(i) In determining under section 303(a)(1) of the Act (21 U.S.C. 823(a)(1)) the number of qualified applicants necessary to produce an adequate and uninterrupted supply of cannabis under adequately competitive conditions, the Administrator shall place particular emphasis on the extent to which any applicant is able to supply cannabis or its derivatives in quantities and varieties that will satisfy the anticipated demand of researchers and other registrants in the United States who wish to obtain cannabis to conduct activities permissible under the Act, as demonstrated through a bona fide supply agreement with a registered researcher or manufacturer as defined in this subpart.

(ii) If an applicant seeks registration to grow cannabis for its own research or product development, the applicant must possess registration as a schedule I researcher with respect to marihuana under § 1301.32 of this chapter. As specified in § 1301.13 of this chapter, chemical analysis and preclinical research (including quality control analysis) are not coincident activities of a manufacturing registration for schedule I substances, including cannabis. In determining under section 303(a)(1) of the Act (21 U.S.C. 823(a)(1)) the number of qualified applicants necessary to produce an adequate and uninterrupted supply of cannabis under adequately competitive conditions, the Administrator shall consider the holding of an approved marihuana research protocol by a registered schedule I researcher seeking to grow cannabis for its own research or product development as evidence of the necessity of the applicant's registration under this factor.

(c) Applications accepted for filing after [EFFECTIVE DATE OF FINAL RULE] will not be considered pending for purposes of paragraph (a) of this section until all applications accepted for filing on or before [EFFECTIVE DATE OF FINAL RULE] have been granted or denied by the Administrator. Where an application is subject to section 303(i) of the Act (21 U.S.C. 823(i)), that section shall apply in lieu of this paragraph (c).

(d) In determining the legitimate demand for cannabis and its derivatives in the United States, the Administrator shall consult with the U.S. Department of Health and Human Services, including its components.

§ 1318.06 Factors affecting prices for the purchase and sale by the Administration of cannabis.

(a) In accordance with section 111(b)(3) of Public Law 102–395 (21 U.S.C. 886a(1)(C)), seeking to recover the full costs of operating the aspects of the diversion control program that are related to issuing registrations that comply with the Controlled Substances Act (CSA), the Administration shall assess an administrative fee. To set the administrative fee, the Administration shall annually determine the preceding fiscal year's cost of operating the program to cultivate cannabis and shall divide the prior fiscal year's cost by the number of kgs of cannabis authorized to be manufactured in the current year's quota to arrive at the administrative fee per kg. The administrative fee per kg shall be added to the sale price of cannabis purchased from the Administration. The administrative fee shall be paid to the Diversion Control Fee Account.

(b) As set forth in § 1318.04, the Administration shall have the exclusive right of, among other things, wholesale trading in cannabis that it purchases from registered manufacturers. The Administration will, therefore, buy from such manufacturer, sell cannabis to registered researchers and manufacturers, and establish prices for such purchase and sale. The Administration will set such prices in the following manner:

(1) Bulk growers of cannabis shall negotiate directly with registered researchers and manufacturers authorized to handle cannabis to determine a sale price for their cannabis. Upon entering into a contract for the provision of bulk cannabis and prior to the exchange of cannabis, the parties shall pay to the Administration an administrative fee assessed based on the number of kgs to be supplied. The administrative fee shall not be recoverable in the event that delivery is rejected by the buyer.

(2) The Administration shall sell the cannabis to the buyer at the negotiated sale price plus the administrative fee assessed on a per kg basis. Prior to the purchase of the cannabis by the Administration, the buyer shall pay the negotiated purchase price and administrative fee to the Administration. The Administration shall hold funds equal to the purchase price in escrow until the delivery of the cannabis by the grower to the Administration. The administrative fee shall not be recoverable in the event that delivery is rejected by the buyer.

(3) After receiving the purchase price and administrative fee from the buyer, the Administration shall purchase the cannabis from the grower, on behalf of the buyer, at the negotiated sale price. The Administration shall retain the administrative fee. In the event the buyer fails to pay the purchase price and the administrative fee, the Administration shall have no obligation to purchase the crop and may order the grower to destroy the crop if the grower cannot find an alternative buyer within four months of harvest.

(4) In instances where the grower of the cannabis is the same entity as the buyer of the cannabis, or a related or subsidiary entity, the entity may establish a nominal price for the purchase of the cannabis. The Administration shall then purchase the entity's cannabis at that price and sell the cannabis back to the entity, or a related or subsidiary entity, at the same price with the addition of the administrative fee.

(c) Administrative fees set in accordance with this part will be made available, on an updated basis, on the Administration's website, no later than December 15th of the year preceding the year in which the administrative fee will be collected.

(d) Nothing in this section shall prohibit the U.S. Department of Health and Human Services from continuing to fund the acquisition of cannabis for use in research by paying, directly or indirectly, the purchase cost and administrative fee to the Administration.

§ 1318.07 Non-liability of Drug Enforcement Administration.

The Administration shall have no liability with respect to the performance of any contractual terms agreed to by a grower and buyer of bulk cannabis, including but not limited to the quality of any cannabis delivered to a buyer. In the event that a buyer deems the delivered cannabis to be defective, the buyer's sole remedy for damages shall be against the grower and not the Administration.

Dated: March 16, 2020.

Uttam Dhillon,

Acting Administrator.

[FR Doc. 2020–05796 Filed 3–20–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 209

[COE–2016–0016]

RIN 0710–AA72

Use of U.S. Army Corps of Engineers Reservoir Projects for Domestic, Municipal & Industrial Water Supply; Withdrawal

AGENCY: Army Corps of Engineers, DoD.

ACTION: Proposed rule; withdrawal.

SUMMARY: As a result of a policy determination by the Assistant Secretary of the Army (Civil Works), the U.S. Army Corps of Engineers (Corps) is withdrawing the proposed rule titled ''Use of U.S. Army Corps of Engineers Reservoir Projects for Domestic, Municipal & Industrial Water Supply,'' which was published on December 16, 2016.

DATES: The Corps is withdrawing the proposed rule published December 16, 2016 (81 FR 91556) as of March 23, 2020.

ADDRESSES: U.S. Army Corps of Engineers, 441 G Street NW, Washington, DC 20314.

FOR FURTHER INFORMATION CONTACT: Amy K. Frantz, Planning and Policy (CECW–P); telephone number: (202) 761–0106; email address: *WSRULE2016@usace.army.mil*; or Daniel Inkelas, Chief Counsel's Office (CECC–L); phone number (202) 761–0345; email address: *WSRULE2016@usace.army.mil.*

SUPPLEMENTARY INFORMATION: None.

Dated: March 16, 2020.

R.D. James,

Assistant Secretary of the Army, (Civil Works).

[FR Doc. 2020–05919 Filed 3–20–20; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket No. ED–2020–OPE–0044]

Proposed Waiver and Extension of the Project Period for the Predominantly Black Institutions Competitive Grant Program

AGENCY: Office of Postsecondary Education (OPE), Department of Education.

ACTION: Proposed waiver and extension of project period.

SUMMARY: The Secretary proposes to waive the requirements in the Education Department General Administrative Regulations that generally prohibit project periods exceeding five years and project period extensions involving the obligation of additional Federal funds. The proposed waiver and extension would enable 23 projects under CFDA number 84.382A to receive funding for an additional period, not to exceed September 30, 2021.

DATES: We must receive your comments on or before April 22, 2020.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

If you are submitting comments electronically, we strongly encourage you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Adobe Portable Document Format (PDF), we strongly encourage you to convert the PDF to print-to-PDF format or to use some other commonly used searchable text format. Please do not submit the PDF in a scanned format. Using a print-to-PDF format allows the Department to electronically search and copy certain portions of your submissions.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov,* including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Help.''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* The Department strongly encourages commenters to submit their comments electronically. However, if you mail or deliver your comments about the proposed waiver and extension, address them to: The Predominantly Black Institutions Competitive Grant Program, CFDA number 84.382A, Attention: Bernadette Miles, U.S. Department of Education, 400 Maryland Avenue SW, Room 250–22, Washington, DC 20202.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Bernadette Miles, U.S. Department of Education, 400 Maryland Avenue SW, Room 250–22, Washington, DC 20202. Telephone: 202–453–7892. Email: *Bernadette.Miles@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this proposed waiver and extension.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 13771 and their overall requirement of reducing regulatory burden that might result from this proposed waiver and extension. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this proposed waiver and extension of the project period in Room 5059, 550 12th Street SW, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week, except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other

documents in the public rulemaking record for this proposed waiver and extension. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

On May 18, 2015, the Department of Education (Department) published in the **Federal Register** (80 FR 28248) a notice inviting applications for projects for fiscal year (FY) 2015 under the Predominantly Black Institutions (PBI) Competitive Grant program authorized under Title III, Part F, Section 371 of the Higher Education Act of 1965, as amended (HEA). The purpose of the PBI program is to strengthen PBIs to carry out programs in the following areas: Science, technology, engineering, or mathematics; health education; internationalization or globalization; teacher preparation; or improving educational outcomes of African-American males.

In September 2015, the Department made 23 60-month awards to eligible institutions funded by the PBI Program as follows:

Institution	State
University of West Alabama	AL.
Arkansas State University	AR.
Pulaski Technical College	AR.
South Georgia Technical College	GA.
Albany Technical College	GA.
Oconee Fall Line Technical College	GA.
Augusta Technical College	GA.
Central Georgia Technical College	GA.
Georgia State University	GA.
Malcolm X College	IL.
Olive Harvey College	IL.
Chicago State University	IL.
Mississippi Delta Community College	MS.
Halifax Community College	NC.
Bloomfield College	NJ.
Medgar Evers College	NY.
York College	NY.
Community College of Philadelphia	PA.
Northeastern Technical College	SC.
Florence-Darlington Technical College.	SC.
Central Carolina Technical College	SC.
Southwest Tennessee Community College.	TN.
Cedar Valley College	TX.

All current project periods for these grantees end on September 30, 2020.

Waivers and Extensions

We are proposing to extend the 23 PBI projects in order to align and coordinate the funding cycles of all discretionary grant programs authorized under Title III, Part F, Section 371 of the Higher Education Act of 1965 (HEA). With the proposed extension, the PBI Program would align with (1) the Alaska Native and Native Hawaiian-serving Institutions program; (2) the Asian American and Native American Pacific Islander-serving program; (3) the Native American-serving Non-Tribal Institutions program; and (4) the Hispanic-Serving Institutions Science, Technology, Engineering, and Mathematics and Articulation Program (HSI–STEM). The waivers and extensions would allow the Department to align and coordinate the award cycles of the Title III, Part F programs, and improve the efficiency and cost-effectiveness of direct training and technical assistance services focused on the competitive strengthening institutions programs. In addition, the Department will consider approaches for improving coordination among programs that provide these services to more efficiently and effectively meet the needs of these institutions and to allow for efficient use of the funding available to support these activities.

We do not believe that it would be in the public interest to run a competition for this program in FY 2020. The program has remaining FY 2019 appropriated funds to be carried over to the current FY 2020 grant cycle and would continue on an award cycle that would not coordinate with the Department's existing part F discretionary grant programs.

The Department has also concluded that it would not be in the public interest to run two consecutive program competitions with the first using the appropriated 2019 carry over funds and the second using the funds appropriated by H.R. 2486, the Fostering Undergraduate Talent by Unlocking Resources for Education (FUTURE) Act, because doing so would increase the burden on the potential applicants.

For these reasons, the Secretary proposes to waive the requirements in 34 CFR 75.250, which prohibit project periods exceeding five years, and the requirements in 34 CFR 75.261(a) and (c)(2), which allow the extension of a project period only if the extension does not involve the obligation of additional Federal funds. The waiver would allow the Department to issue one-time FY 2020 continuation awards to the current PBI Program grantees estimated as follows:

Institution	State	Award
University of West Alabama.	AL	$414,672
Arkansas State University.	AR	599,996
Pulaski Technical College.	AR	599,856
South Georgia Technical College.	GA	600,000
Albany Technical College.	GA	600,000
Oconee Fall Line Technical College.	GA	545,459
Augusta Technical College.	GA	591,493
Central Georgia Technical College.	GA	596,148
Georgia State University.	GA	600,000
Malcolm X College	IL	590,500
Olive Harvey College	IL	543,246
Chicago State University.	IL	600,000
Mississippi Delta Community College.	MS	600,000
Halifax Community College.	NC	600,000
Bloomfield College	NJ	600,000
Medgar Evers College	NY	600,000
York College	NY	600,000
Community College of Philadelphia.	PA	600,000
Northeastern Technical College.	SC	599,252
Florence-Darlington Technical College.	SC	599,993
Central Carolina Technical College.	SC	599,921
Southwest Tennessee Community College.	TN	600,000
Cedar Valley College	TX	467,126

Any activities carried out during the year of this continuation award must be consistent with the scope, goals, and objectives of the grantees' applications as approved in the 2015 competition. The requirements for continuation awards are set forth in 34 CFR 75.253.

Regulatory Flexibility Act Certification

The Secretary certifies that the proposed waiver and extension of the project period would not have a significant economic impact on a substantial number of small entities. The only entities that would be affected by the proposed waiver and extension of the project period are the current grantees and any other potential applicants.

The Secretary certifies that the proposed waiver and extension would not have a significant economic impact on these entities because the extension of an existing project period imposes minimal compliance costs, and the activities required to support the additional year of funding would not impose additional regulatory burdens or require unnecessary Federal supervision.

Paperwork Reduction Act of 1995

This notice of proposed waiver and extension of the project period does not contain any information collection requirements.

Intergovernmental Review

These programs are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of our specific plans and actions for this program.

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 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.

Robert L. King,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2020–05741 Filed 3–20–20; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2020–0055 FRL–10006–83–Region 5]

Air Plan Approval; Ohio; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to remove the air pollution nuisance rule from the Ohio State Implementation Plan (SIP) using the Clean Air Act (CAA) error correction provision. EPA has determined that this rule was not relied upon by Ohio to demonstrate attainment or maintenance of any National Ambient Air Quality Standards (NAAQS). If EPA takes final action consistent with this proposal, the nuisance provision will no longer be part of the Ohio SIP.

DATES: Comments must be received on or before April 22, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2020–0055 at *http://www.regulations.gov,* or via email to *arra.sarah@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For 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.*

FOR FURTHER INFORMATION CONTACT: Rachel Rineheart, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7017, *rineheart.rachel@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

I. Why is EPA proposing to remove Ohio's nuisance rule from the SIP?

The CAA was first enacted in 1970. Section 110(a)(1) required each state to submit to EPA SIPs that provided for the implementation, maintenance and enforcement of the NAAQS. In the 1970s and early 1980s, thousands of state and local agency regulations were submitted to EPA for incorporation into the SIP to fulfill the new Federal requirements. In many cases, states submitted entire regulatory air pollution programs, including many elements not required by the CAA. Due to time and resource constraints, EPA's review of these submittals focused primarily on the rules addressing the new substantive requirements of the CAA, and we approved many other elements into the SIP with minimal review. We now recognize that some of these elements are appropriate for state and local agencies to adopt and implement, but not as federally enforceable SIP requirements. These include rules that prohibit air pollution nuisances. Such rules generally have no connection to the purposes for which SIPs are developed and approved, namely the implementation, maintenance, and enforcement of the NAAQS.

II. What is EPA's authority to correct errors in SIP rulemakings?

Section 110(k)(6) of the CAA provides EPA with authority to make corrections to prior SIP actions that are subsequently found to be in error in the same manner as the prior action, and to do so without requiring any further submission from the state. This determination and the basis must be provided to the state and the public.

III. Which rule is EPA proposing to remove?

Ohio rule AP–2–07, ''Air pollution nuisances prohibited,'' was approved by EPA into the Ohio SIP on April 15, 1974. *See* 39 FR 13542. Subsequently, Ohio amended and renumbered the rule as OAC 3745–15–07 and submitted it as a revision to the SIP. EPA approved the amended provision on August 13, 1984. *See* 49 FR 32182. OAC 3745–15–07 prohibits the ''emission or escape into the open air from any source or sources whatsoever, of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, odors, or any other substances or combinations of substances, in such manner or in such amounts as to endanger the health, safety or welfare of the public, or cause unreasonable injury or damage to property.''

EPA has reviewed the docket files regarding Ohio's nuisance rule and found no information indicating that the state has relied on, or ever intended to rely on, this rule for attainment or

maintenance of any NAAQS.[1] Additionally, the Ohio Environmental Protection Agency has confirmed that they have not relied on, and did not intend to rely on, this rule for attainment or maintenance of any NAAQS.

IV. What action is EPA taking?

EPA is proposing to remove Ohio's nuisance provision from the Ohio SIP because it does not have a reasonable connection to the attainment and maintenance of the NAAQS. Consequently, EPA finds that its prior approval of OAC 3745–15–07 into the Ohio SIP was in error. To correct this error, EPA is proposing to remove OAC 3745–15–07 from the approved Ohio SIP pursuant to section 110(k)(6) of the CAA and to codify this removal by revising the appropriate paragraph under 40 CFR part 52, subpart KK, § 52.1870 (Identification of Plan).

V. Incorporation by Reference

In this document, EPA is proposing to amend regulatory text that includes incorporation by reference. EPA is proposing to remove 3745–15–07 ''Air Pollution Nuisances Prohibited'' of the EPA-Approved Ohio Regulations from the Ohio State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51. EPA has made, and will continue to make the State Implementation Plan generally available through *www.epa.gov/air-quality-implementation-plans/approved-air-quality-implementation-plans-region-5* and at the EPA Region 5 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 CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: March 9, 2020.

Kurt A. Thiede,

Regional Administrator, Region 5.

[FR Doc. 2020–05957 Filed 3–20–20; 8:45 am]

BILLING CODE 6560–50–P

[1] EPA has taken similar actions in a number of other states. *See, e.g.,* Approval and Promulgation of Implementation Plans; Michigan: Correction, 64 FR 7790 (February 17, 1999).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648–BJ49

Fisheries of the Exclusive Economic Zone Off Alaska; Reclassifying Sculpin Species in the Groundfish Fisheries of the Bering Sea and Aleutian Islands and the Gulf of Alaska

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

ACTION: Notice of availability; fishery management plan amendments; request for comments.

SUMMARY: The North Pacific Fishery Management Council submitted Amendment 121 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) and Amendment 110 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP) (collectively Amendments 121/110), to the Secretary of Commerce for review. If approved, Amendments 121/110 would reclassify sculpins in these fishery management plans (FMPs) under the ecosystem component (EC) category. This action is necessary to ensure sculpin species are accurately classified in the FMPs based on the best available scientific information. Amendments 121/110 are intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMPs, and other applicable laws.

DATES: Comments must be received no later than May 22, 2020.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2020–0004, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA- NMFS-2020-0004,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Records Office. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of the draft Environmental Assessment and the Regulatory Impact Review (collectively referred to as the ''Analysis'') prepared for this proposed rule may be obtained from *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Megan Mackey, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council (council) submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce (Secretary). The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment. This notice announces that proposed Amendments 121/110 are available for public review and comment.

NMFS manages the groundfish fisheries in the exclusive economic zone under the FMPs. The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679.

Section 3.1.2 of the FMPs define two broad classifications for stocks or stock complexes (*i.e.,* species or species groups). The first classification is for stocks ''in the fishery'' that include target stocks in need of conservation and management that fishers seek to catch, and non-target stocks in need of conservation and management that are caught incidentally during the pursuit of target stocks. The second classification is for EC species that do not require conservation and management, but may be listed in an FMP in order to achieve ecosystem management objectives. Under the groundfish FMPs, NMFS must establish an overfishing level (OFL), an acceptable biological catch (ABC), and a total allowable catch (TAC) for each stock or stock complex (*i.e.,* species or species group) that is ''in the fishery,'' but not for those in the EC.

The FMPs define the OFL as the catch level above which overfishing is occurring for a species or species group. NMFS manages fisheries in an effort to ensure that no OFLs are exceeded in any year. The FMPs define the ABC as the level of a species or species group's annual catch that accounts for the scientific uncertainty in the estimate of OFL and any other scientific uncertainty. The FMPs define the TAC as the annual catch target for a species or species group, derived from the ABC by considering social and economic factors and management uncertainty.

In 2010, Amendments 96/87 to the BSAI and GOA FMPs, respectively, established the EC category and designated prohibited species (salmon, steelhead trout, crab, halibut, and herring) and forage fish species (as defined in Table 2c to 50 CFR part 679 and § 679.20(i)) as EC species in the groundfish FMPs. Additional detail is provided in the final rule implementing Amendments 96/87 (75 FR 61639, October 6, 2010).

In 2015, NMFS implemented Amendments 100/91 to the BSAI and GOA FMPs, respectively, to add grenadiers to the EC category (80 FR 11897, March 5, 2015). The Council and NMFS added grenadiers to the FMPs in the EC category because grenadiers did not require conservation and management, but acknowledged their role in the ecosystem and limited the groundfish fisheries' potential impact on grenadiers. Adding grenadiers to the EC category allowed for improved data collection and catch monitoring appropriate for grenadiers given their abundance, distribution, and catch. Additional detail is provided in the final rule implementing Amendments 100/91 (80 FR 11897, March 5, 2015).

In 2018, NMFS implemented Amendments 117/106 to the BSAI and GOA FMPs, respectively, to add squids to the FMPs in the EC category because they were, similar to grenadiers, determined not to require conservation and management. Additional detail is provided in the final rule implementing Amendments 117/106 (83 FR 31460, July 6, 2018).

Sculpins are currently classified as target species ''in the fishery'' in section 3.1.2 of the groundfish FMPs and directed fishing is allowed. However, sculpins are not a target species for any groundfish fishery in the BSAI or GOA. Sculpins are only caught incidentally to other target groundfish. Sculpins are incidentally caught primarily in the BSAI by trawl gear in directed fishing for yellowfin sole, rock sole, and Atka mackerel, as well as Pacific cod hook-and-line, pot, and trawl directed fishing (Table 3–4 and Table 3–5 of the Analysis). Sculpins are caught primarily in the GOA by Pacific cod, shallow-water flatfish directed fishing, and IFQ halibut fisheries (Table 3–6 of the Analysis).

For both the BSAI and GOA, sculpins are managed as a Tier 5 species, which is the least preferred method of specifying an overfishing limit when limited biological reference points are available. Only Tier 6 species, for which no biological reference points are available, are below Tier 5 in terms of limited information available. Nonetheless, specification of OFL for Tier 5 species reflects the best estimate possible for sculpins with the available data. As described in Section 3.2.3 of the Analysis, model estimates of sculpin abundance in the BSAI and GOA have been fairly stable over the years with no conservation concerns apparent.

Stock assessments provide the scientific basis for determining whether a stock is experiencing overfishing (*i.e.* when a stock's recent harvest rate exceeds sustainable levels) or overfished (*i.e.* already depleted), and for calculating a sustainable harvest rate and forecasting catches that correspond to that rate. For stocks in Tiers 4–6, no determination can be made of overfished status or approaching an overfished condition as information is insufficient to estimate the Maximum Sustainable Yield (MSY) stock level. Therefore, it is not possible to determine whether the sculpin complex is overfished or whether it is approaching an overfished condition because it is managed under Tier 5. However, in the absence of directed fishing, they are very unlikely to be overfished. Sculpins, in general, are not retained. As noted in Section 3.2.2 of the Analysis, sculpin catch has been substantially below ABC and OFL, and has been a small proportion of the biomass each year.

Section 302(h)(1) of the Magnuson-Stevens Act requires a council to prepare an FMP for each fishery under its authority that is in need of conservation and management.

''Conservation and management'' is defined in section 3(5) of the Magnuson-Stevens Act. The National Standard guidelines at 50 CFR 600.305(c) (revised on October 18, 2016, 81 FR 71858), provide direction for determining which stocks will require conservation and management and provide direction to regional councils and NMFS for how to consider these factors in making this determination. Specifically, the guidelines direct regional councils and NMFS to consider a non-exhaustive list of ten factors when deciding whether stocks require conservation and management.

Section 2.2.1 in the Analysis considers each of the 10 factors' relevance to sculpins. The analysis shows that while sculpins are currently classified as a target species in the FMPs, there has been no directed fishing for sculpins since they were included in the FMPs. Sculpins are not important to commercial, recreational, or subsistence users, nor are they important to the National or regional economy. There are no developing fisheries for sculpins in the EEZ off Alaska nor in waters of the State of Alaska. Because there is no directed fishing and incidental fishing-related mortality is low, there is very little probability that sculpins will become overfished. Sculpins are not in need of rebuilding, and are not targeted as a major food product in Alaska. There are no conservation concerns for sculpins since they are not targeted, are rarely retained, and future uses of sculpins remain available. Maintaining sculpins as a target species in the BSAI and GOA FMPs is not likely to change stock condition.

In October of 2019, the Council recommended and NMFS proposes Amendments 121/110 to reclassify sculpins as EC category species in the FMPs. Based on a review of the scientific information, and after considering the revised NS guidelines, the Council and NMFS determined that sculpins are not in need of conservation and management, and that classifying sculpins in the EC category is an appropriate action.

While the Council determined that sculpins are not in need of conservation and management as defined by the Magnuson-Stevens Act, and after considering the revised NS guidelines, the Council and NMFS determined that there are benefits to retaining sculpins as an EC species complex in the FMPs because they are a part of the ecosystem as benthic predators.

Amendments 121/110 would amend Section 3.1.2 of the FMPs to establish the sculpins EC species complex in the FMPs. Amendments 121/110 would allow NMFS to prohibit directed fisheries for sculpins and limit the retention and commercial exchange of sculpins. By virtue of being classified as EC species, catch specifications for sculpins (OFL, ABC, and TAC) would no longer be required.

NMFS is soliciting public comments on proposed Amendments 121/110 through the end of the comment period (see **DATES**). NMFS intends to publish in the **Federal Register** and seek public comment on a proposed rule that would implement Amendments 121/110, following NMFS' evaluation of the proposed rule under the Magnuson-Stevens Act.

Respondents do not need to submit the same comments on Amendments 121/110 and the proposed rule. All relevant written comments received by the end of the applicable comment period, whether specifically directed to the FMP amendments or the proposed rule will be considered by NMFS in the approval/disapproval decision for Amendments 121/110 and addressed in the response to comments in the final decision. Comments received after end of the applicable comment period will not be considered in the approval/disapproval decision on Amendments 121/110. To be considered, comments must be received, not just postmarked or otherwise transmitted, by the last day of the comment period (see **DATES**).

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

Dated: March 18, 2020.

Hélène M.N. Scalliet,

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

[FR Doc. 2020–06065 Filed 3–20–20; 8:45 a.m.]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 85, No. 56

Monday, March 23, 2020

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 18, 2020.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology Comments regarding these information collections are best assured of having their full effect if received by April 22, 2020. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Cotton Classing, Testing, and Standards.

OMB Control Number: 0581–0008.

Summary of Collection: The U.S. Cotton Standards Act, 7 U.S.C. 51 53 and 55, authorizes the USDA to supervise the various activities directly associated with the classification or grading of cotton, cotton linters, and cottonseed based on official USDA Standards. The Cotton and Tobacco Program of the Agricultural Marketing Service carries out this supervision and is responsible for the maintenance of the functions to which these forms relate. USDA is the only Federal agency authorized to establish and promote the use of the official cotton standards of the U.S. in interstate and foreign commerce and to supervise the various activities associated with the classification or grading of cotton, cotton linters, and cottonseed based on official USDA standards.

Need and Use of the Information: The Agricultural Marketing Service collects the information using various forms. Form FD–210 is submitted by owners of cotton to request cotton classification services. The request contains information for USDA to ascertain proper ownership of the samples submitted, to distribute classification results, and bill for services. Information about the origin and handling of the cotton is necessary in order to properly evaluate and classify the samples.

Form CN–246 is submitted by cotton gins and warehouses seeking to serve as licensed samplers. Licenses issued by the USDA–AMS Cotton and Tobacco Program authorize the warehouse/gin to draw and submit samples to ensure the proper application of standards in the classification of cotton and to prevent deception in their use.

Form CN–383 is a package of forms designated as CN–383–a through CN–383–k that is submitted by cotton producers, ginners, warehousemen, cooperatives, manufacturers, merchants, and crushers interested in acquiring cotton classification standards and round testing services.

If this information is not collected or collected less frequency, Federal services could not be provided as authorized by the U.S. Cotton Standards Act.

Description of Respondents: Business or other for-profit.

Number of Respondents: 1,041.

Frequency of Responses: Reporting: Annually; on occasion.

Total Burden Hours: 184.

Agricultural Marketing Service

Title: Cotton Classification and Market News Service.

OMB Control Number: 0581–0009.

Summary of Collection: The Cotton Statistics and Estimates Act, 7 U.S. Code 471–476, authorizes the Secretary of Agriculture to collect and publish annually statistics or estimates concerning the grades and staple lengths of stocks of cotton. In addition, Agricultural Marketing Service (AMS) collects, authenticates, publishes, and distributes timely information of the market supply, demand, location, and market prices for cotton (7 U.S.C. 473B). This information is needed and used by all segments of the cotton industry.

Need and Use of the Information: AMS will collect information on the quality of cotton in the carryover stocks along with the size or volume of the carryover. Growers use this information in making decisions relative to marketing their present crop and planning for the next one; cotton merchants use the information in marketing decisions; and the mills that provide the data also use the combined data in planning their future purchase to cover their needs. Importers of U.S. cotton use the data in making their plans for purchases of U.S. cotton. AMS and other government agencies are users of the compiled information.

Description of Respondents: Business or other for-profit.

Number of Respondents: 696.

Frequency of Responses: Reporting: On occasion; Weekly; Annually.

Total Burden Hours: 599.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–06078 Filed 3–20–20; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

U.S. Codex Office

Codex Alimentarius Commission: Public Meetings of the Codex Alimentarius Commission: Meeting of the Committee on Contaminants in Foods; the Committee on Food Import and Export Certification and Inspection Systems; the Codex Committee on Methods of Analysis and Sampling, and the Committee on Residues of Veterinary Drugs in Foods

AGENCY: U.S. Codex Office, USDA.

ACTION: Notice of public meeting changes.

SUMMARY: Due to circumstances related to the outbreak of the Coronavirus (COVID–19), USDA is publishing this notice to announce that arrangements have been changed to make the public meetings conducted by telephone conference only.

FOR FURTHER INFORMATION CONTACT: Doreen Chen-Moulec at 202–720–4063 or Mary Frances Lowe at 202–205–7760; U.S. Codex Office, 1400 Independence Avenue SW, Room 4861, South Agriculture Building, Washington, DC 20250. Phone: (202) 205 7760, Fax: (202) 720–3157, Email: *uscodex@usda.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Codex Office is publishing this notice to announce that arrangements for the public meetings for the Codex Alimentarius Commission: Meeting of the Codex Committee on Contaminants in Food (March 23, 2020) (85 FR 11047), Codex Alimentarius Commission: Meeting of the Committee on Food Import and Export Certification and Inspection Systems (March 25, 2020) (85 FR 12887), and Codex Alimentarius Commission: Meeting of the Committee on Methods if Analysis and Sampling (April 16, 2020) (85 FR 10399), have changed and will be conducted by telephone conference only to be consistent with public health guidance related to outbreaks of novel coronavirus (COVID19). The arrangement for the public meeting of Codex Alimentarius Commission: Meeting of the Codex Committee on Residues of Veterinary Drugs in Foods (April 30, 2020) (85 FR 13822) will be also be conducted by telephone conference only for the same reason. Please find information on the schedule, telephone conference number and passcode for public meetings at the following address: *www.usda.gov/topics/trade/international-food-standards/codex-federal-register-notices-and-public-meetings.* Please note that the documents related to these public meetings will remain accessible via the internet at the following address: *www.codexalimentarius.org/meetings-reports/en.*

Done at Washington, DC, on March 17, 2020.

Mary Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2020–06067 Filed 3–20–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket No. RHS–20–MFH–0007]

Notice of Solicitation of Applications for the Section 533 Housing Preservation Grants for Fiscal Year 2020

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS), an Agency within Rural Development, announces that it is soliciting competitive applications under its Housing Preservation Grant (HPG) program. This action is taken to comply with Agency regulations which requires the Agency to announce the opening and closing dates for receipt of pre-applications for HPG funds from eligible applicants. The Agency will publish the amount of funding on its website at *https://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas.* Expenses incurred in developing applications will be at the applicant's risk.

DATES: The closing deadline for receipt of all paper pre-applications in response to this Notice is 5:00 p.m., local time for each Rural Development State Office on May 7, 2020. If submitting the pre-application in electronic format, the closing deadline for receipt is 5:00 p.m. Eastern Daylight Time on May 7, 2020.

Rural Development State Office locations can be found at: *http://www.rd.usda.gov/contact-us/state-offices.* RHS will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile (FAX) and postage due applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: For general information, applicants may contact Bonnie Edwards-Jackson, Finance and Loan Analyst, Multi-Family Housing Preservation and Direct Loan Division, USDA-Rural Development, STOP 0781, 1400 Independence Avenue SW, Washington, DC 20250–0781, telephone (202) 690–0759 (voice) (this is not a toll-free number) or (800) 877–8339 (TDD-Federal Information Relay Service) or via email at, *bonnie.edwards@usda.gov.*

SUPPLEMENTARY INFORMATION:

Priority Language for Funding Opportunities

The Agency encourages applications that will help improve life in rural America. See information on the Interagency Task Force on Agriculture and Rural Prosperity found at: *www.usda.gov/ruralprosperity.* Applicants are encouraged to consider projects that provide measurable results in helping rural communities build robust and sustainable economies through strategic investments in infrastructure, partnerships and innovation.

Key strategies include:

- Achieving e-Connectivity for Rural America
- Developing the Rural Economy
- Harnessing Technological Innovation
- Supporting a Rural Workforce
- Improving Quality of Life

To leverage investments in rural property, the Agency also encourages projects located in rural Opportunity Zones where projects should provide measurable results in helping communities build robust and sustainable economies. An Opportunity Zone is an economically-distressed community where new investments, under certain conditions, may be eligible for preferential tax treatment. Localities qualify as Opportunity Zones if they have been nominated for that designation by the State and that nomination has been certified by the Secretary of the U.S. Treasury via his delegation of authority to the Internal Revenue Service.

To combat a key threat to economic prosperity, rural workforce and quality of life, the Agency also encourages applications that will support the Administration's goal to reduce the morbidity and mortality associated with Substance Use Disorder (including opioid misuse) in high-risk rural communities by strengthening the capacity to address prevention, treatment and/or recovery at the community, County, State, and/or Regional levels:

Key strategies include:

- Prevention: Reducing the occurrence of Substance Use Disorder (including opioid misuse) and fatal

substance-related overdoses through community and provider education and harm reduction measures such as the strategic placement of overdose reversing devices, such as naloxone;

• Treatment: Implementing or expanding access to evidence-based treatment practices for Substance Use Disorder (including opioid misuse) such as medication-assisted treatment (MAT); and

• Recovery: Expanding peer recovery and treatment options that help people start and stay in recovery.

To focus investments in areas with the largest opportunity for growth in prosperity, the Agency encourages applications that serve the smallest communities with the lowest incomes, with an emphasis on areas where at least 20 percent of the population is living in poverty, according to the American Community Survey data by census tracts.

Overview

Federal Agency Name: Rural Housing Service, USDA.

Funding Opportunity Title: Housing Preservation Grants.

Announcement Type: Notice.

Catalog of Federal Domestic Assistance Number: 10.433.

Paperwork Reduction Act

The reporting requirements contained in this Notice have been approved by the Office of Management and Budget under OMB Number 0575–0115.

A. Program Description

The HPG program is a grant program, authorized under 42 U.S.C. 1490m and implemented at 7 CFR part 1944, subpart N, which provides qualified public agencies, private non-profit organizations including, but not limited to, Faith-Based and neighborhood partnerships, and other eligible entities; grant funds to assist low- and very low-income homeowners in repairing and rehabilitating their homes in rural areas. In addition, the HPG program assists cooperative housing complexes and rental property owners in rural areas in repairing and rehabilitating their units if they agree to make such units available to very low- and low- income persons. Rental property owners can include Section 515 rental properties if the eligibility requirements for the HPG program are met. In accordance with 7 CFR part 1944.663, rental property owners must agree to make the units repaired or rehabilitated available for occupancy to very low- or low-income persons for a period of not less than 5 years. The minimum 5-year restriction to rent the very low- and low- income tenants will only apply to the units that are repaired with the HPG funding. Any units within the property that were not repaired with HPG funding will not be subject to the 5-year restriction.

B. Federal Award Information

The funding instrument for the HPG program will be a grant agreement. The term of the grant can vary from 1 to 2 years, depending on available funds and demand. No maximum or minimum grant levels have been established at the National level. In accordance with 7 CFR 1944.652, coordination and leveraging of funding for repair and rehabilitation activities with housing and community development organizations or activities operating in the same geographic area are expected, but not required. You should contact the Rural Development State Office to determine the allocation. HPG applicants who were previously selected for HPG funds are eligible to submit new applications to apply for fiscal year (FY) 2020 HPG program funds.

The amount of funding available for the HPG program may be found at the following link: *http://www.rd.usda.gov/programs-services/housing-preservation-grants.* In addition, the Consolidated Appropriations Act, 2019 (Pub. L. 116–6) set-aside for grants located in Rural Economic Area Partnership Zones (REAP Zones). The State Office will indicate on the list submitted to the National Office if the application is eligible for the REAP Zones set-aside. The National Office will then compile a national list, rank the REAP Zones applicants based on the point allocations set forth in this **Federal Register** Notice, and distribute the HPG REAP Zones set-aside starting with the highest scoring eligible HPG REAP Zones applicants. Other funds will be distributed under a formula allocation to States pursuant to 7 CFR part 1940, subpart L, ''Methodology and Formulas for Allocation of Loan and Grant Program Funds.'' Decisions on funding will be based on pre-application scores. Anyone interested in submitting an application for funding under this program is encouraged to consult the Rural Development website periodically for updated information regarding the status of funding authorized for this program.

The commitment of program dollars will be made to selected applicants that have fulfilled the necessary requirements for obligation.

C. Eligibility Information

1. *Eligible Applicants.* Eligible entities for these competitively awarded grants include State and local Governments, non-profit corporations; which may include, but not be limited to Faith-Based and community organizations, federally recognized Indian Tribes, and consortia of eligible entities. HPG applicants who were previously selected for HPG funds are eligible to submit new applications to apply for FY 2020 HPG program funds. More eligibility requirements can be found at 7 CFR 1944.658, 1944.661, and 1944.662.

2. *Cost Sharing or Matching.* Pursuant to 7 CFR 1944.652, grantees are expected to coordinate and leverage funding for repair and rehabilitation activities; as well as replacement housing, with housing and community development organizations or activities operating in the same geographic area. While HPG funds may be leveraged with other resources, cost sharing or matching is not a requirement for the HPG applicant as the HPG applicant would not be denied an award of HPG funds if all other project selection criteria have been met.

3. *Other.* Awards made under this Notice are subject to the provisions contained in the Consolidated Appropriations Act, 2019 (Pub. L. 116–6) sections 744 and 745 regarding Corporate Felony Convictions and Corporate Federal Tax Delinquencies. To comply with these provisions, only applicants that are or propose to be corporations will submit this form as part of their pre-application. Form AD–3030, ''Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants,'' can be found here: *http://www.ocio.usda.gov/document/ad3030.*

D. Application and Submission Information

1. *Address to Request Application Package:* Applicants wishing to submit a paper application in response to this Notice must contact the Rural Development State Office serving the State of the proposed HPG housing project in order to receive further information and copies of the paper application package. You may find the addresses and contact information for each State Office following this link: *http://www.rd.usda.gov/contact-us/state-offices.* Rural Development will date and time stamp incoming paper applications to evidence timely receipt and; upon request, will provide the applicant with a written acknowledgment of receipt. You may access the electronic grant pre-application for Housing Preservation Grants at: *http://www.grants.gov.*

2. *Content and Form of Application:* 7 CFR part 1944, subpart N provides details on what information must be contained in the pre-application package. Entities wishing to apply for assistance should contact the Rural Development State Office to receive further information, the State allocation of funds, and copies of the pre-application package. Unless otherwise noted, applicants wishing to apply for assistance must make its statement of activities available to the public for comment. The applicant(s) must announce the availability of its statement of activities for review in a newspaper of general circulation in the project area and allow at least 15 days for public comment. The start of this 15-day period must occur no later than 16 days prior to the last day for acceptance of pre-applications by the United States Department of Agriculture (USDA)-Rural Development. Federally recognized Indian Tribes, pursuant to 7 CFR 1944.674, are exempt from the requirement to consult with local leaders including announcing the availability of its statement of activities for review in a newspaper.

All applicants will file an original and two copies of Standard Form (SF)-424, ''Application for Federal Assistance,'' and supporting information with the appropriate Rural Development State Office. A pre-application package; including SF–424, is available in any Rural Development State Office. All pre-applications shall be accompanied by the following information which Rural Development will use to determine the applicant's eligibility to undertake the HPG program and to evaluate the pre-application under the project selection criteria of 7 CFR 1944.679.

(a) A statement of activities proposed by the applicant for its HPG program as appropriate to the type of assistance the applicant is proposing, including:

(1) A complete discussion of the type of and conditions for financial assistance for housing preservation, including whether the request for assistance is for a homeowner assistance program, a rental property assistance program, or a cooperative assistance program;

(2) The process for selecting recipients for HPG assistance, determining housing preservation needs of the dwelling, performing the necessary work, and monitoring/inspecting work performed;

(3) A description of the process for coordinating with other public and private organizations and programs that provide assistance in rehabilitation of historic properties in accordance with 7 CFR 1944.673;

(4) The development standard(s) the applicant will use for the housing preservation work; and, if not the Rural Development standards for existing dwellings, the evidence of its acceptance by the jurisdiction where the grant will be implemented;

(5) The time schedule for completing the program;

(6) The staffing required to complete the program;

(7) The estimated number of very low- and low-income minority and nonminority persons the grantee will assist with HPG funds; and, if a rental property or cooperative assistance program, the number of units and the term of restrictive covenants on their use for very low- and low-income;

(8) The geographical area(s) to be served by the HPG program;

(9) The annual estimated budget for the program period based on the financial needs to accomplish the objectives outlined in the proposal. The budget should include proposed direct and indirect administrative costs, such as personnel, fringe benefits, travel, equipment, supplies, contracts, and other cost categories, detailing those costs for which the grantee proposes to use the HPG grant separately from non-HPG resources, if any. The applicant budget should also include a schedule (with amounts) of how the applicant proposes to draw HPG grant funds, *i.e.,* monthly, quarterly, lump sum for program activities, etc.;

(10) A copy of an indirect cost proposal when the applicant has another source of Federal funding in addition to the Rural Development HPG program;

(11) A brief description of the accounting system to be used;

(l2) The method of evaluation to be used by the applicant to determine the effectiveness of its program which encompasses the requirements for quarterly reports to Rural Development in accordance with 7 CFR 1944.683(b) and the monitoring plan for rental properties and cooperatives (when applicable) according to 7 CFR 1944.689;

(13) The source and estimated amount of other financial resources to be obtained and used by the applicant for both HPG activities and housing development and/or supporting activities;

(14) The use of program income; if any, and the tracking system used for monitoring same;

(15) The applicant's plan for disposition of any security instruments held by them as a result of its HPG activities in the event of its loss of legal status;

(16) Any other information necessary to explain the proposed HPG program; and

(17) The outreach efforts outlined in 7 CFR 1944.671(b).

(b) Complete information about the applicant's experience and capacity to carry out the objectives of the proposed HPG program.

(c) Evidence of the applicant's legal existence, including, in the case of a private non-profit organization, which may include, but not be limited to, Faith-Based and community organizations, a copy of, or an accurate reference to, the specific provisions of State law under which the applicant is organized; a certified copy of the applicant's Articles of Incorporation and Bylaws or other evidence of corporate existence; certificate of incorporation for other than public bodies; evidence of good standing from the State when the corporation has been in existence one year or more; and the names and addresses of the applicant's members, directors and officers. If other organizations are members of the applicant-organization, or the applicant is a consortium, pre-applications should be accompanied by the names, addresses, and principal purpose of the other organizations. If the applicant is a consortium, documentation showing compliance with paragraph (4)(ii) under the definition of ''organization'' in 7 CFR 1944.656 must also be included.

(d) For a private non-profit entity, which may include, but not be limited to, Faith-Based and community organizations, the most recent audited statement and a current financial statement dated and signed by an authorized officer of the entity showing the amounts and specific nature of assets and liabilities together with information on the repayment schedule and status of any debt(s) owed by the applicant.

(e) A brief narrative statement which includes information about the area to be served and the need for improved housing (including both percentage and the actual number of both low-income and low-income minority households and substandard housing), the need for the type of housing preservation assistance being proposed, the anticipated use of HPG resources for historic properties, the method of evaluation to be used by the applicant in determining the effectiveness of its efforts.

(f) A statement containing the component for alleviating any overcrowding as defined by 7 CFR 1944.656.

(g) A signed copy of the documentation in accordance with 7

CFR 1944.673 (as a companion to (a)(3) above);

(h) The applicant must submit written statements and related correspondence reflecting compliance with 7 CFR 1944.674(a) and (c) regarding consultation with local Government leaders in the preparation of its program and the consultation with local and State Government pursuant to the provisions of Executive Order 12372.

(i) The applicant is to make its statement of activities available to the public for comment prior to submission to Rural Development pursuant to 7 CFR 1944.674(b). The application must contain a description of how the comments (if any were received) were addressed.

(j) The applicant must submit an original and one copy of Form RD 400–1, ''Equal Opportunity Agreement'' and Form RD 400–4, ''Assurance Agreement'' in accordance with 7 CFR 1944.676.

Applicants should review 7 CFR part 1944, subpart N for a comprehensive list of all application requirements.

3. *Address Unique Entity Identifier and System for Award Management:* As part of the application, all applicants, except for individuals or agencies excepted under 2 CFR 25.110(d), must be: (1) registered in the System for Award Management (SAM); (2) provide a valid unique entity identifier in its applications; and (3) maintain an active SAM registration with current information at all times during which it has an active Federal award or application. An award may not be made to the applicant until the applicant has complied with the unique entity identifier and SAM requirements.

4. *Intergovernmental Review:* The HPG program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

5. *Funding Restrictions:* There are no limits on proposed direct and indirect costs. Expenses incurred in developing pre-applications will be at the applicant's risk.

6. *Other Submission Requirements:* To comply with the President's Management Agenda, USDA is participating as a partner in the Government-wide *grants.gov site.* Housing Preservation Grants [Catalog of Federal Domestic Assistance #10.433] is one of the programs included at this website. If you are an applicant under the HPG program, you may submit your pre-application to the Agency in either electronic or paper format. Please be mindful that the pre-application deadline for electronic format differs from the deadline for paper format. The electronic format deadline will be based on Eastern Standard Time. The paper format deadline is local time for each Rural Development State Office.

Users of *Grants.gov* will be able to download a copy of the pre-application package, complete it off line, and then upload and submit the application via the *Grants.gov* site. You may not email an electronic copy of a grant pre-application to USDA Rural Development; however, the Agency encourages your participation in *Grants.gov*.

The following are useful tips and instructions on how to use the website:

- When you enter the *Grants.gov* site, you will find information about submitting an application electronically through the website as well as the hours of operation. USDA-Rural Development strongly recommends that you do not wait until the application deadline date to begin the application process through *Grants.gov*. To use *Grants.gov*, applicants must have a DUNS number.
- You may submit all documents electronically through the website, including all information typically included on the Application for Housing Preservation Grants, and all necessary assurances and certifications.
- After you electronically submit your application through the website, you will receive an automatic acknowledgement from *Grants.gov* that contains a *Grants.gov* tracking number.
- RHS may request that you provide original signatures on forms at a later date.
- If you experience technical difficulties on the closing date and are unable to meet the 5:00 p.m. (Eastern Standard Time) deadline, print out your application and submit it to your State Office; you must meet the closing date and local time deadline.
- Please note that you must locate the downloadable application package for this program by the CFDA Number or FedGrants Funding Opportunity Number, which can be found at *http://www.grants.gov.*

In addition to the electronic pre-application at: *http://www.grants.gov* website, all applicants must complete and submit the FY 2020 pre-application package, detailed later in this Notice, for the Section 533 HPG program. A copy of a suggested coversheet is included with this Notice. Applicants are encouraged to submit this pre-application coversheet electronically by accessing the website: *http://www.rd.usda.gov/programs-services/housing-preservation-grants.* Click on the Forms & Resources tab to access the ''FY 2020 Pre-Application for Section 533 Housing Preservation Grants (HPG).''

Applicants are encouraged; but not required, to also provide an electronic copy of all hard copy forms and documents submitted in the pre-application/application package as requested by this Notice. The forms and documents must be submitted as read-only Adobe Acrobat PDF files on an electronic media such as CDs, DVDs or USB drives. For each electronic device that you submit, you must include a Table of Contents listing all of the documents and forms on that device. The electronic medium must be submitted to the local Rural Development State Office where the project will be located.

Please Note: If you receive a loan or grant award under this Notice, USDA reserves the right to post all information that is not protected by the Privacy Act submitted as part of the pre-application/application package on a public website with free and open access to any member of the public.

E. Application Review Information

1. *Criteria.* All paper applications for Section 533 HPG funds must be filed with the appropriate Rural Development State Office and all paper or electronic applications must meet the requirements of this Notice and 7 CFR part 1944, subpart N. Pre-applications determined not eligible and/or not meeting the selection criteria will be notified by the Rural Development State Office.

2. *Review and Selection Process.* The Rural Development State Offices will utilize the following threshold project selection criteria for applicants in accordance with 7 CFR 1944.679:

(a) Providing a financially feasible program of housing preservation assistance. ''Financially feasible'' is defined as proposed assistance which will be affordable to the intended recipient or result in affordable housing for very low- and low-income persons.

(b) Serving eligible rural areas with a concentration of substandard housing for households with very low- and low-income.

(c) Being an eligible applicant as defined in 7 CFR 1944.658.

(d) Meeting the requirements of consultation and public comment in accordance with 7 CFR 1944.674.

(e) Submitting a complete pre-application as outlined in 7 CFR 1944.676.

3. *Scoring.* For applicants meeting all of the requirements listed above, the Rural Development State Offices will use weighted criteria in accordance with 7 CFR part 1944, subpart N as selection

for the grant recipients. Each pre-application and its accompanying statement of activities will be evaluated and, based solely on the information contained in the pre-application, the applicant's proposal will be numerically rated on each criteria within the range provided. The highest-ranking applicant(s) will be selected based on allocation of funds available to the State.

(a) Points are awarded based on the percentage of very low-income persons that the applicant proposes to assist, using the following scale:

(1) More than 80%: 20 points
(2) 61% to 80%: 15 points
(3) 41% to 60%: 10 points
(4) 20% to 40%: 5 points
(5) Less than 20%: 0 points

(b) The applicant's proposal may be expected to result in the following percentage of HPG fund use (excluding administrative costs) to total cost of unit preservation. This percentage reflects maximum repair or rehabilitation with the least possible HPG funds due to leveraging, innovative financial assistance, owner's contribution or other specified approaches. Points are awarded based on the following percentage of HPG funds (excluding administrative costs) to total funds:

(1) 50% or less: 20 points
(2) 51% to 65%: 15 points
(3) 66% to 80%: 10 points
(4) 81% to 95%: 5 points
(5) 96% to 100%: 0 points

(c) The applicant has demonstrated its administrative capacity in assisting very low- and low-income persons to obtain adequate housing based on the following:

(1) The organization or a member of its staff has at least one or more years' experience successfully managing and operating a rehabilitation or weatherization type program: 10 points.

(2) The organization or a member of its staff has at least one or more years' experience successfully managing and operating a program assisting very low- and low-income persons obtain housing assistance: 10 points.

(3) If the organization has administered grant programs, there are no outstanding or unresolved audit or investigative findings which might impair carrying out the proposal: 10 points.

(d) The proposed program will be undertaken entirely in rural areas outside Metropolitan Statistical Areas, also known as MSAs, identified by Rural Development as having populations below 10,000 or in remote parts of other rural areas (*i.e.,* rural areas contained in MSAs with less than 5,000 population) as defined in 7 CFR 1944.656: 10 points.

(e) The program will use less than 20 percent of HPG funds for administration purposes:

(1) More than 20%: Not eligible
(2) 20%: 0 points
(3) 19%: 1 point
(4) 18%: 2 points
(5) 17%: 3 points
(6) 16%: 4 points
(7) 15% or less: 5 points

(f) The proposed program contains a component for alleviating overcrowding as defined in 7 CFR 1944.656: 5 points.

In the event more than one pre-application receives the same amount of points, those pre-applications will then be ranked based on the actual percentage figure used for determining the points in item (a) in the ''*Scoring*'' section of this Notice (7 CFR 1944.679(b)(1)).

Example of 1st tie-break:

Both Applicants score 80 points
Applicant X's percentage in ''Scoring'' section *item (a) is 65%*
Applicant B's percentage in ''Scoring'' section *item (a) is 75%*
Applicant B is ranked higher than Applicant X
Applicant B will be funded before Applicant X

Further, in the event that pre-applications are still tied, then those pre-applications still tied will be ranked based on the percentage figures used for determining the points in item (b) in the ''*Scoring*'' section of this Notice (7 CFR 1944.679(b)(2)).

Example of 2nd tie-break:

Both Applicants score 80 points
Both Applicants percentage in ''Scoring'' section *item (a) is 65%*
Applicant X's percentage in ''Scoring'' section *item (b) is 55%*
Applicant B's percentage in ''Scoring'' section *item (b) is 60%*
Applicant X is ranked with a lower percentage than Applicant B
Applicant X will be funded before Applicant B

Further, 7 CFR 1944.679(c), *for applications where HPG assistance to rental properties or co-ops is proposed,* those still tied will be further ranked based on the number of years the units are available for occupancy under the program (a minimum of five years is required). For this part, ranking will be based from most to least number of years.

Example of 3rd tie-break:

Both Applicants score 80 points
Both Applicants percentage in ''Scoring'' section *item (a) is 65%*
Both Applicants percentage in ''Scoring'' section *item (b) is 55%*
Applicant X's rental unit will be available for occupancy under the program for 10 years
Applicant B's rental unit will be available for occupancy under the program for 5 years
Applicant X is ranked higher than Applicant B
Applicant X will be funded before Applicant B

If any of the applicants that remain tied after the 1st and 2nd tie-breaks are offering to assist single family owners, *then the 3rd tie-break would not be applicable,* and a lottery would be used to select the applicant to be funded.

If there is still a tie after the first two [*or three, when applicable*] tie-breaks, then a lottery system will be used to select the applicant to be funded. The lottery will be conducted at the National Office. The lottery will consist of the names of each application with equal scores printed onto a same size piece of paper, which will then be placed into a receptacle that fully obstructs the view of the names. The Director of the Preservation and Direct Loan Division, in the presence of two witnesses, will draw a piece of paper from the receptacle. The name on piece of paper drawn will be the applicant to be funded.

After the award selections are made, all applicants will be notified of the status of their applications by mail with form AD–622 Form, ''Notice of Pre-Application Review Action.'' Applicants will be given their review rights or appeal rights in accordance with 7 CFR 1944.682.

F. Federal Award Administration Information

1. *Federal Award Notices.* The Agency will notify; in writing, applicants whose pre-applications have been selected for funding. At the time of notification, the Agency will advise the applicant what further information and documentation is required along with a timeline for submitting the additional information. If the Agency determines it is unable to select the application for funding, the applicant will be informed in writing. Such notification will include the reasons the applicant was not selected. The Agency will advise applicants, whose pre-applications did not meet eligibility and/or selection criteria, of their review rights or appeal rights in accordance with 7 CFR 1944.682.

2. *Administrative and National Policy Requirements.* Rural Development is encouraging applications for projects that will support rural areas with persistent poverty and in Opportunity Zones. This emphasis will support Rural Development's mission of

improving the quality of life for Rural Americans and commitment to directing resources to those who most need them.

3. *Reporting.* Post-award reporting requirements can be found in the Grant Agreement.

G. Non-Discrimination Statement

In accordance with Federal civil rights law and USDA civil rights regulations and policies, the USDA, its Agencies, offices, and employees and institutions participating in or administering USDA programs are prohibited from discrimination based on race, color, national origin, religion, sex, gender identity, (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service, at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form (PDF), found online at: *http://www.ascr.usda.gov/complaint_filing_cust.html,* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *Mail:* United States Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410;

(2) *Fax:* (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Bruce W. Lammers,

Administrator, Rural Housing Service.

BILLING CODE 3410–XV–P

Fiscal Year 2020 Pre-application for Section 533 Housing Preservation Grants (HPG)

Instructions

Applicants are encouraged, but not required, to submit this pre-application form electronically by accessing the website: http://www.rd.usda.gov/program-services/housing-preservation-grants. Click on the **Forms & Resources** tab to access the "Fiscal Year 2020 Pre-application for Section 533 Housing Preservation Grants (HPG)." Please note that electronic submittals are not on a secured website. If you do not wish to submit the form electronically by clicking on the **Send Form** button, you may still fill out the form, print it and submit it with your application package to the State Office. You also have the option to save the form and submit it on an electronic media to the State Office.

Supporting documentation required by this pre-application may be attached to the email generated when you click the **Send Form** button to submit the form. However, if the attachments are too numerous or large in size, the email box will not be able to accept them. In that case, submit the supporting documentation for this pre-application to the State Office with your complete application package. Under item **IX. Documents Submitted**, indicate the supporting documents that you are submitting either with the pre-application or to the State Office.

I. Applicant Information — Total Score:

a. Applicant's Name: _____

b. Applicant's Address:

Address, Line 1: _____

Address, Line 2: _____

City: _____ **State:** _____ **Zip:** _____

c. Name of Applicant's Contact Person: _____

d. Contact Person's Telephone Number: _____

e. Contact Person's Email Address: _____

f. Entity Type: **(Check One)**

☐ State Government ☐ Local Government
☐ Non-Profit Corporation ☐ Federally Recognized Indian Tribes ☐ Faith-based and Neighborhood Partnership
☐ Community Organization ☐ Other consortia of an eligible entity

II. Project Information

a. Project Name: _____

b. Project Address:

Address, Line 1: _____

Address, Line 2: _____

City: _____ **State:** _____ **Zip:** _____

c. Organization DUNS number: _____

d. Grant Amount Requested: _____

e. This grant request is for one of the following types of assistance:

☐ Homeowner assistance program

☐ Rental property assistance program
☐ Cooperative assistance program

f. In response to e. above, answer one of the following:
The Number of low- and very-low income persons that the grantee will assist in the Homeowner assistance program: _____ OR
The number of Units for low- and very-low income persons in the Rental property or Cooperative assistance program: _____

g. This proposal is for one of the following:
☐ Housing Preservation Grant (HPG) program (no set-aside)
☐ Set-aside for Grant located in a Rural Economic Area Partnership (REAP) zone

III. Low-income Assistance

Check the percentage of very low-income persons that this application proposes to assist in relation to the total population of the project:

☐ More than 80 percent (20 points)
☐ 61 percent to 80 percent (15 points)
☐ 41 percent to 60 percent (10 points)
☐ 20 percent to 40 percent (5 points)
☐ Less than 20 percent (0 points)
Points: ____

IV. Percent of HPG Fund Use

Check the percentage of HPG fund use (excluding administrative costs) in comparison to the total cost of unit preservation. This percentage reflects maximum repair or rehabilitation results with the least possible HPG funds due to leveraging, innovative financial assistance, owner's contribution or other specified approaches.

☐ 50 percent or less of HPG Funds (20 points)
☐ 51 percent to 65 percent of HPG Funds (15 points)
☐ 66 percent to 80 percent of HPG Funds (10 points)
☐ 81 percent to 95 percent of HPG Funds (5 points)
☐ 96 percent to 100 percent of HPG Funds (0 points)
Points: ____

V. Administrative Capacity

The following three criteria demonstrate your administrative capacity to assist very low- and low-income persons to obtain adequate housing (30 points maximum).

a. Does this organization or a member of its staff have at least one or more years of experience successfully managing and operating a rehabilitation or weatherization type of program? (10 points) Yes ___ No ___ Points: ____

b. Does this organization or a member of its staff have at least one or more years of experience successfully managing and operating a program assisting very low- or low-income persons obtain housing assistance? (10 points)

Yes ___ No ___ Points: ____

c. If this organization has administered grant programs, are there any outstanding or unresolved audit or investigative findings which might impair carrying out the proposal? (10 points for No) No ___ Yes ___ Points: ____

If Yes, please explain:

_____

_____

_____

VI. Area Served

Will this proposal be undertaken entirely in rural areas outside Metropolitan Statistical Areas, also known as MSAs, and identified by Rural Development as having populations below 10,000 or in remote parts of other rural areas (i.e., rural areas contained in MSAs with a population of less than 5,000) as defined in 7 CFR 1944.656? (10 points)

Yes ___ No ___ Points: ____

VII. Percent of HPG Funds for Administration

Check the percentage of HPG funds that will be used for Administration purposes:

- ☐ More than 20 percent (Not eligible)
- ☐ 20 percent (0 points)
- ☐ 19 percent (1 point)
- ☐ 18 percent (2 points)
- ☐ 17 percent (3 points)
- ☐ 16 percent (4 points)
- ☐ 15 percent or less (5 points)

Points: ____

VIII. Alleviating Overcrowding

Does the proposed program contain a component for alleviating overcrowding as defined in 7 CFR 1944.656? (5 points): Yes ___ No ___ Points: ____

IX. Documents Submitted

Check if the following documents are being submitted electronically with this pre-application or will be mailed to the State Office with your complete pre-application package.

NOTE: You are only required to submit supporting documents for programs in which you will be participating as indicated in this pre-application. Points will be assigned for the items that you checked based on a review of the supporting documents. **Please refer to the Notice of Solicitation of Applications (NOSA) for the complete list of documents that you are required to submit with your complete pre-application package.**

Reference	Item	Submitted with this Preapplication	Submitted to State Office
I.	Applicant Information		
II.	Project Information		
III.	Low Income Assistance		
IV.	Percent of HPG Fund Use		
V.	Administrative Capacity		
VI.	Area Served		
VII.	Percent of HPG Funds for Administration		
VIII.	Alleviating Overcrowding		

X. HPG 2020 Scoring

PLEASE NOTE: The scoring below is based on the responses that you have provided on this pre-application form and may not accord with the final score that the Agency assigns upon evaluating the supporting documentation that you submit. Your score may change from what you see here if the supporting documentation does not adequately support your answer or, if required documentation is missing.

IMPORTANT: Please read and follow these steps before submitting this form. Have all of your supporting documents ready for submission before you submit this form.

1. **Step 1:** Please Save the form with the Project name and State in the Filename, before you click the Send Form button. Pre-applications submitted with the default filename will not be accepted as it will default to a blank form with no data.

2. **Step 2:** Once your supporting documents are ready for submission, click ***Send Form*** to open up an email window with the pre-application attached as a .pdf data file. You must submit this file in order for your pre-application to be processed. Please add the .pdf file that you saved in Step 1. Attach all supporting documents as well. Enter the **Project Name** and **State** in the Subject line of the email and then send the email with all of your attachments.

3. **Step 3:** You may print the form for your records.

Please Note

By submitting this electronic pre-application file and its supporting documents you have completed one step of the application process.

You **must** also complete the electronic application at: http://www.grants.gov

[FR Doc. 2020–05984 Filed 3–20–20; 8:45 am]
BILLING CODE 3410–XV–C

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket No. RHS–20–CF–0006]

Notice of Request for Revision of a Currently Approved Information Collection

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Notice; comment requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the above-named Agencies to request Office of Management and Budget's (OMB) approval for a revision of a currently approved information collection in support of the servicing of Community and Direct Business Programs Loans and Grants.

DATES: Comments on this notice must be received by May 22, 2020 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Rural Development Innovation Center—Regulations Management Division, USDA, 1400 Independence Avenue SW, Room 4227, South Building, Washington, DC 20250–1522. Telephone: (202)720–2825. Email *arlette.mussington@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for revision.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) The accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) Ways to enhance the quality, utility and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent by the Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''[insert Agency name]'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select [insert docket number] to submit or view public comments and to view supporting and related materials available electronically. Information on using *Regulations.gov,* including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.

Title: 7 CFR 1951–E, Servicing of Community and Direct Business Programs Loans and Grants.

OMB Number: 0575–0066.

Expiration Date of Approval: May 31, 2021.

Type of Request: Revision of a currently approved information collection.

Abstract: The Community Facilities program is authorized to make loans and grants to public entities, nonprofit corporations, and Indian tribes for the development of essential community facilities primarily serving rural residents. The Direct Business and

Industry program, under Rural Business-Cooperative Service, is authorized to make loans to improve, develop, or finance business, industry, and employment, and improve the economic and environmental climate in rural communities.

The purpose of this collection is to establish security servicing policies, assist recipients in meeting the objectives of the loans and grants, repay loans on schedule, comply with agreements, and protect the Government's financial interest. Routine servicing responsibilities include collection of payments, compliance reviews, security inspections, review of financial reports, determining applicant/borrower eligibility and project feasibility for various servicing actions, monitoring delinquent accounts, and supervision activities.

The revision is a result of an increase of 138 responses and 123 burden hours since our last submission. This increase is due to the fact that there has been an increase of funding availability and initiatives for the direct Community Facilities loan program over the past few years.

Supervision by the Agencies include, but is not limited to: Review of budgets, management reports, audits and financial statements; performing security inspections; providing, arranging, or recommending technical assistance; evaluating environmental impacts of proposed actions by the borrower; performing civil rights compliance reviews; and assisting in the development of workout agreements.

Information will be collected by the field offices from applicants, borrowers, consultants, lenders, and attorneys.

Failure to collect information could result in improper servicing of these loans.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: State, local or tribal Governments, Not-for-profit institutions, businesses, and individuals.

Estimated Number of Respondents: 15

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 1,773.

Estimated Total Annual Burden on Respondents: 1,663.

Copies of this information collection can be obtained from Arlette Mussington, Innovation Center—Regulations Management Division, at (202) 720–2825. Email: *arlette.mussington@usda.gov.*

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

Bruce W. Lammers,

Administrator, Rural Housing Service.

[FR Doc. 2020–05977 Filed 3–20–20; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of the firms contributed importantly to the total or partial separation of the firms' workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

SUPPLEMENTARY INFORMATION:

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[3/12/2020 through 3/16/2020]

Firm name	Firm address	Date accepted for investigation	Product(s)
FiberLok Technologies, Inc	811 Stockton Avenue, Fort Collins, CO 80524.	3/12/2020	The firm manufactures textile graphics, primarily labels and badges.
Marathon Boat Group, Inc	1 Grumman Way, Marathon, NY 13803.	3/12/2020	The firm manufactures aluminum canoes, pontoon boats, and flat-bottom boats.
Lozier Corporation	6336 John J. Pershing Drive, Omaha, NE 68110.	3/13/2020	The firm manufactures retail fixtures, including shelving, counters, cabinets, and display racks.
Apex Manufacturing Services, Ltd.	520 Charles Street, Billings, MT 59101.	3/16/2020	The firm manufactures metal and plastic parts.
Industrial Screen & Maintenance, Inc.	2285 Logos Court, Grand Junction, CO 81505.	3/16/2020	The firm manufactures metal screens and strainers for industrial uses.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. These petitions are received pursuant to section 251 of the Trade Act of 1974, as amended.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Irette Patterson,

Program Analyst.

[FR Doc. 2020–05975 Filed 3–20–20; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–18–2020]

Foreign-Trade Zone (FTZ) 158—Jackson, Mississippi, Notification of Proposed Production Activity, Traxys Cometals USA, LLC (Manganese and Aluminum Alloying Agents), Burnsville, Mississippi

Traxys Cometals USA, LLC (Traxys Cometals) submitted a notification of proposed production activity to the FTZ Board for its facility in Burnsville, Mississippi. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on March 11, 2020.

Traxys Cometals already has authority to produce high-grade manganese and aluminum alloying agents within FTZ 158. The current request would add a finished product and a foreign status material/component to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status material/component and the specific finished product described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Traxys Cometals from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, for the foreign-status material/component noted below and in the existing scope of authority, Traxys Cometals would be able to choose the duty rate during customs entry procedures that applies to low-carbon ferromanganese powder (duty rate 2.3%). Traxys Cometals would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The material/component sourced from abroad is manganese powder (duty rate 14%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is May 4, 2020.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Wedderburn at *Chris.Wedderburn@trade.gov* or (202) 482–1963.

Dated: March 17, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–06056 Filed 3–20–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–886]

Ferrovanadium From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments in Part; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) has preliminarily determined that two of the three respondents in this administrative review (AR) of the antidumping duty (AD) order on ferrovanadium from the Republic of Korea (Korea), Korvan Ind, Co., Ltd. (Korvan) and Woojin Ind. Co., Ltd. (Woojin), made no shipments of subject merchandise to the United States during the period of review (POR), May 1, 2018 through April 30, 2019. Commerce has preliminarily assigned the third respondent, Fortune Metallurgical Group Co., Ltd. (Fortune), an AD margin based upon the application of total adverse facts available. We invite interested parties to comment on these preliminary results.

DATES: Applicable March 23, 2020.

FOR FURTHER INFORMATION CONTACT: Karine Gziryan, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4081.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2019, Commerce notified interested parties of the opportunity to request an AR of orders, findings, or suspended investigations with anniversaries in May 2019, including the AD order on ferrovanadium from Korea.[1] Commerce received a request from AMG Vanadium LLC (the petitioner), to conduct an AR of the AD order on ferrovanadium from Korea with respect to Korvan, Woojin, and Fortune.[2]

After initiating this review with respect to Korvan, Woojin, and Fortune, on July 25, 2019, Commerce issued an antidumping duty questionnaire to each of these companies.[3] Korvan and Woojin submitted no shipments letters.[4] Fortune did not respond to the questionnaire.

On January 22, 2020, Commerce extended the due date for issuing the preliminary results of this review until March 6, 2020.[5]

For a complete description of the events that followed the initiation of this AR, *see* the Preliminary Decision Memorandum which is hereby adopted by this notice.[6]

Scope of the Order

The product covered by this review is ferrovanadium from Korea. For a full description of the scope *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of the topics included in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and it is available to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum is available at

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 84 FR 18479 (May 1, 2019).

[2] *See* Petitioner's Letter, ''Ferrovanadium from the Republic of Korea: Request For Administrative Review,'' dated May 31, 2019.

[3] *See* Commerce Letters to Korvan, Woojin, and Fortune with the AD Questionnaire attached dated July 25, 2019.

[4] *See* Woojin's Letter, ''Ferrovanadium from the Republic of Korea: Statement of No Shipments'' dated August 12, 2019; *see also* Korvan's Submission dated August 16, 2019 (which is a corrected version of an August 8, 2019, submission that Commerce rejected due to filing deficiencies).

[5] *See* Memorandum, ''Ferrovanadium from the Republic of Korea: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated January 22, 2020.

[6] *See* Memorandum, ''Decision Memorandum for the Preliminary Results in the Antidumping Duty Administrative Review of Ferrovanadium from the Republic of Korea; 2018–2019,'' dated concurrently, and hereby adopted by, this notice (Preliminary Decision Memorandum).

http://enforcement.trade.gov/frn/. The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Preliminary Determination of No Shipments

Commerce preliminarily determines that Korvan and Woojin, each of which claimed to have made no shipments of subject merchandise to the United States during the POR, did not have any shipments during the POR. For details regarding this determination, *see* the Preliminary Decision Memorandum. Consistent with Commerce's practice, we are not rescinding this AR with respect to these two companies, but we intend to complete the review and issue appropriate instructions to CBP based on the final results of the review.[7]

Adverse Facts Available

Pursuant to sections 776(a) and (b) of the Act, Commerce has preliminarily assigned Fortune an AD margin of 54.69 percent, as AFA, because it did not respond to Commerce's AD questionnaire. For details regarding this determination, *see* the Preliminary Decision Memorandum.

Preliminary Results of Review

Commerce preliminarily determines that the following estimated weighted-average dumping margin exists:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Fortune Metallurgical Group Co., Ltd	54.69

Assessment Rates

Upon issuance of the final results of review, Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[8] The final results of this AR shall be the basis for the assessment of antidumping duties on entries of merchandise under review and for future deposits of estimated duties, where applicable.[9] We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review. Pursuant to Commerce's practice, if we continue to determine that Korvan and Woojin made no sales or shipments of subject merchandise to the United States during the POR, any suspended entries of subject merchandise during the POR under their case numbers will be liquidated at the all-others rate.

Cash Deposits

The following cash deposit requirements for estimated antidumping duties will be effective upon publication of the notice of final results of this review for all shipments of ferrovanadium from Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Fortune will be equal to the weighted-average dumping margin for Fortune established in the final results of the review; (2) for merchandise exported by companies not covered in this review but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate established for the most recently completed segment of the proceeding; (3) if the exporter is not a firm covered in this review, in a prior review, or in the investigation in this proceeding but the producer is, then the cash deposit rate will be the rate established for the producer of the merchandise in the most recently completed segment of the proceeding; and (4) the cash deposit rate for all other producers or exporters will continue to be 3.22 percent, the all-others rate established in the less-than-fair-value investigation.[10] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Public Comment

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs to the Assistant Secretary for Enforcement and Compliance not later than 30 days after the date of publication of this notice, unless the Secretary alters the time limit. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[11] Interested parties who submit case briefs or rebuttal briefs in this AR are encouraged to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.[12]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request for a hearing, filed electronically via ACCESS, to the Assistant Secretary for Enforcement and Compliance within 30 days after the date of publication of this notice.[13] An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time on the due date. Hearing requests should contain: (1) The requestor's name, address and telephone number; (2) the number of persons from the requestor that will participate in the hearing; and (3) a list of issues the requestor will discuss at the hearing. Issues raised in the hearing will be limited to those issues raised in case briefs. Commerce intends to issue the final results of this AR, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of these preliminary results of review in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act, unless extended.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this period of review. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Commerce is issuing and publishing these results of review in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: March 4, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Preliminary Determination of No Shipments

[7] *See, e.g., Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013,* 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013,* 79 FR 51306 (August 28, 2014).

[8] *See* 19 CFR 351.212(b).

[9] *See* section 751(a)(2)(C) of the Act.

[10] *See Ferrovanadium From the Republic of Korea: Final Determination of Sales at Less Than Fair Value,* 82 FR 14874 (March 23, 2017).

[11] *See* 19 CFR 351.309(d); *see also* 19 CFR 351.303 (for general filing requirements).

[12] *See* 19 CFR 351.309(c)(2) and (d)(2).

[13] *See* 19 CFR 351.310(c).

V. Application of Facts Available and Adverse Inferences
VI. Recommendation

[FR Doc. 2020–06055 Filed 3–20–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–910]

Circular Welded Carbon Quality Steel Pipe From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2018–2019

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

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty (AD) order on circular welded carbon quality steel pipe (circular welded pipes) from the People's Republic of China (China) for the period of review (POR) July 1, 2018, through June 30, 2019, based on the timely withdrawal of the request for review.

DATES: Applicable March 23, 2020.

FOR FURTHER INFORMATION CONTACT: Paola Aleman Ordaz, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4031.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2019, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order* for the POR.[1] In accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), on July 31, 2019, Independence Tube Corporation, a Nucor Company, and Southland Tube, Incorporated, a Nucor Company (Nucor) requested a review of the Order with respect to 121 companies.[2] On September 9, 2019, in accordance with section 751(a) of the Act and 19 CFR 351.221(c)(1)(i), Commerce initiated an administrative review of the AD order on circular welded pipes from China with respect to the 121 companies named by Nucor.[3] On October 17, 2019, Nucor timely withdrew its July 31, 2019, review request for all 121 companies.[4]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the publication date of the notice of initiation of the requested review. The petitioner withdrew its request for review within the 90-day deadline. Because Commerce received no other requests for review, we are rescinding the administrative review of the AD order on circular welded pipes from China covering the POR July 1, 2018, through June 30, 2019, in full, in accordance with 19 CFR 351.213(d)(1).

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess AD duties on all appropriate entries of circular welded pipes from China during the period July 1, 2018, through June 30, 2019, at rates equal to the cash deposit rate for estimated AD duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as the only reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of AD duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of AD duties occurred and the subsequent assessment of doubled AD duties.

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: March 17, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–06053 Filed 3–20–20; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 31295 (July 1, 2019) (*Order*).

[2] *See* Nucor's letter ''Circular Welded Carbon Quality Steel Pipe from The People's Republic of China: Request for Administrative Review'' dated July 31, 2019.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 47242 (September 9, 2019).

[4] *See* Nucor's letter ''Circular Welded Carbon Quality Steel Pipe from The People's Republic of China: Withdraw of Request for Administrative Review'' dated October 17, 2019.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–920]

Lightweight Thermal Paper From the People's Republic of China: Final Results of Expedited Second Sunset Review of the Antidumping Duty Order

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

SUMMARY: As a result of this sunset review, the Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on lightweight thermal paper (LWTP) from the People's Republic of China (China) would be likely to lead to continuation or recurrence of dumping at the dumping margins identified in the ''Final Results of Review'' section of this notice.

DATES: Applicable March 23, 2020.

FOR FURTHER INFORMATION CONTACT: Kyle Clahane, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5449.

SUPPLEMENTARY INFORMATION:

Background

On December 2, 2019, Commerce published the notice of initiation of the second sunset review of the *Order* on LWTP from China, pursuant to section 751(c)(2) of the Tariff Act of 1930, as amended (the Act).[1] On December 13, 2019, Commerce received a notice of

[1] *See Initiation of Five-Year (Sunset) Reviews,* 84 FR 65968 (December 2, 2019).

intent to participate from Appvion Operations, Inc. and Kanzaki Specialty Papers Inc. (collectively, domestic interested parties) within the deadline specified in 19 CFR 351.218(d)(1)(i).[2]

On December 23, 2019, Commerce received a complete substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[3] We did not receive any responses from respondent interested parties in this proceeding. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce is conducting an expedited (120-day) sunset review of the *Order.*

Scope of the Order

The products covered by this order include certain lightweight thermal paper, which is thermal paper with a basis weight of 70 grams per square meter (g/m2) (with a tolerance of ±4.0 g/m2) or less; irrespective of dimensions;[4] with or without a base coat[5] on one or both sides; with thermal active coating(s)[6] on one or both sides that is a mixture of the dye and the developer that react and form an image when heat is applied; with or without a top coat;[7] and without an adhesive backing. Certain lightweight thermal paper is typically (but not exclusively) used in point-of-sale applications such as ATM receipts, credit card receipts, gas pump receipts, and retail store receipts. The merchandise subject to this order may be classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 3703.10.60, 4811.59.20, 4811.90.8040, 4811.90.9090, 4820.10.20, 4823.40.00, 4811.90.8030, 4811.90.8050, 4811.90.9030, and 4811.90.9050.[8] [9] Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Analysis of Comments Received

Commerce addresses all issues raised in this sunset review in the Issues and Decision Memorandum, which is hereby adopted by this notice.[10] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. A list of topics discussed in the Issues and Decision Memorandum is included as an appendix to this notice. In addition, a complete version of the Issues and Decision Memorandum can be accessed at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Final Results of Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the antidumping duty order on lightweight thermal paper from China would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the margin likely to prevail would be weighted-average margins of up to 115.29 percent.

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: March 16, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. History of the Order
V. Legal Framework
VI. Discussion of the Issues
  1. Likelihood of Continuation of Recurrence of Dumping
  2. Magnitude of the Margin Likely to Prevail
VII. Final Results of Third Expedited Sunset Review
VIII. Recommendation

[FR Doc. 2020–06054 Filed 3–20–20; 8:45 am]

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[2] *See* Domestic Interested Parties' Letter, ''Five-Year (Sunset) Review of Antidumping Order on Lightweight Thermal Paper from the People's Republic of China: Domestic Industry's Notice of Intent to Participate'' dated December 13, 2019.

[3] *See* Domestic Interested Parties' Letter, ''Five-Year (Sunset) Review of Antidumping Order on Lightweight Thermal Paper from the People's Republic of China: Domestic Industry Substantive Response,'' dated December 23, 2019.

[4] LWTP is typically produced in jumbo rolls that are slit to the specifications of the converting equipment and then converted into finished slit rolls. Both jumbo and converted rolls (as well as LWTP in any other form, presentation, or dimension) are covered by the scope of these orders.

[5] A base coat, when applied, is typically made of clay and/or latex and like materials and is intended to cover the rough surface of the paper substrate and to provide insulating value.

[6] A thermal active coating is typically made of sensitizer, dye, and co-reactant

[7] A top coat, when applied, is typically made of polyvinyl acetone, polyvinyl alcohol, and/or like materials and is intended to provide environmental protection, an improved surface for press printing, and/or wear protection for the thermal print head.

[8] HTSUS subheading 4811.90.8000 was a classification used for LWTP until January 1, 2007. Effective that date, subheading 4811.90.8000 was replaced with 4811.90.8020 (for gift wrap, a non-subject product) and 4811.90.8040 (for ''other'' including LWTP). HTSUS subheading 4811.90.9000 was a classification for LWTP until July 1, 2005. Effective that date, subheading 4811.90.9000 was replaced with 4811.90.9010 (for tissue paper, a non-subject product) and 4811.90.9090 (for ''other,'' including LWTP).

[9] As of January 1, 2009, the International Trade Commission deleted HTSUS subheadings 4811.90.8040 and 4811.90.9090 and added HTSUS subheadings 4811.90.8030, 4811.90.8050, 4811.90.9030, and 4811.90.9050 to the Harmonized Tariff Schedule of the United States (2009). *See* Harmonized Tariff Schedule of the United States (2009), available at *ww.usitc.gov.* These HTSUS subheadings were added to the scope of the order in lightweight thermal paper's LTFV investigation.

[10] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order on Lightweight Thermal Paper from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR108]

Marine Mammals; File No. 23672

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Environmental Investigation Agency, P.O. Box 53343, Washington, DC 20009 (Responsible Party: Allan Thornton), has applied in due form for a permit to conduct commercial and educational photography on beluga whales (*Delphinapterus leucas*).

DATES: Written, telefaxed, or email comments must be received on or before April 22, 2020.

ADDRESSES: These documents are available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov*. Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Courtney Smith, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant proposes to film beluga whales in Bristol Bay, Alaska for a short documentary to educate the public on the importance of protecting beluga whales and the threats that affect their populations. Filmmakers would photograph or film up to 500 beluga whales annually using an unmanned aircraft system. They may incidentally harass up to 10 minke whales (*Balaenoptera acutorostrata*), 500 harbor porpoise (*Phocoena phocoena*), 10 Dall's porpoises (*Phocoenoides dalli*), and 500 Pacific white-sided dolphins (*Lagenorhynchus obliquidens*) annually while filming. The permit would expire on December 1, 2021.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 18, 2020.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–06066 Filed 3–20–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2020–0013; OMB Control Number 0704–0253]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Subcontracting Policies and Procedures

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

ACTION: Notice and request for comments regarding a proposed revision of an approved information collection requirement.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, DoD announces the proposed revision and extension of a public information collection requirement, and seeks public comment on the provisions thereof. DoD invites comments on: Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of the 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 information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through May 31, 2020. DoD proposes that OMB extend its approval for an additional three years.

DATES: DoD will consider all comments received by May 22, 2020.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0253, using any of the following methods:

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

○ *Email: osd.dfars@mail.mil.* Include OMB Control Number 0704–0253 in the subject line of the message.

○ *Fax:* 571–372–6094.

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

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

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

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Subcontracting Policies and Procedures—DoD FAR Supplement Part 244; OMB Control Number 0704–0253.

Type of Request: Extension.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Respondents: 22.

Responses per Respondent: 2.

Annual Responses: 44.

Hours per Response: 8.

Estimated Hours: 372.

Reporting Frequency: On occasion.

Needs and Uses: Administrative contracting officers use this information in making decisions to approve or disapprove a contractors purchase system. The disapproval of a contractor's purchasing system would necessitate Government consent to individual subcontracts and possibly prompt a financial withhold or other Government rights and remedies. DFARS 244.305, entitled Granting, Withholding, or Withdrawing Approval, provides policy guidance for administrative contracting officers to determine the acceptability of the contractor's purchasing system and approve or disprove the system, at the completion of the in-plant portion of a contractor purchasing system review, and to pursue correction of any deficiencies with the contractor. DFARS clause 252.244–7001, Contractor Purchasing System Administration, requires the contractor to respond within 30 days to a written initial determination from the contracting officer that identifies significant deficiencies in the contractor's purchasing system. The contracting officer will evaluate the contractor's response to this initial determination and notify the contractor in writing of any remaining significant deficiencies, the adequacy of any proposed or completed corrective action and system disapproval if the contracting officer

determines that one or more significant deficiencies remain. If the contractor receives the contracting officer's final determination of significant deficiencies, the contractor has 45 days to either correct the significant deficiencies or submit an acceptable corrective action plan.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

[FR Doc. 2020–05355 Filed 3–20–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing; Notice of Federal Advisory Committee Meeting; Cancellation

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee Meeting; cancellation.

SUMMARY: On February 20, 2020, the Department of Defense (DoD) published a notice that announced the next meeting of the Defense Advisory Committee on Military Personnel Testing (''the Committee''), which was scheduled for Tuesday, March 24, 2020 from 9:00 a.m. to 4:45 p.m. and Wednesday, March 25, 2020 from 9:00 a.m. to 1:30 p.m. DoD is publishing this notice to announce that this federal advisory committee meeting has been cancelled and will be re-scheduled at a later date.

DATES: Committee Meeting; Cancellation.

Day 1: March 24, 2020—Cancelled.

Day 2: March 25, 2020—Cancelled.

ADDRESSES: Not Applicable. Meeting is cancelled.

FOR FURTHER INFORMATION CONTACT: Sofiya Velgach, (703) 697–9271 (Voice), (703) 614–9272 (Facsimile), *osd.pentagon.ousd-p-r.mbx.dacmpt@mail.mil* (Email). Mailing address is Assistant Director, Accession Policy, Office of the Under Secretary of Defense for Personnel and Readiness, Room 3D1066, The Pentagon, Washington, DC 20301–4000.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Department of Defense and the Designated Federal Officer, the Defense Advisory Committee on Military Personnel Testing was unable to provide public notification required by 41 CFR 102–3.150(a) concerning the cancellation of the previously noticed meeting for March 24, 2020—March 25, 2020. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

On February 20, 2020 (85 FR 9751–9752), the DoD published a notice that announced the next meeting of the Defense Advisory Committee on Military Personnel Testing, which was scheduled for Tuesday, March 24, 2020 from 9:00 a.m. to 4:45 p.m. and Wednesday, March 25, 2020 from 9:00 a.m. to 1:30 p.m. DoD is publishing this notice to announce that this federal advisory committee meeting has been cancelled and will be re-scheduled at a later date. The rescheduled meeting will be announced in the **Federal Register**.

Dated: March 17, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–05952 Filed 3–20–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0013]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Office of Management (OM), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before April 22, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2020–SCC–0013. 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–208B, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Stephanie Valentine, 202–453–7061.

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: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 1880–0542.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 450,000.

Total Estimated Number of Annual Burden Hours: 225,000.

Abstract: This collection of information is necessary to enable the

Agency to garner customer and stakeholder feedback in an efficient, timely manner in accordance with our commitment to improving service delivery. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with the Agency's programs.

Dated: March 18, 2020.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–06068 Filed 3–20–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0051]

Agency Information Collection Activities; Comment Request; Written Application for the Independent Living Services for Older Individuals Who Are Blind Program

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before May 22, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2020–SCC–0051. 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 James Billy, 202–245–7273.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Written Application for the Independent Living Services for Older Individuals Who Are Blind Program.

OMB Control Number: 1820–0660.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 56.

Total Estimated Number of Annual Burden Hours: 9.

Abstract: This application is used by States to request funds to administer the Independent Living Services for Older Individuals Who Are Blind (IL–OIB) program. The IL–OIB program is provided under Title VII, Chapter 2, Section 752 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended by Title IV of the Workforce Innovation and Opportunity Act (WIOA), to assist individuals who are age 55 or older whose significant visual impairment makes competitive integrated employment difficult to attain, but for whom independent living goals are feasible.

Dated: March 18, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2020–06059 Filed 3–20–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL20–33–000]

City of Goose Creek v. South Carolina Public Service Authority; Notice of Complaint

Take notice that on March 16, 2020, pursuant to sections 206 and 306 of the Federal Power Act,[1] and Rule 206 of the Rules of Practice and Procedures of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206, the City of Goose Creek, (Complainant) filed a formal complaint against the South Carolina Public Service Authority (Santee Cooper or Respondent) alleging that Santee Cooper has unjustly and unreasonably denied transmission service to the City of Goose Creek and unduly discriminated against the City of Goose Creek by denial of this service, as more fully explained in the complaint.

The Complainant certifies that copies of the complaint were served on the contacts for the Respondent as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the

[1] 16 U.S.C. 824e, 824i, 824j, 825e (2019).

''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on April 6, 2020.

Dated: March 17, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–06044 Filed 3–20–20; 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: EC20–47–000.
Applicants: Nuveen Asset Management, LLC, Symphony Asset Management LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Nuveen Asset Management, LLC, et al.
Filed Date: 3/16/20.
Accession Number: 20200316–5201.
Comments Due: 5 p.m. ET 4/6/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–260–003.
Applicants: Duke Energy Carolinas, LLC.
Description: Compliance filing: DEF Schedule 2 Settlement Compliance Filing to be effective 6/1/2019.
Filed Date: 3/17/20.
Accession Number: 20200317–5047.
Comments Due: 5 p.m. ET 4/7/20.

Docket Numbers: ER19–1730–001.
Applicants: Wind Park Bear Creek, L.L.C.
Description: Report Filing: Refund Report Under Docket ER19–1730 to be effective N/A.
Filed Date: 3/17/20.
Accession Number: 20200317–5005.
Comments Due: 5 p.m. ET 4/7/20.

Docket Numbers: ER19–1886–001.
Applicants: Stony Creek Wind Farm, LLC.
Description: Report Filing: Refund Report Under Docket ER19–1886 to be effective N/A.
Filed Date: 3/17/20.
Accession Number: 20200317–5004.
Comments Due: 5 p.m. ET 4/7/20.

Docket Numbers: ER20–608–002.
Applicants: Bear Valley Electric Service, Inc.
Description: Tariff Amendment: Second Amendment to MBR Application Request for Waivers & Blanket Authority to be effective 5/1/2020.
Filed Date: 3/16/20.
Accession Number: 20200316–5131.
Comments Due: 5 p.m. ET 4/6/20.

Docket Numbers: ER20–930–001.
Applicants: South Carolina Generating Company, Inc.
Description: Tariff Amendment: Amendment of GENCO Unit Power Sales Agreement to be effective 1/31/2020.
Filed Date: 3/17/20.
Accession Number: 20200317–5070.
Comments Due: 5 p.m. ET 4/7/20.

Docket Numbers: ER20–1300–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: First Revised ISA, SA No. 4114; Queue No. AC2–016 to be effective 2/13/2020.
Filed Date: 3/17/20.
Accession Number: 20200317–5000.
Comments Due: 5 p.m. ET 4/7/20.

Docket Numbers: ER20–1311–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1276R21 Evergy Metro NITSA NOA to be effective 3/1/2020.
Filed Date: 3/17/20.
Accession Number: 20200317–5027.
Comments Due: 5 p.m. ET 4/7/20.

Docket Numbers: ER20–1312–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Rate Schedule FERC No. 271 between Tri-State and Wheatland to be effective 3/18/2020.
Filed Date: 3/17/20.
Accession Number: 20200317–5040.
Comments Due: 5 p.m. ET 4/7/20.

Docket Numbers: ER20–1314–000.
Applicants: Sunflower Electric Power Corporation.
Description: Petition for Tariff Waiver of Sunflower Electric Power Corporation.
Filed Date: 3/16/20.
Accession Number: 20200316–5191.
Comments Due: 5 p.m. ET 4/6/20.

Docket Numbers: ER20–1315–000.
Applicants: Citizens Sunrise Transmission LLC.
Description: Request for Limited Tariff Waiver of Citizens Sunrise Transmission LLC.
Filed Date: 3/16/20.
Accession Number: 20200316–5204.
Comments Due: 5 p.m. ET 4/6/20.

Docket Numbers: ER20–1316–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: Transmission Access Charge Balancing Account (2020 TACBAA) Revisions to be effective 12/31/9998.
Filed Date: 3/17/20.
Accession Number: 20200317–5083.
Comments Due: 5 p.m. ET 4/7/20.

Docket Numbers: ER20–1317–000.
Applicants: Arizona Public Service Company.
Description: Compliance filing: Compliance Filing—Modification of Formula Rate to be effective 1/27/2020.
Filed Date: 3/17/20.
Accession Number: 20200317–5086.
Comments Due: 5 p.m. ET 4/7/20.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES20–18–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Midcontinent Independent System Operator, Inc.
Filed Date: 3/16/20.
Accession Number: 20200316–5179.
Comments Due: 5 p.m. ET 4/6/20.

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: March 17, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–06045 Filed 3–20–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File Date	Presenter or Requester
Prohibited:		
NONE.		
Exempt:		
1. P–405–106	2–28–2020	U.S. Congress [1]
2. RP19–1353–000	3–3–2020	FERC Staff [2]
3. CP14–96–000	3–9–2020	New York Senator Peter B. Harckham.
4. EC19–120–000	3–10–2020	U.S. Senate [3]

[1] U.S. Senator Chris Van Hollen, Congressman Jamie Raskin, and Congressman John P. Sarbanes.
[2] Memorandum of communication regarding Northern Natural Gas Company.
[3] U.S. Senator Jeffrey Merkley, U.S. Senator Edward Markey, and U.S. Senator Bernard Sanders.

Dated: March 17, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–06043 Filed 3–20–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2019–0104; FRL–10004–83]

Safer Choice Partner of the Year Awards Call for Submissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Safer Choice program is accepting submissions for its 2020 Safer Choice Partner of the Year Awards. EPA developed the Partner of the Year Awards to recognize the leadership contributions of Safer Choice partners and stakeholders who, over the past year, have shown achievement in the design, manufacture, selection, and use of products with safer chemicals, which furthers outstanding or innovative source reduction. All Safer Choice stakeholders and program participants in good standing are eligible for recognition. Interested parties who would like to be considered for this award should submit to EPA information about their accomplishments and contributions during 2019. There is no form associated with this year's application. Award winners will be recognized at a Safer Choice Partner of the Year Awards ceremony that is being planned for in the Fall of 2020.

DATES: Submissions are due on or before May 31, 2020.

ADDRESSES: Candidates interested in learning more about the Partner of the Year Awards should refer to the Safer Choice website: *https://www.epa.gov/saferchoice/safer-choice-partner-year-awards.* Please submit materials by email to *saferchoice_support@abtassoc.com* and *rutsch.linda@epa.gov.* The docket for this action, identified by docket information (ID) number EPA–HQ–OPPT–2019–0104 (2020 Safer Choice Partner of the Year Awards Program), is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Linda Rutsch, Chemistry, Economics and Sustainable Strategies Division,

Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mail Code 7406M, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 343–9924; email address: *rutsch.linda@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

You may be potentially affected by this action if you are a Safer Choice program partner or stakeholder. 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:

- Other Basic Inorganic Chemical Manufacturing (NAICS code 325180);
- All Other Basic Organic Chemical Manufacturing (Primary) (NAICS code 325199);
- Pesticide and Other Agricultural Chemical Manufacturing (NAICS code 325320);
- Paint and Coating Manufacturing (NAICS code 325510);
- Adhesive Manufacturing (NAICS code 325520);
- Soap and Other Detergent Manufacturing (NAICS code 325611);
- Polish and Other Sanitation Good Manufacturing (NAICS code 325612);
- Surface Active Agent Manufacturing (Primary) (NAICS code 325613);
- Toilet Preparation Manufacturing (NAICS code 325620);
- Photographic Film, Paper, Plate, and Chemical Manufacturing (NAICS code 325992);
- All Other Miscellaneous Chemical Product and Preparation Manufacturing (NAICS code 325998);
- Service Establishment Equipment and Supplies Merchant Wholesalers (Primary) (NAICS code 423850);
- Other Chemical and Allied Products Merchant Wholesalers (Primary) (NAICS code 424690);
- Supermarkets and Other Grocery (except Convenience) Stores (Primary) (NAICS code 445110);
- All Other Specialty Food Stores (NAICS code 445299);
- Pharmacies and Drug Stores (NAICS code 446110);
- Office Supplies and Stationery Stores (NAICS code 453210);
- All Other Miscellaneous Store Retailers (except Tobacco Stores) (Primary) (NAICS code 453998);
- Electronic Shopping and Mail-Order Houses (NAICS code 454110);
- Research and Development in Biotechnology (except Nanobiotechnology) (Primary) (NAICS code 541714);
- Facilities Support Services (NAICS code 561210);
- Janitorial Services (NAICS code 561720);
- Carpet and Upholstery Cleaning Services (NAICS code 561740);
- Elementary and Secondary Schools (NAICS code 611110);
- Colleges, Universities, and Professional Schools (NAICS code 611310);
- Promoters of Performing Arts, Sports, and Similar Events with Facilities (NAICS code 711310);
- Drycleaning and Laundry Services (NAICS code 8123);
- Civic and Social Organizations (Primary) (NAICS code 813410);
- Business Associations (Primary) (NAICS code 813910);
- Administration of Air and Water Resource and Solid Waste Management Programs (Primary) (NAICS code 924110); and
- Other General Government Support (NAICS code 921190).

II. Background

As part of its environmental mission, the Safer Choice program partners with businesses to help consumers and commercial buyers identify products with safer chemical ingredients, without sacrificing quality or performance. Toward this end, the Safer Choice program certifies products containing ingredients that have met the program's specific and rigorous human health and environmental toxicological criteria. The Safer Choice program allows the use of its label on products that perform and contain safer ingredients, as determined by expert evaluation. The Safer Choice program recognition represents a high level of achievement in formulating products that are safer for people and the environment. The purpose of the Partner of the Year Awards is to recognize the leadership contributions of Safer Choice partners and stakeholders who, over the past year, have shown achievement in the design, manufacture, selection, and use of products with safer chemicals, which furthers outstanding or innovative source reduction.

III. How can I participate?

To be considered for a Partner of the Year Award, candidates should notify the Safer Choice program of their interest. They should submit supporting information on their accomplishments and contributions focusing on calendar year 2019. There is no form associated with this year's application. Candidates interested in learning more about the Safer Choice Partner of the Year Awards should refer to the Safer Choice website: *https://www.epa.gov/saferchoice/safer-choice-partner-year-awards.*

Authority: 15 U.S.C. 2601 *et seq.*

Dated: March 17, 2020.

Alexandra Dapolito Dunn,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2020–06072 Filed 3–20–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2020–0077; FRL–10006–61]

Certain New Chemicals; Receipt and Status Information for February 2020

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is required under the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to make information publicly available and to publish information in the **Federal Register** pertaining to submissions under TSCA Section 5, including notice of receipt of a Premanufacture notice (PMN), Significant New Use Notice (SNUN) or Microbial Commercial Activity Notice (MCAN), including an amended notice or test information; an exemption application (Biotech exemption); an application for a test marketing exemption (TME), both pending and/or concluded; a notice of commencement (NOC) of manufacture (including import) for new chemical substances; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review. This document covers the period from 02/01/2020 to 02/29/2020.

DATES: Comments identified by the specific case number provided in this document must be received on or before April 22, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2020–0077, and the specific case number for the chemical substance related to your comment, 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:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Jim Rahai, Information Management Division (MC 7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8593; email address: *rahai.jim@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. What action is the Agency taking?

This document provides the receipt and status reports for the period from 02/01/2020 to 02/29/2020. The Agency is providing notice of receipt of PMNs, SNUNs and MCANs (including amended notices and test information); an exemption application under 40 CFR part 725 (Biotech exemption); TMEs, both pending and/or concluded; NOCs to manufacture a new chemical substance; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review.

EPA is also providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

B. What is the Agency's authority for taking this action?

Under the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.,* a chemical substance may be either an ''existing'' chemical substance or a ''new'' chemical substance. Any chemical substance that is not on EPA's TSCA Inventory of Chemical Substances (TSCA Inventory) is classified as a ''new chemical substance,'' while a chemical substance that is listed on the TSCA Inventory is classified as an ''existing chemical substance.'' (See TSCA section 3(11).) For more information about the TSCA Inventory go to: *https://www.epa.gov/tsca-inventory.*

Any person who intends to manufacture (including import) a new chemical substance for a non-exempt commercial purpose, or to manufacture or process a chemical substance in a non-exempt manner for a use that EPA has determined is a significant new use, is required by TSCA section 5 to provide EPA with a PMN, MCAN or SNUN, as appropriate, before initiating the activity. EPA will review the notice, make a risk determination on the chemical substance or significant new use, and take appropriate action as described in TSCA section 5(a)(3).

TSCA section 5(h)(1) authorizes EPA to allow persons, upon application and under appropriate restrictions, to manufacture or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a)(2), for ''test marketing'' purposes, upon a showing that the manufacture, processing, distribution in commerce, use, and disposal of the chemical will not present an unreasonable risk of injury to health or the environment. This is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://www.epa.gov/oppt/newchems.*

Under TSCA sections 5 and 8 and EPA regulations, EPA is required to publish in the **Federal Register** certain information, including notice of receipt of a PMN/SNUN/MCAN (including amended notices and test information); an exemption application under 40 CFR part 725 (biotech exemption); an application for a TME, both pending and concluded; NOCs to manufacture a new chemical substance; and a periodic status report on the new chemical substances that are currently under EPA review or have recently concluded review.

C. Does this action apply to me?

This action provides information that is directed to the public in general.

D. Does this action have any incremental economic impacts or paperwork burdens?

No.

E. What should I consider as I prepare my comments for EPA?

1. *Submitting confidential business information (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 *http://www.epa.gov/dockets/comments.html.*

II. Status Reports

In the past, EPA has published individual notices reflecting the status of TSCA section 5 filings received, pending or concluded. In 1995, the Agency modified its approach and streamlined the information published in the **Federal Register** after providing notice of such changes to the public and an opportunity to comment (See the **Federal Register** of May 12, 1995, (60 FR 25798) (FRL–4942–7). Since the passage of the Lautenberg amendments to TSCA in 2016, public interest in information on the status of section 5 cases under EPA review and, in particular, the final determination of such cases, has increased. In an effort to be responsive to the regulated community, the users of this information, and the general public, to comply with the requirements of TSCA, to conserve EPA resources and to streamline the process and make it more timely, EPA is providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of

EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

III. Receipt Reports

For the PMN/SNUN/MCANs that have passed an initial screening by EPA during this period, Table I provides the following information (to the extent that such information is not subject to a CBI claim) on the notices screened by EPA during this period: The EPA case number assigned to the notice that indicates whether the submission is an initial submission, or an amendment, a notation of which version was received, the date the notice was received by EPA, the submitting manufacturer (*i.e.,* domestic producer or importer), the potential uses identified by the manufacturer in the notice, and the chemical substance identity.

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information provided by the submitter, and (G) indicates that this information in the table is generic information because the specific information provided by the submitter was claimed as CBI.

Submissions which are initial submissions will not have a letter following the case number. Submissions which are amendments to previous submissions will have a case number followed by the letter ''A'' (*e.g.* P–18–1234A). The version column designates submissions in sequence as ''1'', ''2'', ''3'', etc. Note that in some cases, an initial submission is not numbered as version 1; this is because earlier version(s) were rejected as incomplete or invalid submissions. Note also that future versions of the following tables may adjust slightly as the Agency works to automate population of the data in the tables.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 02/01/2020 TO 02/29/2020

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–16–0424A	4	02/18/2020	Sachem Inc	(G) Directing agent	(G) Tetraalkylpiperidinium hydroxide.
P–16–0425A	5	02/05/2020	CBI	(G) A chemical reactant used in manufacturing a polymer.	(G) amino-silane.
P–17–0178A	5	02/26/2020	Shin-Etsu Microsi	(G) Microlithography for electronic device manufacturing.	(G) Sulfonium, triphenyl-, salt with substituted-alkyl 4-substituted-benzoate.
P–17–0355A	7	02/05/2020	CBI	(G) Site intermediate	(G) Benzoic acid, 2-hydroxy-, -alkyl derivs.
P–18–0013A	3	02/26/2020	Shin-Etsu Microsi	(G) Microlithography for electronic device manufacturing.	(G) Substituted-triphenylsulfonium, inner salt.
P–18–0014A	3	02/26/2020	Shin-Etsu Microsi	(G) Microlithography for electronic device manufacturing.	(G) Sulfonium, triphenyl-, salt with disubstituted-heterocyclic compound (1:1).
P–18–0037A	2	02/26/2020	Shin-Etsu Microsi	(G) Microlithography for electronic device manufacturing.	(G) Sulfonium, triphenyl-, salt with 2,4,5-trisubstituted-benzenesulfonate (1:1).
P–18–0151A	9	02/04/2020	Struers Inc	(S) A curing agent for curing epoxy systems.	(S) Formaldehyde, reaction products with 1,3-benzenedimethanamine and p-tert-butylphenol.
P–18–0154A	8	02/19/2020	CBI	(G) Crosslinking agent for coatings	(G) Isocyanic acid, polyalkylenepolycycloalkylene ester, 2-alkoxy alkanol and 1-alkoxy alkanol and alkylene diol blocked.
P–18–0211A	2	02/17/2020	Patcham USA LLC	(S) Wetting and dispersing agent for pigment formulations, paints, and coatings.	(G) Alkaneamine, (aminoalkyl)-, polymer with aziridine and 1,6-diisocyanatohexane, polyethylene glycol alkyl ether- and polyethylene-polypropylene glycol aminoalkyl alkyl ether- and alkenyl benzenated polyethylene glycol Ph ether.
P–18–0273A	5	02/05/2020	CBI	(G) Used in polymer manufacturing	(S) 1,4-Cyclohexanedicarboxylic acid, 1,4-bis(2-ethylhexyl) ester.
P–18–0283A	6	02/21/2020	CBI	(G) Open, non-dispersive use	(G) Hydroxy alkanoic acid, compds. with aminoalkoxyalcohol-epoxy polymer-alkanolamine reaction products.
P–18–0289A	4	02/13/2020	CBI	(G) Gas scrubbing, (G) landfill deoderizing, (G) wastewater deoderizing.	(G) 2-(2(methylcaboxymonocyclic) amino)ethoxy)-alcohol.
P–18–0290A	4	02/13/2020	CBI	(G) wastewater deodorizing, (G) Gas scrubbing, (G) Landfill odor neutralizing.	(G) Carbomonocylic-oxazolidine.
P–18–0302A	5	02/15/2020	CBI	(G) Chemical intermediate	(S) D-glucaric acid, ammonium salt (1:1).
P–18–0323A	5	02/25/2020	Kuraray America, Inc	(G) Raw material for polymer manufacturing.	(S) 2-Propenoic acid, 2-methyl-, 3-methyl-3-buten-1-yl ester.
P–18–0323A	6	02/28/2020	Kuraray America, Inc	(G) Raw material for polymer manufacturing.	(S) 2-Propenoic acid, 2-methyl-, 3-methyl-3-buten-1-yl ester.
P–18–0326A	6	02/24/2020	CBI	(G) Chemical Intermediate	(G) Alkanoic acid, alkyl ester, manuf. of, byproducts from, distn. residues.
P–18–0379A	2	02/11/2020	CBI	(G) Hardener for waterborne epoxy system.	(G) Cashew nutshell liquid polymer with Epichlorohydrin, formaldehyde, phenol, amines and glycol.,
P–18–0387A	2	02/06/2020	CBI	(G) Plastic Additive	(G) Alkanal, reaction products with alkanediyl bis[alkyl-tris(alkyl-heterocycle)-1,3,5-triazine-2,4,6-triamine and hydrogen peroxide.
P–18–0388A	2	02/06/2020	CBI	(G) Plastic additive	(G) 1,3,5-triazine-2,4,6-triamine, alkanediyl bis[alkyl-tris(alkyl-heterocycle)-, allyl derivs., oxidized, hydrogenated.
P–19–0053A	7	02/28/2020	Wacker Chemical Corporation.	(S) Used as a surface treatment, sealant, caulk, and coating for mineral building materials such as concrete, brick, limestone, and plaster, as well as on wood, metal and other substrates.	(S) 1-Butanamine, N-butyl-N-[(triethoxysilyl)methyl]-

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 02/01/2020 TO 02/29/2020—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–19–0064A	6	02/21/2020	The Sherwin Williams Company.	(G) Polymeric film former for coatings	(G) 4,4′-methylenebis[2,6-dimethyl phenol] polymer with 2-(chloromethyl)oxirane, 1,4-benzyl diol, 2-methyl-2-propenoic acid, butyl 2-methyl 2-propenoate, ethyl 2-methyl 2-propenoate, and ethyl 2-propenoate, reaction products with 2-(dimethylamino) ethanol.
P–19–0077A	10	02/19/2020	CBI	(G) Agricultural	(G) Alkenylamide.
P–19–0085A	3	02/18/2020	Neste oil US, Inc	(G) The PMN substance will be used as a functional fluid in electrical equipment.	(G) Aliphatic hydrocarbons, C16-18-branched and linear.
P–19–0088A	4	02/26/2020	CBI	(G) Feedstock for amine recovery	(S) Ethanamine, N-ethyl-, 2-hydroxy-1,2,3-propanetricarboxylate (1:?).
P–19–0109A	8	02/20/2020	Arch Chemicals, Inc	(G) A component of a cleaning formulation to improve the wettability of the overall cleaning solution on the substrate.	(S) Copper, [[2,2′,2″-(nitrilo-.kappa.N)tris[ethanolato-.kappa.O]](2-)]- (S) Copper, bis[2-(amino-.kappa.N)ethanolato-.kappa.O]-;
P–19–0170A	2	02/06/2020	CBI	(S) Coupling agent in elastomer-based formulations that will be used in molding operations to manufacture different types of rubber articles including but not limited to rubber tires.	(G) Heteroatom-substituted alkyl triethoxysilane, reaction products with methylated formaldehyde-melamine polymer.
P–20–0008A	2	02/13/2020	Archroma U.S., Inc	(S) Dye for use with paper, paper products, and nonwoven products produced from paper.	(G) 7-Heteropolycyclicsulfonic acid, 2-[4-[2-[1-[[(2-methoxy-5-methyl-4-sulfophenyl)amino]carbonyl]-2-oxopropyl]diazenyl]phenyl]-6-methyl-, compd. with (alkylamino)alkanol and (hydroxyalkyl)amine.
P–20–0010A	4	02/21/2020	CBI	(G) Polymerization auxiliary	(G) Carboxylic acid, reaction products with metal hydroxide, inorganic dioxide and metal.
P–20–0012A	6	02/07/2020	CBI	(G) Ink Additive	(G) Polyol, polymer with alkyl diisocyanate, alkyl substituted heterocycle blocked.
P–20–0013A	2	02/17/2020	Arkema Inc	(G) UV curable inks	(S) 2-Propenoic acid, 2-methyl-, (2-oxo-1,3-dioxolan-4-yl)methyl ester.
P–20–0015A	5	02/05/2020	GE Healthcare	(S) Used in the manufacture of hollow fiber products.	(G) N-alkyl heteromonocyclic diphenolamide, polymer with Bisphenol A, haloaryl-substituted sulfone, compd. with cyclic sulfonate ester, polyaryl alcohol terminated.
P–20–0024A	4	02/21/2020	CBI	(G) Dispersant polymer for coatings	(G) Phenol-formaldehyde polymer with amino-oxirane copolymer and nitrobenzoates.
P–20–0026A	4	02/04/2020	GE Healthcare	(S) The new monomer is isolated and used for subsequent polymerization.	(G) N-alkyl heteromonocyclic diphenolamide.
P–20–0026A	5	02/05/2020	GE Healthcare	(S) The new monomer is isolated and used for subsequent polymerization.	(G) N-alkyl heteromonocyclic diphenolamide.
P–20–0026A	6	02/06/2020	GE Healthcare	(S) The new monomer is isolated and used for subsequent polymerization.	(G) N-alkyl heteromonocyclic diphenolamide.
P–20–0036	2	02/06/2020	Sigma-Aldrich Co LLC.	(G) Used in the manufacture of Lithium-6 Chloride.	(S) Carbonic acid, di(lithium-6Li) salt.
P–20–0037	3	02/12/2020	Sigma-Aldrich Co LLC.	(G) Used in manufacturing devices for gamma and neutron radiation detection.	(S) Lithium Chloride (6LiCl).
P–20–0043	4	02/23/2020	Saproterra	(S) Soil and Plant amendment	(S) Acetic acid, 2-[[3-(4-pyridinyl)-1H-1,2,4-triazol-5-yl]thio]-, compd. with 2-aminoethanol (1:1).
P–20–0044A	2	02/21/2020	Angus Chemical Company.	(G) Curing additive: Automotive paint, (G) Neutralization, stability and pigment dispersancy in industrial latex paints, (G) Neutralization, solubilization and stability in commercial waterborne and solvent borne coatings and varnishes used for wood, metal, composites and other substrates, (G) Solubilizer for high acid value styrene acrylic polymers for use in ink applications, (G) Additive for industrial polyurethane dispersions.	(S) 1-Propanamine, 3-methoxy-N,N-dimethyl.
P–20–0045	2	02/27/2020	Torrecid USA LLC	(G) Raw material in ceramic tiles production.	(S) Iron oxide (Fe2O3), mixed with silica, calcined.
P–20–0050	2	02/05/2020	CBI	(G) Additive in consumer products	(S) Benzenepentanol, alpha, gamma-dimethyl-
P–20–0050A	3	02/20/2020	CBI	(G) Additive in consumer products	(S) Benzenepentanol, alpha, gamma-dimethyl-
P–20–0051A	2	02/07/2020	CBI	(S) Curing agent for Industrial epoxy coating systems.	(S) 1,8-Octanediamine, 4-(aminomethyl)-, N-benzyl derivs.
P–20–0052	1	02/05/2020	Evonik Corporation	(S) Liquid shrinkage reducing admixture for concrete.	(S) Oxirane, 2-methyl-, polymer with oxirane, mono(3,5,5-trimethylhexanoate).
P–20–0054	1	02/07/2020	CBI	(G) Catalyst is used in a closed process	(S) Nitrile hydratase.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 02/01/2020 TO 02/29/2020—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–20–0056	2	02/12/2020	CBI	(G) Pigment dispersant	(G) Polyphosphoric acids, 2-[(alkyl-1-oxo-alkene-1-yl)oxy]alkyl esters, polymers with acrylic acid, alkyl acrylate, alkyl methacrylate, hydroxyalkyl methacrylate and carbomonocycle, 2,2′-(1,2-diazenediyl)bis[2,4-dialkylalkanenitrogensubstituted]-initiated.
P–20–0057	1	02/11/2020	Nusil Technology LLC.	(G) Silane coupling agent used in silicone formulations.	(G) Arene, trimethoxysilyl-, hydrolyzed.
P–20–0058	2	02/19/2020	CBI	(G) Additive for automatic dishwashing, (G) Additive for hard surface cleaner.	(G) Polysaccharide, polymer with unsaturated carboxylic acid and methacryloxyethyltrimethyl ammonium chloride, sodium salt, acid salt initiated.
P–20–0059	3	02/28/2020	CBI	(S) Colorant for thermoplastic resins	(G) Propanedinitrile, 2-[[4-[ethyl[2-[4-(substitute methyl butyl)phenoxy]ethyl]amino]-2-methylphenyl]methylene].
SN–20–0001	1	02/05/2020	CBI	(G) Carrier fluids, (G) Precision and general cleaning, (G) Aerosol solvent.	(S) 2-Butene, 1,1,1,4,4,4-hexafluoro-, (2Z)-

* The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission prior to the start of the 90-day review period, and in no way reflects the final status of a complete submission review.

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs that have passed an initial screening by EPA during this period: The EPA case number assigned to the NOC including whether the submission was an initial or amended submission, the date the NOC was received by EPA, the date of commencement provided by the submitter in the NOC, a notation of the type of amendment (*e.g.,* amendment to generic name, specific name, technical contact information, etc.) and chemical substance identity.

TABLE II—NOCS APPROVED* FROM 02/01/2020 TO 02/29/2020

Case No.	Received date	Commencement date	If amendment, type of amendment	Chemical Substance
P–12–0315	02/07/2020	01/22/2020	N	(G) 2-alkenoic acid, 2-alkyl-, polymer with alkyl 2-alkyl alkanoate, vinyl carbomonocycle, alkyl alkanoate and alkanediol alkanoate, tert-alkyl alkane peroxoate and tert-alkyl alkylalkaneperoxoate initiated.
P–15–0054A	02/13/2020	09/30/2015	CBI Substantiation provided	(G) Carbon nanotubes.
P–15–0361	02/24/2020	02/20/2020	N	(G) Alkyl and aralkyl and trimethoxysilylethylene modified polysiloxane.
P–18–0108	02/11/2020	01/27/2020	N	(G) Aromatic anhydride polymer with bisalkylbiphenylbisamine compound with alkylaminoalkyl acrylate ester.
P–18–0133	02/13/2020	02/04/2020	N	(G) Polyol adduct of bisaldehyde.
P–18–0160	02/21/2020	02/12/2020	N	(G) Heteropolycyclic, halo substituted alkyl substituted- diaromatic amino substituted carbomonocycle, halo substituted alkyl substituted heteropolycyclic, tetraaromatic metalloid salt (1:1).
P–18–0258	02/06/2020	01/24/2020	N	(G) Dioic acids, polymers with caprolactam and alkyldiamines.
P–18–0277A	02/21/2020	05/15/2019	CBI Substantiation provided	(G) Poly[2-(dimethylamino)ethyl acrylate chloride salt, vinyl acetate, methacrylic acid and alkyl acrylates].
P–18–0358	02/14/2020	01/20/2020	N	(S) 1H-Imidazole-1-propanenitrile,2-ethyl-ar-methyl-
P–19–0055	02/14/2020	02/12/2020	N	(S) 1,3-propanediol, 2-ethyl-2-(hydroxymethyl)-, polymer with oxirane, 4-(dimethylamino)benzoate.
P–19–0130A	02/04/2020	10/23/2019	CBI Substantiation provided	(G) Aminohydroxy naphthalenesulfonic acid, coupled with diazotized [(aminophenyl)sulfonyl]ethyl hydrogen sulfate and diazotized amino[[(sulfooxy)ethyl]sulfonyl]benzenesulfonic acid, salts.
P–19–0152	02/03/2020	01/18/2020	N	(G) Alkaneic acid, dialkyl ester polymer with alkanediol, (isocyanatocarbomonocycle) alkyl) carbomonocycle) carbamate.

* The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission.

In Table III of this unit, EPA provides the following information (to the extent such information is not subject to a CBI claim) on the test information that has been received during this time period: The EPA case number assigned to the test information; the date the test information was received by EPA, the type of test information submitted, and chemical substance identity.

TABLE III—TEST INFORMATION RECEIVED FROM 02/01/2020 TO 02/29/2020

Case No.	Received date	Type of Test Information	Chemical Substance
P–16–0543	01/29/2020	Exposure Monitoring Report	(G) Halogenophosphoric acid metal salt.

TABLE III—TEST INFORMATION RECEIVED FROM 02/01/2020 TO 02/29/2020—Continued

Case No.	Received date	Type of Test Information	Chemical Substance
LM–18–0050	02/19/2020	Fish Acute Toxicity Test (OCED Test Guideline 203), Ready Biodegradability (OECD Test Guideline 301F), Hydrolysis as a function of pH (OECD Test Guideline 111), S, E, R, F Value Table.	(G) Heterocyclic amine, 1-[2-[[4-[2-[2-amino-6-[2-[2,5-dialkoxy-4-[[2-(sulfooxy)alkyl]sulfonyl]aromaticyl]]diazenyl]-5-hydroxy-7-sulfo-1-aromaticyl]]diazenyl]-3-sulfoaromaticyl]]sulfonyl]alkyl]-3-carboxy-, inner salt, alkali metal.
P–18–0159 ..	02/04/2020	Acute Oral Toxicity in the Rat (OECD Test Guideline 420).	(G) Thiophenium, 1-(2,7-disubstituted-1-naphthalenyl)tetrahydro-, salt with polyfluoro-n-polyfluoroalkylsulfonyl-1-alkanesulfonamide(1:1).
P–18–0202 ..	01/29/2020	Water Solubility: Column Elution Method; Shake Flask Method (OCSPP Test Guideline 830.7840).	(G) Trialkyl alkanal, polymer with phenol.

If you are interested in information that is not included in these tables, you may contact EPA's technical information contact or general information contact as described under **FOR FURTHER INFORMATION CONTACT** to access additional non-CBI information that may be available.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: March 12, 2020.

Pamela Myrick,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2020–06063 Filed 3–20–20; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Existing Collection

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of information collection—request for new control number and approval of collection: Employer Information Report (EEO–1) Component 1; revision of existing approval for EEO–1 Component 2.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA), the Equal Employment Opportunity Commission (EEOC or Commission) announces that it has submitted to the Office of Management and Budget (OMB) a request for a three-year PRA approval of Component 1 of the Employer Information Report (EEO–1). The EEOC is seeking OMB approval to remove Component 1 from OMB control number 3046–0007 and assign it a new PRA control number. The EEOC is not submitting a request to approve Component 2 of the EEO–1 collection.

DATES: Written comments on this notice must be submitted on or before April 22, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Commenters are also encouraged to send comments to the EEOC using any of the following methods—please use only one method:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions on the website for submitting comments.

Mail: Comments may be submitted by mail to Bernadette B. Wilson, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507.

Fax: Comments totaling six or fewer pages can be sent by facsimile (''fax'') machine to (202) 663–4114. (This is not a toll-free number.) Receipt of fax transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (800) 669–6820 (TTY). (These are not toll-free telephone numbers.)

Instructions: All comments received must include the agency name and docket number. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. However, the EEOC reserves the right to refrain from posting libelous or otherwise inappropriate comments, including those that contain obscene, indecent, or profane language; that contain threats or defamatory statements; that contain hate speech directed at race, color, sex, national origin, age, religion, disability, or genetic information; or that promote or endorse services or products.

All comments received, including any personal information provided, also will be available for public inspection during normal business hours by appointment only at the EEOC Headquarters' Library, 131 M Street NE, Washington, DC 20507. Upon request, individuals who require assistance viewing comments are provided appropriate aids such as readers or print magnifiers. To schedule an appointment to inspect the comments at the EEOC's library, contact the library staff at (202) 663–4630 (voice) or (800) 669–6820 (TTY). (These are not toll-free numbers.)

FOR FURTHER INFORMATION CONTACT: Rashida Dorsey, Ph.D., MPH, Director, Data Development and Information Products Division and Senior Advisor on Data Strategy, Office of Enterprise Data and Analytics, Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507, (202) 663–4355 (voice) or (202) 663–7063 (TTY). Requests for this notice in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 663–4191 (voice) or (202) 663–4494 (TTY).

SUPPLEMENTARY INFORMATION:

I. Background

A. The EEO–1 Report

Since 1966, the EEOC has required EEO–1 filers to submit demographic data (Component 1) on an annual basis. All private employers that are covered by Title VII of the Civil Rights Act of 1964, as amended (Title VII) [1] and that have 100 or more employees are required to file Component 1 data. In addition, Office of Federal Contract Compliance Programs (OFCCP) regulations require certain federal contractors to file the EEO–1 if they have 50 or more employees and are not

[1] 42 U.S.C. 2000e, *et seq.*

exempt as provided for by 41 CFR 60–1.5.[2]

B. The 60-Day Notice: The Commission's Statement of Intention for the EEO–1

On September 12, 2019, the Commission published a Notice in the **Federal Register** announcing its intention to seek OMB approval for a three-year PRA authorization to collect EEO–1 Component 1 data from covered employers (''60-Day Notice''). The 60-Day Notice also stated the Commission's intention to request that OMB remove Component 1 from OMB control number 3046–0007 and provide a new control number.[3] In the same 60-Day Notice, the Commission announced that it did not intend to seek OMB approval of PRA authorization for Component 2 of the EEO–1 (the summary pay data component). The Commission reached the decision to renew Component 1 but not Component 2 based on its assessment of the proven utility of Component 1 data and the uncertain utility of Component 2 data, balanced against updated calculations of the burden that the Components 1 and 2 collections impose on covered employers, as defined by the PRA. In the Notice, the Commission requested public comments during a sixty-day period ending November 12, 2019 (hence the Notice is referred to as the ''60-Day Notice''). In addition, on November 20, 2019, the Commission held a public hearing pursuant to Section 709(c) of Title VII. 42 U.S.C. 2000e–8(c) and considered the testimony of six witnesses representing both employer and employee stakeholders, as well as labor economists.[4]

C. Factors Necessitating the Intended Positions in the 60-Day Notice

(1) EEO–1 Components 1 and 2 Now Have Different Timelines

In 2016, the EEOC sought OMB approval under the PRA to collect specific summary pay data as Component 2 of the long-established EEO–1 report. On September 29, 2016, OMB authorized the EEOC to collect Component 2 data for calendar years 2017 and 2018 under OMB control number 3046–0007, with the first filing deadline being March 31, 2018 (for 2017 pay data). This OMB approval also authorized the EEOC to collect Component 1 EEO–1 data for calendar years 2016, 2017, and 2018.[5]

On August 29, 2017, OMB exercised its authority under the PRA to initiate a review of the Component 2 collection and stay the EEOC's collection of Component 2 data, but not Component 1 data.[6] Subsequently, the National Women's Law Center and the League of United Latin American Citizens (LULAC) challenged this action in court and, on March 4, 2019, the court in *National Women's Law Center, et al.* v. *Office of Management and Budget, et al.,* Civil Action No. 17–cv–2458 (D.D.C.), vacated OMB's stay of Component 2. The court ordered that OMB's September 29, 2016 PRA approval of the revised EEO–1 was in effect. On April 25, 2019, the court further ordered that the PRA approval for the EEO–1, including Component 2 data, under OMB control number 3046–0007, would expire no later than April 5, 2021. The court also ordered that the collection of Component 2 data would not be deemed complete until the percentage of filers submitting Component 2 reports equaled or exceeded the mean percentage of EEO–1 reporters that actually submitted EEO–1 reports in each of the past four reporting years. The court ordered the EEOC to collect Component 2 data for 2017 and 2018 with a submission deadline for covered employers of September 30, 2019. On October 29, 2019, the court ordered the EEOC to continue to collect Component 2 data through January 31, 2020, and on February 10, 2020, the court ordered that the EEOC's collection of Component 2 data was complete. This case is now pending on appeal before the U.S. Court of Appeals for the D.C. Circuit. *National Women's Law Center, et al.* v. *Office of Management and Budget, et al.,* Case No. 19–5130 (D.C. Cir.).

The EEOC must now seek PRA authorization from OMB to continue to collect EEO–1 data for calendar years 2019, 2020, and 2021. To minimize confusion in light of the above-referenced litigation involving Component 2, the EEOC is asking OMB to approve Component 1 under a new OMB control number.

(2) EEO–1 Burden Calculations in 2016 Were Based on Incorrect Assumptions

In May 2018, the EEOC created the Office of Enterprise Data and Analytics (OEDA) with the goal of creating a 21st century data and analytics program within the agency. OEDA is now staffed largely by data scientists and statisticians who did not work at the EEOC in 2016 when the Commission developed the 2016 PRA package for the EEO–1. When the EEOC began preparing materials to seek this PRA approval of the EEO–1 collection, staff in OEDA revisited the methodology used in 2016 for calculating EEO–1 burden estimates. OEDA staff considered the methodology the EEOC used prior to 2016 and, significantly, also referenced Government Accountability Office (GAO) statements[7] and OMB instructions[8] on

[2] Unless otherwise noted, the term ''contractor'' refers to federal contractors and first-tier subcontractors that satisfy the employee and contract size coverage criteria that subject them to the EEO–1 reporting obligations. The term ''private employers'' or ''private industry'' refers to all other entities required to file the EEO–1 that are not included in the ''contractor'' designation. The terms ''employer,'' ''covered employer,'' or ''filer'' refer to all entities that are required to file EEO–1 data.

[3] 84 FR 48138. The Commission voted to approve this 60-Day Notice in September 2019. Chair Janet Dhillon was sworn in as a Commission member on May 15, 2019, ending a four-month period during which the Commission lacked a quorum and therefore could not consider or approve documents like the 60-day Notice. There also was a partial government shutdown from December 22, 2018–January 25, 2019.

[4] *See* Notice of public hearing on proposed EEO–1 Report amendments, 84 FR 59619. The press release on the hearing is available at *EEOC Examines the Efficacy of EEOC's Pay Data Collection Model* (Nov. 20, 2019), *https://www.eeoc.gov/eeoc/newsroom/release/11-20-19.cfm*. More information about the hearing is available at EEOC, *Hearing of November 20, 2019—Public Hearing on the Proposed Revisions of the Employer Information Report (EEO–1), https://www.eeoc.gov/eeoc/meetings/11-20-19/index.cfm.*

[5] These Component 1 collections were timely, except for the collection of 2018 Component 1 data, which was delayed due to the partial government shutdown from December 22, 2018 through January 25, 2019. The filing deadline for that 2018 collection was extended to May 31, 2019.

[6] During the term of this stay, the EEOC collected Component 1 data for reporting years 2017 and 2018.

[7] *See* Government Accountability Office Report GAO–18–381, ''*PAPERWORK REDUCTION ACT, Agencies Could Better Leverage Review Processes and Public Outreach to Improve Burden Estimates,*'' July 2018 (GAO Report), *https://www.gao.gov/assets/700/693057.pdf.*

[8] ROCIS HOW TO Guide for Agency Users of the (ICR) Module, April 5, 2017, *https://www.rocis.gov/rocis/jsp3/common/ROCIS_HOW_TO_Guide_for_AGENCY_Users_of_ICR_Module-04052017.pdf,* p. 105, ¶ 12. (''Provide estimates of the hour burden of the collection of information. The statement should: * Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.

* If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.

* Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection

Continued

the appropriate methodology for calculating burden estimates in federal information collections. Per guidance published in a 2018 GAO report:

> A single information collection request may contain multiple burden hour estimate formulas depending, for example, on whether there are different forms or different types of respondents. The total annual burden hour estimate is the sum of all of individual burden hour estimate formulas. If the information request is for the maximum 3-year period, then the annual burden estimate is the average over that 3-year period.[9]

In light of these considerations, OEDA staff concluded that the EEOC's 2016 burden estimate for the EEO–1 had underestimated the burden to submit Component 1 and Component 2 data. After Janet Dhillon was sworn in as Chair of the EEOC on May 15, 2019, she consulted with the Director of OEDA about the EEO–1 burden calculation and other aspects of the PRA process.

OEDA staff concluded that the 2016 methodology did not adhere to the standard approach of OMB and GAO, which was to account for the burden of filing each different type of the EEO–1 ''report'' (see explanation below of the five types of EEO–1 reports). Rather, the 2016 burden methodology initially assessed employer burden entirely at the firm level, assuming that covered employers would use automated data systems to centralize EEO–1 data collection and then utilize the EEOC's upload file function to send data to the agency.[10] Although later acknowledging that tasks such as data entry would necessarily be performed at the establishment level, especially if a covered employer did not use the EEOC's upload file function, the final 2016 burden methodology still asserted that ''the bulk of the tasks performed in completing the EEO–1 report will be completed at the firm level due to the centrality of automation'' and calculated burden at the firm level.[11] This assumption led to the conclusion that ''the total estimated *annual* burden hour costs for employers and contractors that will complete both Components 1 and 2 in 2017 and 2018 will be $53,546,359.08.'' [12]

By contrast, the methodology used to develop the burden estimates in this 30-Day Notice returns to the approach used by the EEOC prior to 2016, which accounted for the burden of filing each different type of EEO–1 ''report.'' The EEO–1 Instructions direct covered employers to use different reports for different purposes, and OMB and GAO direct agencies to account for the burden of filing each different kind of report.[13] An employer with only a single location files one EEO–1 report—a type 1 EEO–1 report—and an employer with numerous locations files a corresponding number of EEO–1 ''establishment'' reports, plus a headquarters report and a consolidated report, as follows: [14]

- A type 2 'Consolidated Report,' which must include all employees of the employer categorized by race, gender and job category;
- A type 3 'Headquarters Report,' which must include employees working at the main office site of the employer and those employees who work from home and report to the corporate office. In addition, a separate EEO–1 report for the headquarters establishment is required even if there are fewer than 50 employees working at the headquarters establishment.
- A type 4 'Establishment Report' must be submitted for each physical establishment with 50 or more employees. Employment data must be categorized by race or ethnicity, gender, and job category.
- A type 6 or type 8 'Establishment Report' must be submitted for each establishment site with fewer than 50 employees:
  - An employer choosing to submit type 8 'Establishment Reports' provides a separate type 8 report for each establishment employing fewer than 50 employees. Like filers submitting the type 4 'Establishment Report, filers choosing to create a type 8 report enter employment data categorized by race or ethnicity, gender, and job category for each type 8 report. The employment data entered for each such establishment on a type 8 report will automatically populate the filer's type 2 Consolidated Report on the EEOC's system.
  - An employer choosing to submit a type 6 'Establishment List' should provide the establishment names, complete addresses, and total number of employees for all physical location where fewer than 50 employees are working. Because the type 6 report does not tally the number of employees, employers choosing a type 6 data report for each establishment employing fewer than 50 employees must manually enter data categorized by race or ethnicity, gender, and job category to the type 2 'Consolidated Report' to include all company employees.

Accounting for the burden of filing each different type of form or report, the Commission's September 12, 2019 60-Day Notice concluded that the burden for Components 1 and 2 of the EEO–1 was $614,391,388 in 2017 and $622,015,798 in 2018.[15]

II. The Public Comments on the 60-Day Notice

The Commission received and posted 11,504 timely public comments in response to the 60-Day Notice.[16] The comments were submitted by individual members of the public, employers, employer associations, Members of Congress, civil rights groups, women's organizations, industry and trade groups, human resources organizations, and social scientists. Several thousand of the posted comments were part of mass comment-writing campaigns and opposed the proposal not to continue Component 2.

activities should not be included here. Instead, this cost should be included under 'Annual Cost to Federal Government'.'')

[9] *GAO Report at* p. 8, Footnote a. to Figure 2.

[10] *Agency Information Collection Activities; Notice of Submission for OMB Review, Final Comment Request: Revision of the Employer Information Report (EEO–1),* 81 FR 45479, 45493 (July 14, 2016) (''the EEOC [initially] concluded that most employers would be filing the EEO–1 with a digital file upload by the time they file their EEO–1 reports for 2017 and 2018. Therefore, in the 60-Day Notice, the EEOC reasoned that 'each additional report filed [would have] just a marginal additional cost.' Accordingly, the burden calculation in the [2016] 60-Day Notice was based on the number of firms filing one or more EEO–1 reports, not on the number of reports submitted or the number of separate establishments submitting reports.'')

[11] *Id.* (''Second, the EEOC no longer assumes that all the EEO–1 reports for 2017 and 2018 will be submitted by one data upload filed by the firm on behalf of all the establishments. While still reflecting that the bulk of the tasks performed in completing the EEO–1 report will be completed at the firm level due to the centrality of automation, the EEOC's 30-Day Notice recognizes that there are certain tasks that will be performed at the establishment level for employers who enter their EEO–1 data directly onto the Joint Reporting Committee's secure portal. Therefore, the 30-Day Notice burden calculations are based on the number of hours needed to complete the tasks at the firm level and also at the establishment level for the proportion of EEO–1 filers who do not now use centralized, secure data uploads.'')

[12] *Id.*

[13] Not all employers are required to file all form types.

[14] *See* Table 1 in section V.B. for the projected annual burden to report Component 1 data in reporting years 2019–2021, by report type and reporting time.

[15] *See* 84 FR. 48138, 48140–48141. The EEOC uses 2017 and 2018 data as an example because it is the agency's most recent data. For 2017, the EEOC calculates that of the $614,391388, $247,959,388 is attributable to Component 1 and $366,431,751 is attributable to Component 2. For 2018, the EEOC calculates that of the $622,015,388, $250,626,707 is attributable to Component 1 and $371,389,091 is attributable to Component 2. *See* footnote 28, *infra* (describing how the burden estimates for Component 2 were calculated).

[16] 11,504 timely comments were posted on regulations.gov. One timely comment was not posted because its content was irrelevant to the 60-Day Notice and therefore the EEOC determined it was submitted in error.

III. Scope of the Public Comments on the 60-Day Notice

A. Component 1

(1) *Summary of 60-Day Notice*

The 60-Day Notice announced the Commission's intention to continue its collection of Component 1 data, even as the EEOC recalculated the burden on employers and concluded that it was higher than previously contemplated. Nonetheless, the Commission noted that collection of Component 1 data is a long-held practice that has occurred for over 50 years and it has already proven its utility to the EEOC's enforcement of employment discrimination laws in many ways. The 60-Day Notice recognized that Component 1 EEO–1 data is an important internal resource for analysis of industries and regions, and also for EEOC investigators who use the EEO–1 along with other data sources as they start to assess allegations of discrimination. Under these circumstances, even with a higher burden estimate, the EEOC concluded that the continued collection of Component 1 data would be necessary for the continued effectiveness of the agency.

(2) Summary of Public Comments

Almost all the public comments supported the EEOC's proposal in the 60-Day Notice to continue to collect Component 1 data.[17] Even while supporting the proposed continuation of Component 1, however, many commenters questioned the accuracy of the Component 1 estimated burden calculation as set forth in the 60-Day Notice. Some of these commenters stated that the EEOC's higher burden estimate for Component 1 still underestimated the actual employer burden. Notwithstanding this concern about the accuracy of the burden estimates, these commenters concluded that the utility of the Component 1 collection continued to justify the burden. Other commenters stated that the estimated burden for Component 1 set forth in the 60-Day Notice overstated the burden on employers. These commenters nonetheless supported the EEOC's proposal to continue collecting Component 1 data.

One commenter, representing a consulting firm that assisted clients with Component 2 filings, suggested the EEOC should discontinue the Component 1 collection in its entirety and argued that all the demographic data currently collected on Component 1 could be collected just as accurately but more efficiently if the EEOC implemented only Component 2.

A small number of commenters suggested changes to the Component 1 data collection. Two commenters, both of which are firms that assist clients with EEO–1 reporting, suggested the EEOC should consider implementing changes that would facilitate the reporting of gender for non-binary employees.

The few commenters who addressed the EEOC's request for a separate OMB Control number for Component 1 supported the proposal.

B. Component 2

(1) Summary of 60-Day Notice

The EEOC announced its intention not to seek approval of the Component 2 summary pay data collection in the 60-Day Notice because it determined that the uncertain utility of the data was outweighed by the burden on employers collecting the data. The 60-Day Notice outlined the EEOC's methodology for calculating the employer reporting burden and why the EEOC decided to use this methodology. The EEOC explained in the 60-Day Notice that it now calculated the burden by deconstructing the total number of reports submitted by report type and by filer type, and then estimating an average burden based on the number and types of reports submitted.[18] These estimates account for the different amounts of time required to complete different types of EEO–1 reports,[19] and are based on the EEOC's experience during the data submission process. Even using modest assumptions about the time needed to complete various EEO–1 reports, as explained in detail in the 60-Day Notice, the EEOC estimated with this new methodology that the *combined* burden hour costs for submitting both Components 1 and 2 was $614,391,388 in 2017 and $622,015,798 in 2018.[20] The EEOC concluded in the 60-Day Notice that the revised burden calculation, which was substantially higher than the Commission's 2016 burden calculation and higher than the burden for Component 1, was too high to justify the continuance of the Component 2 collection, especially in light of Component 2's uncertain utility.

Because the EEOC must balance the utility of the data to its enforcement programs against the burden the data collection imposes on the employers who must submit it, the Commission said in the 60-Day Notice that it should consider information from the ongoing Component 2 data collection before deciding whether to submit another pay data collection request to OMB. Without this assessment,[21] the 60-Day Notice reasoned that the practical utility to the EEOC's enforcement program of the pay data as defined in the 2016 Component 2 was far outweighed by the burden imposed on employers that must comply with the reporting obligation. For this reason, the EEOC decided not to seek renewal of the Component 2 summary pay data collection.

(2) Summary of Public Comments

Almost all commenters emphasized the importance of addressing pay inequity in the U.S. workforce. Many of the commenters who had also provided input on the original 2016 proposal to

[17] One anonymous commenter expressed concern about government oversight generally, and that individuals should turn to internal HR processes or litigation to address unfair treatment.

[18] *See* footnote 2, *supra; see also, e.g., Mortality in Correctional Institutions,* 84 FR 1507, 1508–09 (2019).

[19] Using Component 1 2017 data as the basis for an example of the new methodology, 75,043 EEO–1 filers submitted a total of 1,597,036 Component 1 reports to the EEOC. Forty percent, or 30,203 filers, submitted a report for only a single establishment. Single establishment filers are referred to as ''Type 1'' filers by the EEOC. Each Type 1 filer submitted a single report, yielding a total of 30,203 reports in 2017. These Type 1 filers have the lowest burden, with an average estimated burden of 45 minutes annually to complete their submission of Component 1. Multiple establishment filers are referred to as ''Type 2'' filers by the EEOC. In 2017, Type 2 filers accounted for 60%, or 44,840 filers of Component 1, and in 2017 submitted a total of 1,566,833 reports, or 98% of all Component 1 EEO–1 reports submitted. Type 2 filers have a higher reporting burden because they are required to submit a combination of reports: one type 2 (''consolidation'') report, one type 3 (''headquarters'') report, and a type 4 establishment report, a type 8 establishment report, or a type 6 establishment list for each establishment. The estimated burden for Type 2 filers varies between 3.5 and 9.5 hours, depending on the report type combination. This new method for calculating the filers' burden yielded a total estimated burden of 7,643,874 hours for 75,043 filers to submit 1,597,036 reports for data year 2017. Per U.S. Department of Labor's Bureau of Labor Statistics wage rates, the associated total annual burden hour cost is $297,381,066 for required filers. The EEOC estimates that the total cost of the administration of the EEO–1 Component data collection to the federal government is $2 million annually.

[20] The EEOC uses 2017 and 2018 data as an example because it is the agency's most recent data. Because the 2016 PRA package combined the Component 1 and 2 burdens for filers that would complete both Components 1 and 2 in 2017 and 2018, the recalculated burden reflected in the 60-Day Notice similarly provided a combined burden calculation for Components 1 and 2 for 2017 and 2018. However, above the Commission has provided a breakdown of how much the burden was attributable to each Component. *See* footnote.15, *supra.*

[21] At the time of the September 12, 2019, 60-Day Notice, the collection of Component 2 data for 2017 and 2018 was ongoing. The Component 2 data collection has now been completed, pursuant to the February 10, 2020 court order in the matter of *National Women's Law Center, et al.,* v. *Office of Management and Budget, et al.,* Civil Action No. 17–cv–2458 (D.D.C.) . . .

create Component 2 reiterated the arguments they raised at that time, whether for or against the Component 2 summary pay data collection.

a. Comments Supporting the Discontinuation of Component 2

Almost all the comments urging the discontinuation of the Component 2 collection were submitted by consultants who provide compliance, technical and/or human resources assistance to EEO–1 filers, and by trade and industry groups. Members of Congress also submitted comments urging the EEOC to discontinue the Component 2 collection. Commenters sometimes reiterated concerns they had raised in 2016 with the Component 2 collection and stated that employers' actual experiences with the 2017 and 2018 Component 2 collections not only validated, but in some respects heightened, their earlier concerns. These comments questioned the EEOC's authority to implement the Component 2 collection, expressed concerns about both the burden and the utility of the Component 2 collection, and expressed unease about the confidentiality and privacy of the data the EEOC collects. Many commenters asserted that any EEOC pay data collection should be undertaken only pursuant to rulemaking, which they argued would provide for a more robust notice-and-comment process.

With respect to the burden calculations, some commenters indicated that although the Component 2 burden in the 60-Day Notice was more accurate than the 2016 estimate, they believed the burden on employers was even higher than the estimate in the 60-Day Notice due to a number of factors. These factors included the difficulty matching the W–2, Box 1 information with the demographic data, and complications arising when employees' employment status changes during the reporting year—for example, when an employee moves between exempt and non-exempt status, or from one job category to another. They argued that addressing these issues required manual adjustments and therefore the Component 2 reporting process could not be fully automated. They noted that even when an employer used the upload file function it nonetheless had to expend significant time on manual adjustments and analyses before uploading the data. Commenters also observed that many of these issues, as well as complications caused by business changes such as mergers and acquisitions, meant this burden would not be significantly reduced in future years.

Similarly, one commenter, a consulting firm representing multiple businesses, explained why its own experience with Component 2, and that of its clients, demonstrated that the burden of collecting, organizing, and filing the data exceeded the firm's own estimates of the burden. All told, the time actually spent by the firm on first-year implementation costs as a third-party vendor was approximately 20% greater than the time it had estimated for this process in the firm's 2016 Component 2 Comments to the EEOC. The firm explained it took 280 hours to update its software to accept employer Component 2 data and create a data upload file to comply with the Component 2 Data Specifications. An additional 20 hours of time was spent by the firm's consultants and subject matter experts advising their programming team on the Component 2 data requirements, reviewing, and approving the programming files, and communicating and resolving error messages with the batch upload file during the Component 2 filing process. Notably, the consulting firm rejected the notion that in the future employers would be able to file Component 2 data with little or no burden because of the time already invested for the 2017 and 2018 collections. According to the firm, the belief that the burden will be significantly less for future collections ''reflects a complete misunderstanding of how employers store and use the data points being collected.'' This is just one of the numerous examples provided by commenters regarding the real-world burden experienced in attempting to complete the Component 2 data collection.

Despite expressing concern about pay inequities and reiterating their commitment to identifying and eliminating unfair pay practices, many of these commenters concluded the Component 2 summary pay data collection would be ineffective in addressing pay equity issues. Many commenters argued that both the W–2, Box 1 data and the hours-worked data were inaccurate and inappropriate measurements and, when combined together, created further inaccuracies because the W–2, Box 1 wages, which include pay for hours not worked, did not correspond with the hours-worked data. Commenters also argued that organizing the data into job categories and pay bands resulted in inaccurate and misleading comparisons. Some commenters also stated that collecting and reporting aggregate W–2, Box 1 wage data in wide pay bands across broad occupational categories increases both ''false positives'' (Type 1 statistical errors) and ''false negatives'' (Type 2 statistical errors) and that extensive Type 1 and Type 2 errors would render the data of minimal to no utility for attributing any differences observed to the presence of illegal employment discrimination. Some commenters and some hearing witnesses (including EEO–1 filers and entities that provide filing assistance to said filers) said their experience conducting the 2017 and 2018 Component 2 collections demonstrated that the Component 2 pay data would not be useful to them for assessing their own pay policies and practices and that it was burdensome. Commenters similarly argued that any EEOC publications of aggregated data organized in pay bands and job categories would not be useful to employers in undertaking self-assessments for the purposes of voluntarily complying with equal pay laws. One economist/consultant who worked with employers filing Component 2 data testified that the Component 2 pay bands are unlikely to reflect actual compensation distribution at many companies, and that Component 2 does not collect any information about the legitimate factors for pay differentials (*e.g.,* length of employment). He noted that an employee starting her career would be reported in the same way as an employee with 30 years of experience in the same occupation. This consultant also stated that a simulated study found the predictive value of Component 2 pay data was no better than random selection (using either Mann-Whitney or compared to other firms).

Some commenters noted that the EEOC failed to implement the recommendations in the 2012 report from the National Research Council, National Academy of Sciences (NAS Report).[22] Many of these commenters argued that the EEOC failed to implement the NAS Report's recommendation to conduct a true pilot study. Some commenters argued that the Commission possibly could have developed a pay data collection that addressed their utility and burden concerns had it more fully implemented the recommendations of the NAS Report. Other commenters suggested there may be no form of pay data collection that would have sufficient utility to justify the burden on respondents.

[22] National Research Council, 2012. *Collecting Compensation Data from Employers.* Washington, DC: National Academies Press, *http://www.nap.edu/read/13496/chapter/1#ii.*

Commenters also expressed concern that the EEOC failed to address adequately the NAS Report's recommendations that would more adequately protect the confidentiality of sensitive employer pay data and that would ensure employee personal identifying information would not be exposed in any EEOC publications of aggregated pay data. They also expressed concerns that the pay data may not be adequately protected from disclosure when it is shared outside the EEOC, including with OFCCP [23] and other agencies that are not bound by Title VII's confidentiality provisions.[24]

b. Comments Opposing the Discontinuation of Component 2

Comments opposing the EEOC's decision to discontinue the Component 2 collection were submitted by members of Congress, several employee advocacy groups representing diverse workers in several segments of the U.S. workforce, academics, and thousands of concerned individuals. Most of the thousands of individual comments were submitted as part of comment-writing campaigns. In many instances, those who had commented on the EEOC's 2016 proposal reiterated arguments supporting the Component 2 summary pay data collection that were reflected in those earlier comments.

Comments opposing the discontinuation of Component 2 generally argued that Component 2 is a necessary and effective tool for identifying and addressing the persistent gender and race/ethnicity pay gaps, and that the decision not to continue the Component 2 collection undermines the EEOC's ability to combat pay discrimination. They asserted that Component 2 not only is an essential tool for the EEOC to fulfill its enforcement mandate, but that it also provides critical information for workers and employers to help identify pay inequities. The majority of these commenters also criticized the EEOC for not addressing and analyzing the utility of Component 2 in the 60-Day Notice before concluding its utility could not justify the reporting burden on employers. Commenters stated that the EEOC's burden calculations were inadequately explained and/or based on faulty assumptions or calculations.

In addressing the pay gap, commenters focused on how the pay gap impacts workers, their families, businesses, and the economy as a whole. Commenters often cited pay gap statistics, frequently focusing on the pay gap impacting their members and constituents. Commenters also frequently highlighted statistics showing how the pay gap is wider for women of color. These commenters concluded that the Component 2 collection was a critical tool for identifying and addressing these pay inequalities. In addition to serving as a critical tool for the EEOC's effective and efficient enforcement of equal pay laws, the commenters argued Component 2 would incentivize employers to voluntarily comply with those laws and would provide them useful data that will assist their self-assessments.[25] Finally, commenters contended the aggregated data (job categories and pay bands) would help to identify pay trends in industries and geographic areas, and would also expose other forms of discrimination such as job segregation.

Some commenters argued that the EEOC was premature in concluding that the Component 2 collection was overly burdensome because the 2017 and 2018 collections were still underway when the EEOC reached that conclusion. These commenters questioned the EEOC's motivations for not seeking renewal of the Component 2 collection, suggesting the EEOC should have continued the Component 2 collection and assessed its burden only after the 2017 and 2018 collections had concluded, thereby allowing the EEOC to take into consideration the actual experience of employers who filed Component 2 for 2017 and 2018.

Some commenters asserted that many of the initial implementation costs of the Component 2 collection have already been incurred by employers and therefore future Component 2 collections would be less burdensome; relatedly, they argued that a different form of pay data collection would increase employer burden. Commenters also argued the EEOC's burden calculations do not adequately account for how, in the long term, automation and technology decrease employer burden.

Finally, some commenters contrast the process the EEOC used to develop the 60-Day Notice burden estimates with the process the EEOC used to develop the 2016 burden calculations, arguing the 2016 process was more transparent and the result of many years of careful study and analysis, in addition to notice and comment under the PRA process and Title VII's requirement for a public hearing.

c. Comments Specific to the Burden Estimation Methodology

The EEOC also received several comments about the burden estimate stated in the 60-Day Notice. Some commenters said the 60-Day Notice inadequately explained the estimated time needed to complete the type 1 and type 2 reports. Some commenters expressed concern about how the EEOC calculated the burden for single- vs. multi-establishment firms and about the EEOC's assumptions relating to the time needed to complete each report. One commenter argues that the GAO guidance referenced in the 60-Day Notice does not require a calculation based on number of forms. At least one commenter questioned why the EEOC included burden calculations for some forms that employers would no longer use. One commenter suggested that the burden calculation includes an arithmetic mistake and questioned why the burden calculation does not assume employers will use only the least costly and least time-consuming alternatives for filing.

IV. Commission Decisions and Final EEOC Proposals to OMB

A. The EEOC Will Seek Three-Year Extension of the EEO–1, Component 1, and Request a New OMB Control Number for Component 1

After evaluating the comments and holding a public hearing, the Commission will seek OMB approval for a three-year extension of Component 1 of the EEO–1. The EEOC also will request that OMB assign a new Control number to Component 1, thereby separating it from the collection of Component 2 data under OMB Control number 3046–0007 that was ongoing until February 2020. The Component 1 data collection, which the Commission has conducted for over 50 years, continues to prove its utility to the EEOC's enforcement of employment discrimination laws on a regular basis. Component 1 EEO–1 data remains an important tool for the Commission's enforcement of federal laws prohibiting discrimination in employment. EEOC investigators use the EEO–1, together with other data sources, in their assessments of allegations of discrimination. The EEOC also uses the

[23] The EEOC's 2016 Component 2 proposal had reflected the contemporaneous expectation that the EEOC would share some part of the Component 2 dataset with OFCCP. As discussed in the ''Data Sharing'' section below, the EEOC no longer intends to provide any Component 2 data to OFCCP.

[24] 42 U.S.C. 2000e–8(e). Title VII forbids the EEOC or any EEOC officer or employee from making public any information, including EEO–1 data, before a Title VII proceeding is instituted that involves that information.

[25] Many of these commenters also argued that the Component 2 data would enhance OFCCP's enforcement efforts.

Component 1 data to analyze employment patterns within companies, industries, or regions. For these reasons, and even with the higher burden estimate for Component 1 outlined below, as compared to the 2016 burden estimates, the EEOC believes the collection of Component 1 data is necessary for the proper performance of the agency's functions and concludes its practical utility to the fulfillment of the EEOC's mission justifies the burden on employers.

Further, because the EEOC is not seeking renewal of Component 2 for the reasons addressed below, the EEOC is requesting a new OMB control number for Component 1 that is separate from the current control number under which the 2017 and 2018 Component 2 summary pay data collections were being conducted until February 2020. As noted in the 60-Day Notice and above, Component 2 approval under control number 3046–0007 will expire no later than April 5, 2021, by order of the court in *National Women's Law Center, et al.* v. *Office of Management and Budget, et al.*[26] A new and separate control number for Component 1 will minimize confusion for EEO–1 filers.

Because the number of Component 1 filers increased to 87,021 by the close of data year 2018, the EEOC estimates that the number of filers required to submit Component 1 will increase again to approximately 90,000 for data years 2019 through 2021. Table 1 below in the 'Component 1' subsection of the Formal Paperwork Reduction Act Statement section provides a breakdown of the number of estimated records by type that will be submitted by the estimated 90,000 filers. Accordingly, the EEOC is calculating the burden estimates in this 30-Day Notice based on this revised estimate of the number of filers.

B. The EEOC Will Not Seek a PRA Extension of Component 2

The necessity of filing now with OMB to request a new PRA approval of the EEO–1 requires the EEOC to make decisions based on the information available. After evaluating the comments and holding a public hearing, the Commission will not seek OMB approval for an extension of Component 2. The Commission concludes that at this time it cannot state that Component 2 data has significant practical utility in assisting the Commission in fulfilling its mission in combating illegal employment discrimination. The Commission's decision is supported by written comments and by testimony at the November 20, 2019 hearing from those with actual experience collecting Component 2 data.[27] Based on the Commission's evaluation of the public comments received in response to the 60-Day Notice and the agency's own burden calculations,[28] and because the PRA requires an agency to demonstrate that the practical utility of the information collection outweighs the burden of the collection, the Commission cannot justify continuing to collect Component 2 data.

If the EEOC seeks to pursue a pay data collection in the future, it will do so using notice and comment rulemaking and a public hearing pursuant to Title VII[29] because a pay data collection would be a significant new collection and reporting requirement. The EEOC believes that there should be a transparent and open process, aligning with the recommendations in the EEOC-commissioned 2012 study from the National Academy of Sciences (NAS), entitled ''Collecting Compensation Data from Employers,'' (NAS Study),[30] that the EEOC:

1. Develops a plan for using pay data before initiating any data collection. Clearly articulating the ultimate uses of the data will help determine both which data elements need to be collected as well as the best approach to collecting the data to ensure the validity, reliability, and utility of the data collected.

2. Initiates a scientifically sound pilot study to test the pay data collection instrument and the plan for the use of the data; and

3. Uses a definition of compensation that is measurable, collectable, and meaningful.

Further, the EEOC concludes that the 2016 burden estimate was developed using an inadequate methodology that significantly underestimated the burden of the Component 2 collection. By contrast, the methodology used to develop the burden estimates in this 30-Day Notice returns to the methodology used by the EEOC prior to 2016 and takes into consideration GAO and OMB guidance on calculating burden estimates in federal information collections. Commenters' experience with submitting Component 2 data confirmed the EEOC's revised burden estimates to submit Component 2 data. These commenters explained why every year, gathering and submitting Component 2 data would continue to be very time consuming, and that increased automation would not meaningfully reduce the burden and drive cost savings. Based on these comments and the Commission's own calculations, the burden estimate contained in the 60-Day Notice and this Notice is more accurate than the 2016 burden estimate.

In response to specific comments about the burden calculations in the 60-Day Notice, the EEOC responds as follows:

1. Regarding the comments about the estimated time needed to complete the reports, as the EEOC indicated in the 60-Day Notice and also concludes in this 30-Day Notice, the estimated average of 45 minutes[31] each to complete both the

[26] Civil Action No. 17–cv–2458 (D.D.C.) On February 10, 2020, the court ordered that the 2017 and 2018 Component 2 collections were complete.

[27] *See* the summary of comments in Section III.B.2 above.

[28] The estimated number of respondents who must file EEO–1 Component 2 data was 62,718 filers for calendar year 2017 and 66,126 filers for calendar year 2018. The estimated number of responses was 1,558,927 for reference year 2017 and 1,588,882 for reference year 2018. The EEOC estimated that about 40% of Component 2 respondents (23,149 in 2017 and 24,182 in 2018) would report data on a single establishment, and that it would take these filers an average of 60 minutes per reporting year to complete their Component 2 EEO–1 report. About 60% of Component 2 filers (39,569 in 2017 and 41,944 in 2018) would report data on multiple establishments. Multi-establishment filers complete both type 2 and type 3 reports, in addition to completing either a type 4, 6, or 8 report for each establishment, totaling, 1,535,778 multi-establishment reports for reporting year 2017 and 1,564,700 multi-establishment reports for reporting year 2018. Single establishments submitted 23,149 reports in 2017 and 24,182 in 2018.

For the 2017 and 2018 Component 2 data collection effort, we estimated that a total of 3,147,809 reports would be submitted. While the actual time spent by multi-establishment filers varies based on a number of factors, as noted in the Component 1 section above, we estimated that it would take a filer, on average, 7.3 hours to complete Component 2 data for 2018. We further estimated that completing 2017 Component 2 data would be more burdensome for filers than completing 2018 Component 2 data because filers would need additional time to locate historical records. As a result, we estimated that it would take a filer, on average, 7.4 hours to complete Component 2 data for 2017. We estimated the average burden for filers to submit 2017 and 2018 Component 2 data to be 7.3 hours.

The collection of EEO–1 Component 2 data for calendar years 2017 and 2018 is estimated to have imposed total burden hours of 22,744,870 for 3,147,809 Component 2 reports. We estimate the total cost of the 2017 collection ($366,443,051) and 2018 collection of ($371,400,532) Component 2 data to be $737,843,583.

[29] See, 42 U.S.C. 2000e–8(c). See also, ''Amendments to the Regulations at 29 CFR part 1602 to Provide for a Pay Survey'' in the EEOC's Fall 2019 Regulatory Agenda, *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=3046-AB15.*

[30] National Research Council. 2012. Collecting Compensation Data from Employers. Washington, DC: National Academies Press. Available at *https://www.nap.edu/catalog/13496/collecting-compensation-data-from-employers.*

[31] This is the estimate for a single establishment to file their EEO–1 Component 1 report, which is being used because the Commission is seeking approval for the collection of Component 1. The Commission estimates under the burden methodology set forth in the 60-Day Notice and this Notice. that it would take a single establishment 60

type 1 and the type 2 report was based on feedback that EEO–1 project staff received from employers filing type 1 and type 2 reports during the 2018 EEO–1 Component 1 data collection. As stated above, feedback from commenters who file EEO–1 reports largely supported the Commission's revised burden estimates and the determination that the burden was higher for the EEO–1 than the Commission estimated in 2016.

2. On the concerns about single vs. multi-establishment firms, the 60-Day Notice explains in detail the calculations for single vs. multi-establishment firms as well as the estimated completion time for each type of required report. This 30-Day Notice also explains that calculation in detail. It also includes Table 1 (see below) to further elucidate the Commission's approach.

3. Regarding the comment about GAO guidance, as the EEOC explains in the 60-Day Notice and again in this 30-Day Notice, the GAO report provides guidance on scientifically sound methods and techniques for calculating burden for federal information collections. In light of the GAO guidance, we believe the scientifically sound way to conduct this data collection is to calculate based on forms. Agency submission of accurate burden estimates using scientifically sound methods and techniques is required by the PRA.

4. On the comment about estimating for forms that are no longer used, all estimates used by the EEOC in both the 60-Day Notice and this 30-Day Notice are based on forms that were actually filed by employers in the 2018 EEO–1 Component 1 data collection. As the EEOC noted, not all employers are required to file all form types.

5. Regarding the comment alleging an arithmetic mistake, the burden calculations in 60-Day Notice do not contain any arithmetic mistakes. The commenter is attempting to calculate average burden at the individual employer level which changes the unit of analysis. As the EEOC explains in both the 60-Day Notice and this 30-Day Notice, the appropriate unit of analysis for burden estimation is at the form type level. Additionally, the EEOC does not dictate filing methods (*i.e.,* online portal or upload) and employers are free to choose whichever filing method they deem appropriate.

As required by the PRA, the EEOC has evaluated the significant burden of the Component 2 collection against its practical utility. Based on this assessment, the EEOC has concluded that the utility of the current Component 2 collection does not justify the burden of the collection on employers. For this reason, the EEOC does not seek OMB's PRA approval to continue the Component 2 information collection.

C. Data Sharing

Title VII forbids the EEOC or any EEOC officer or employee from making public any information, including EEO–1 data, before a Title VII proceeding is instituted that involves that information.[32] EEOC staff who violate this prohibition may be found guilty of a criminal misdemeanor and could be fined or imprisoned.

The EEO–1 data are collected under Title VII and Executive Order 11246. The EEO–1, administered by the EEOC's Office of Enterprise Data and Analytics, is a single data collection designed to meet the enforcement data needs of both the EEOC and OFCCP while simultaneously avoiding duplication. With respect to sharing data with OFCCP, and consistent with EEOC's updated practices, the EEOC will share with OFCCP only Component 1 data for federal contractors. Further, in light of the OFCCP's announcement of its decision not to request, accept, or use Component 2 data from the EEOC, the EEOC does not intend to provide any Component 2 data to OFCCP. *See, OFCCP Intention not to Request, Accept, or Use Employer Information Report (EEO–1) Component 2 Data,* 84 FR 64932 (Nov. 25, 2019).[33]

The EEOC directly imposes Title VII's confidentiality requirement on all of its contractors, including contract workers and contractor companies, as a condition of their contracts. With respect to other federal agencies with a legitimate law enforcement purpose, the EEOC gives access to information collected under Title VII *only* if the agencies agree, by letter or memorandum of understanding, to comply with the confidentiality provisions of Title VII. For the EEOC, its agents and contractors, Title VII only permits disclosure of information after suit is filed in a particular matter on the issues that were investigated at the administrative level.

With respect to data-sharing with state and local fair employment practices agencies (FEPAs), Title VII itself states that the EEOC may only give FEPAs information (including EEO–1 data) about employers in their jurisdiction on the condition that they *not* make it public prior to the institution of a proceeding under state or local law involving such information.[34] The EEOC's current practice is to share EEO–1 data with a contracted FEPA only upon request and to share only EEO–1 data for an employer within the FEPA's jurisdiction and only when that employer is a respondent to a particular charge of discrimination cited by the FEPA in its data request. Title VII authorizes the EEOC to decline to honor a FEPA's subsequent requests for information if the FEPA violates Title VII's confidentiality requirements.[35]

To align with provisions of Title VII, the Federal Information Security Modernization Act of 2014 (FISMA),[36] the Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act),[37] and OMB Memorandum M–19–15 *Improving Implementation of the Information Quality Act* issued on April 24, 2019,[38] the EEOC is modernizing its policies and procedures concerning data access to EEO–1 data for approved external data users. The EEOC is reviewing and updating all current data sharing memoranda with other federal enforcement agencies. The EEOC will only provide approved users access to the minimum data necessary to adhere to the specific terms of the relevant memoranda. Consistent with the requirements of the Evidence Act, the EEOC is exploring secure mechanisms to facilitate access to EEO–1 restricted data for approved researchers for statistical purposes and for developing evidence. As defined by the Evidence Act, ''evidence'' only means ''information produced as a result of statistical activities conducted for a statistical purpose.'' *See,* 44 U.S.C. 3561(6).

minutes to file an EEO–1 Component 2 report due to the additional data elements. *See* footnote 28, *supra.*

[32] 42 U.S.C. 2000e–8(e). Consistent with these confidentiality requirements, the EEOC has released aggregate EEO–1 data in the past that does not reveal the identity of individual filers.

[33] In the Supporting Statement issued with the 2016 PRA, the EEOC stated: ''OFCCP will not receive EEO–1 summary pay data for companies that are not federal contractors under OFCCP's jurisdiction.'' FINAL EEO–1 Supporting Statement (September 28, 2016). Notwithstanding this statement, the EEOC's practice was to share all employer Component 1 data with OFCCP (regardless of federal contractor status). The EEOC has ceased the practice of sharing all Component 1 employer data with OFCCP and going forward, the Commission will only provide OFCCP Component 1 EEO–1 data for federal contractors.

[34] 42 U.S.C. 2000e–8(d).

[35] *Id.*

[36] Public Law 113–283 (2014).

[37] Public Law 115–435 (2019).

[38] *https://www.whitehouse.gov/wp-content/uploads/2019/04/M-19-15.pdf.*

V. Formal Paperwork Reduction Act Statement

A. Overview of Information Collection

Component 1

Collection Title: Employer Information Report (EEO–1) Component 1.

OMB Number: 3046–XXXX (previously 3046–0007).

Frequency of Report: Annual.

Type of Respondent: Private employers with 100 or more employees and certain federal government contractors and first-tier subcontractors with 50 or more employees.

Description of Affected Public: Private employers with 100 or more employees and certain federal government contractors and first-tier subcontractors with 50 or more employees.

Reporting Hours: 9,167,393.

Respondent Burden Hour Cost: $297 million.[39]

Federal Cost: $2 million.

Number of Forms: 1.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964 (Title VII) requires employers to make and keep records relevant to the determination of whether unlawful employment practices have been or are being committed, to preserve such records, and to produce reports as the Commission prescribes by regulation or order.[40] Pursuant to this statutory authority, the EEOC in 1966 issued a regulation requiring certain employers to file executed copies of the EEO–1 in conformity with the directions and instructions on the form, which called for reporting employee data by job category, ethnicity, race, and sex.[41] Pursuant to Executive Order 11246,[42] the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, in 1978 issued its regulation describing the EEO–1 as a report ''promulgated jointly with the Equal Employment Opportunity Commission'' and requiring certain contractors to submit ''complete and accurate reports'' annually.[43] Currently, Component 1 of the EEO–1 directs certain covered employers with more than 50 employees (contractors) or 100 employees (private industry) to report annually the number of individuals they employ by job category and by race, ethnicity, and sex.[44] The data include seven race and ethnicity categories[45] and ten job categories,[46] by sex. The individual EEO–1 reports are confidential. EEO–1 data are used by the EEOC to investigate charges of employment discrimination against employers in private industry and to provide information about the employment status of minorities and women.[47]

B. Burden Statement

The previous annual estimated burden for Component 1 under the 2016 clearance[48] was 1,952,146 hours. After reviewing the methodology used to calculate the 2016 burden for Component 1, we identified an approach we believe is substantially more precise and is supported by comments received in response to the 60-Day Notice and public hearing on November 20, 2019.

The methodology used in this notice to calculate the burden for Component 1 is to separate Type 1 (single establishment) and Type 2 (multi-establishment) filers and calculate the burden by considering the following factors: Type of filer, the combination of report types submitted by the filer, and the total number of reports filers will certify to complete their EEO–1 submission.

Reporting time estimates for EEO–1 Component 1 filers are based on the most recently completed Component 1 collection cycle. During the 2018 data collection cycle (which took place in 2019), 80,396 of the 87,021 eligible EEO–1 Component 1 filers submitted a total of 1,628,897 records. Based on data trends over the last five data collection years, we expect that the total number of eligible filers submitting data will increase to 90,000 filers. We further estimate that of the 90,000 filers, Type 1 filers will continue to represent about 40% of filers and these filers will submit less than 2% of all records, while type 2 filers will continue to represent about 60% of filers and will submit more than 98% of records. We have no reason to believe that completion time by record type will vary from previous years and we believe that filers will continue to submit the same record combination types, *e.g.* Type 1 filers will submit a type 1 report only, and type 2 filers will submit type 2 and type 3 reports, and then either type 4, type 6 or type 8 reports, depending on their business structure.

Using the 90,000 number, we estimate that Component 1 EEO–1 filers will submit a total of 1,915,345 records annually, for data years 2019 and 2021. We estimate that the 36,223 type 1 filers will submit 36,223 type 1 records, and it will take them 27,167 hours to submit these records. We estimate the 53,777 type 2 filers will submit 1,879,122 records. Based on 2018 data, we calculated that the ratio of type 2 records to type 3 records was 1:1, or type 2 filers submit an equal number of type 3 headquarters records. Since type

[39] This estimate is based on the most recent median pay data from the Bureau of Labor Statistics. We estimated that a computer support specialist would account for 60% of the estimated hourly wage; a database administrator would account for 20%; an HR specialist would account for 10%; legal counsel would account for 5% and an CEO would account for 5%, for a total estimated hourly wage of $32.44. *See* U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, https://www.bls.gov/ooh/business-and-financial/human-resources-specialists.htm.*

[40] 42 U.S.C. 2000e–8(c).

[41] The EEOC's EEO–1 regulation is at 29 CFR part 1602 Subpart B. The EEOC is responsible for obtaining OMB's PRA approval for the EEO–1 report.

[42] Exec. Order No. 11,246, 30 FR 12,319 (Sept. 24, 1965).

[43] 41 CFR 60–1.7(a). The EEOC may also share EEO–1 data with state and local Fair Employment Practices Agencies under the authority of section 709(d) of Title VII. Subject to their agreement to retain confidentiality as required by 42 U.S.C. 2000e–8(e), the EEOC shares EEO–1 reports with the Department of Justice (DOJ), the Federal Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA). The FDIC and NCUA use EEO–1 data pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 to help analyze diversity in management, employment, and business activities. DOJ uses the EEO–1 data when it defends OFCCP in litigation, in the event a federal contractor sues OFCCP to prevent debarment.

[44] The EEO–1 uses federal race and ethnicity categories, which were adopted by the Commission in 2005 and implemented in 2007.

[45] *Hispanic or Latino*—A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.

White (Not Hispanic or Latino)—A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

Black or African American (Not Hispanic or Latino)—A person having origins in any of the black racial groups of Africa.

Native Hawaiian or Other Pacific Islander (Not Hispanic or Latino)—A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Asian (Not Hispanic or Latino)—A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

American Indian or Alaska Native (Not Hispanic or Latino)—A person having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliation or community attachment.

Two or More Races (Not Hispanic or Latino)—All persons who identify with more than one of the above five races.

[46] The ten job groups are: Executive/Senior Level Officials and Managers; First/Mid Level Officials and Managers; Professionals; Technicians; Sales Workers; Administrative Support Workers; Craft Workers; Operatives; Laborers and Helpers; and Service Workers.

[47] Any reports the EEOC publishes based on EEO–1 data include only aggregated EEO–1 data that protects the confidentiality of each employer's information, as well as the privacy of each employee's personal information.

[48] The 2016 burden was estimated to be 6.6 hours per respondent, multiplied by 60,886 respondents. The EEOC has now determined that the proper unit of analysis to calculate burden should be the number of reports submitted by report type, rather than the number of respondents.

4, 6 and 8 records report establishment data, the ratios of type 4-to-type 2; type 6-to-type 2; and type 8-to-type 2 records are considerably larger. Specifically, the ratio of type 4 records to type 2 records is 4.9:1, or for every type 2 record submitted, nearly 5 type 4 records were submitted. The ratio for type 6 records to type 2 records is 14.9:1, or for every type 2 record submitted, nearly 15 type 6 records were submitted. The ratio for type 8 records to type 2 records is 13.1:1, or for every type 2 record, about 13 type records were submitted. These ratios were then applied to the estimated number of type 2 filers—53,777—to estimate the total number of records by type we expect to receive for data years 2019 through 2021. We estimate it will take filers a total of 9,140,226 hours to submit these records. The total aggregate reporting time for Component 1 EEO–1 filers is 9,167,393 hours. The aggregate reporting time for Component 1 EEO–1 filers by record type varies between a low of 27,167 hours for type 1 filers submitting type 1 reports, and 6,414,815 hours for type 2 filers submitting type 6 reports. The table below outlines that number of records, the average reporting time by record type, and the total number of hours estimated to submit these records.

TABLE 1—PROJECTED ANNUAL BURDEN FOR COMPONENT 1 DATA YEARS 2019–2021, BY REPORT TYPE AND REPORTING TIME

	Number of records	Average reporting time (minutes)	Aggregate reporting time, hours
Type 1	36,223	45	27,167
Type 2 [a]	53,777	45	40,333
Type 3 [b]	53,777	45	40,333
Type 4 [c]	264,403	120	528,806
Type 6 [d]	801,852	480	6,414,815
Type 8 [e]	705,313	180	2,115,940
Total	1,915,345		9,167,393

[a] The Consolidated Report must include all employees of the company categorized by race, gender and job category.

[b] Headquarters Report (Required)—The Headquarters Report must include employees working at the main office site of the company and those employees that work from home that report to the corporate office. Employment data must be categorized by race, gender and job category. A separate EEO–1 report for the headquarters establishment is required even if there are fewer than 50 employees working at the headquarters establishment.

[c] Establishment Report—A separate EEO–1 Type 4 report must be submitted for each physical establishment with 50 or more employees. Employment data must be categorized by race, gender and job category.

[d] Establishment list—includes establishment name, address and total number of employees for each location with less than 50 employees. Employers choosing Type 6 reports must also manually enter data categorized by race, gender and job category into the accompanying Type 2 report and include all company employees.

[e] A separate EEO–1 report must be submitted for each establishment employing fewer than 50 employees. Like the Type 4 report, Type 8 report employment data must also be categorized by race, gender and job category. Employers choosing Type 8 reports must enter employment data categorized by race, gender and job category for each Type 8 report. The employment data entered for each such establishment will automatically populate the Type 2 Report.

An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The estimated number of respondents who must annually file EEO–1 Component 1 data for the next three years is 90,000 filers each year. The EEOC estimates that the 90,000 filers will submit 1,915,345 reports. Reports represent the annual number of responses. About 40% of Component 1 filers (36,223 filers) will submit a single report on a single establishment, and it is estimated that it will take these filers an average of 45 minutes per reporting year to complete their Component 1 EEO–1 report. About 60% of Component 1 filers (53,777 filers) will report data on multiple establishments. All multi-establishment filers must complete both type 2 and type 3 reports, in addition to completing either a type 4, 6, or 8 report for each establishment for each reporting year, for a total of 1,879,122 multi-establishment EEO–1 reports submitted by 53,777 multi-establishment filers. While the actual submission time for single and multi-establishment filers varies,[49] for purposes of this exercise we estimate that it will take a filer, on average, under 5 hours to complete their Component 1 EEO–1 report. Each filer will be asked to respond to Component 1 of the EEO–1 once annually. The burden estimate is based on data from prior administrations of Component 1 of the EEO–1.

An estimate of the total public burden (in hours) associated with the collection: The collection of EEO–1 Component 1 data for calendar years 2019, 2020, and 2021 is estimated to impose a total of 9,167,393 annual burden hours for 1,915,345 Component 1 reports. Filers are encouraged to report data electronically to decrease burden.

Dated: March 11, 2020.

For the Commission.

Janet Dhillon,

Chair.

[FR Doc. 2020–06008 Filed 3–20–20; 8:45 am]

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[49] Burden for single establishment filers is based on a single report. Burden for multi-establishment reporters is cumulative and is based on the report type combination. EEO–1 project staff estimate that the average completion time for the type 2 report would be 45 minutes, the completion of the type 3 report adds an average of 45 minutes to the burden, and the completion of type 4 reports adds an average of 2 hours to the burden, so a Type 2 filer completing type 4 reports will have an average burden of 3.5 hours (45 minutes for the type 2 report, plus 45 minutes for the type 3 report, plus 2 hours for the type 4 reports). A Type 2 filer completing type 6 reports will add—on average—8 hours to the burden, for a total burden of 9.5 hours. A Type 2 filer completing type 8 reports will add—on average—3 hours to the burden, for a total burden of 4.5 hours. While this analysis recognizes that individual filers' burdens will vary, on average a multi-establishment filer submitting 2/3/4 reports would have the lowest estimated burden of 3.5 hours while a filer submitting 2/3/6 reports would have the highest estimated average burden of 9.5 hours. Once Type 1, or single establishment filers, and filers submitting 2/3/8 are considered, the average estimated burden for EEO–1 filers is approximately 5 hours.

FEDERAL TRADE COMMISSION

Privacy Act of 1974; System of Records

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice of modified systems of records.

SUMMARY: The FTC is making technical revisions to several of the notices that it has published under the Privacy Act of 1974 to describe its systems of records. This action is intended to make these notices clearer, more accurate, and up-to-date.

DATES: These technical revisions shall become final and effective on March 23, 2020.

FOR FURTHER INFORMATION CONTACT: G. Richard Gold and Alex Tang, Attorneys, Office of the General Counsel, FTC, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326–2424.

SUPPLEMENTARY INFORMATION: To inform the public, the FTC publishes in the **Federal Register** and posts on its website a ''system of records notice'' (SORN) for each system of records that the FTC currently maintains within the meaning of the Privacy Act of 1974, as amended, 5 U.S.C. 552a (''Privacy Act'' or ''Act''). See *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems.* The Privacy Act protects records about individuals in systems of records collected and maintained by Federal agencies. (A system is not a ''system of records'' under the Act unless the agency maintains and retrieves records in the system by the relevant individual's name or other personally assigned identifier.) Each Federal agency, including the FTC, must publish a SORN that describes the records maintained in each of its Privacy Act systems, including the categories of individuals that the records in the system are about, where and how the agency maintains these records, and how individuals can find out whether an agency system contains any records about them or request access to such records, if any. The FTC, for example, maintains 40 systems of records under the Act. Some of these systems contain records about the FTC's own employees, such as personnel and payroll files, while other FTC systems contain records about members of the public, such as public comments, consumer complaints, or phone numbers submitted to the FTC's Do Not Call Registry.

The FTC's SORNs discussed in this notice apply only to the FTC's own Privacy Act record systems. They do not cover Privacy Act records that other Federal agencies may collect and maintain in their own systems. Likewise, the FTC's SORNs and the Privacy Act of 1974 do not cover records that private businesses or other non-FTC entities may collect about individuals, which may be covered by other privacy laws.

On June 12, 2008, the FTC republished and updated all of its SORNs, describing all of the agency's systems of records covered by the Privacy Act in a single document for ease of use and reference. See 73 FR 33592. To ensure the SORNs remain accurate, FTC staff reviews each SORN on a periodic basis. As a result of this systematic review, the FTC made revisions to several of its SORNs on April 17, 2009 (74 FR 17863), August 27, 2010 (75 FR 52749), February 23, 2015 (80 FR 9460), November 2, 2017 (82 FR 50871), November 6, 2018 (83 FR 55541), and April 19, 2019 (84 FR 16493).

Based on a periodic review of its SORNs, the FTC is publishing these additional technical revisions, to ensure that the FTC's SORNs remain clear, accurate, and up-to-date:

- First, the FTC is amending several SORNs to clarify or update information about the applicable records disposition schedules published or approved by the National Archives and Records Administration (NARA), which determine how long agency records in each system should be retained and destroyed.
- Second, the FTC is amending multiple SORNs applicable to FTC financial-related records (FTC–III–2 and FTC–III–3) to take account of the FTC's migration of these systems, previously serviced under an interagency agreement with the Department of Interior's National Business Center, to the Department of Treasury's Administrative Resource Center (ARC), part of the Bureau of Fiscal Services, as of October 1, 2019; to also address the new interagency service agreement with ARC for acquisition procurement support (FTC–III–4), and to make other technical changes (*e.g.,* updating the official title of the system manager, explaining how individuals may now access certain records online).
- Third, after consultation with staff at the Office of Management & Budget (OMB), which provides guidance to Federal agencies on complying with the Privacy Act, the FTC is amending the above SORNs to include specific references to the **Federal Register** notices where the FTC previously published three SORN Appendices applicable to all FTC SORNs. Specifically, these Appendices, which are posted on the FTC's website: List the authorized disclosures and routine uses applicable to all FTC systems of records (Appendix I); how an individual can make a Privacy Act request to determine if the FTC has any records about him or her and, if so, how the individual may request access to or amendment of those records in the FTC's systems (Appendix II); and the location of FTC buildings and offices where the FTC maintains its records subject to the Act (Appendix III).
- Fourth, the FTC is republishing the full text of each of the above SORNs, incorporating the technical amendments, for the convenience of the reader and in accordance with OMB Circular A–108 (2016), which reorganized the format and content for SORNs published by Federal agencies.

The FTC is not substantively adding or amending any routine uses of its Privacy Act system records. Accordingly, the FTC is not required to provide prior public comment or notice to OMB or Congress for these technical amendments, which are final upon publication. See U.S.C. 552a(e)(11) and 552a(r); OMB Circular A–108, supra.

A SORN-by-SORN summary, including a more detailed description of each SORN and how it is being amended, appears below, followed by the full text of the SORNs, as amended.

II. Federal Trade Commission Personnel Systems of Records

FTC–II–12 (Learning Management System—FTC.). This SORN covers the system used by the FTC's Human Capital Management Office to track and log requests of FTC employees to attend training courses. The FTC is revising this SORN to update the ''system name and number'' heading. The ''category of records'' section of the SORN is also being amended to recognize that records in this system contain employee names, but no longer include social security numbers or dates of birth. The ''policies and practices for retrieval of records'' section is revised to reflect that records are not retrieved by social security number.

FTC–II–13 (Staff Time and Activity Reporting (STAR) System—FTC). This SORN covers the system that the FTC uses to compile statistics on time spent by each employee on various FTC matters. The Commission has updated the ''retention and disposal'' section to cite the applicable General Records Schedule approved by NARA for government-wide use.

III. Federal Trade Commission Financial Systems of Records

FTC–III–2 (Travel Management System—FTC). This SORN covers travel documentation for FTC employees and other authorized individuals on official travel for the FTC. This SORN is revised to take account of the FTC's migration

of this system, which was previously serviced under an interagency agreement with the Department of Interior's National Business Center, to the Department of Treasury's Administrative Resource Center as of October 1, 2019. Thus, the sections on ''system location'' and ''categories of records in the system'' are also being updated. The Commission is also updating the ''retention and disposal'' section to cite the applicable General Records Schedule approved by NARA for government-wide use.

FTC–III–3 (Financial Management System—FTC). This SORN covers FTC records of payments or reimbursements for official travel by its employees and other individuals (compare FTC–III–2 above) and miscellaneous payments for the acquisition of goods or services (compare FTC–III–4 below). This SORN is revised to take account of the FTC's migration of this system, previously serviced under an interagency agreement with the Department of Interior's National Business Center, to the Department of Treasury's Administrative Resource Center as of October 1, 2019. Conforming amendments are also being made to ''system location'', ''system manager(s)'', and ''categories of records in the system'', and a non-substantive update is being made to routine uses (*i.e.,* citing the related Treasury SORN). The Commission has also updated the ''retention and disposal'' section to cite the applicable General Records Schedule that was approved by NARA for government-wide use.

FTC–III–4 (Automated Acquisitions System—FTC). This SORN covers the system used by the FTC to track requisitions (orders) for goods or services from non-FTC sources. This SORN is revised to take account of the FTC's new interagency service agreement for acquisition systems support with the Department of Treasury's Administrative Resource Center as of October 1, 2019. Conforming amendments are being made to ''system location'' and ''categories of records in the system'' (also citing to the relevant Government-wide General Services Administration (GSA) SORN that includes the same record categories). The Commission is also updating the contact information for the ''system manager(s)''. Finally, the Commission is updating the ''retention and disposal'' section to cite the applicable General Records Schedule approved by NARA for government-wide use.

IV. FTC Correspondence Systems of Records

FTC–IV–3 (National Do Not Call Registry—FTC). This SORN covers records of individuals who wish to be placed on the FTC's telemarketing do-not-call list. It also covers information collected from telemarketers, sellers, or agents who are required to comply with the list, but only to the extent, if any, that such telemarketers, sellers, or agents are also ''individuals'' within the meaning of the Privacy Act. The Commission has updated the official title and contact information for the ''system manager(s)''. The Commission is also updating the ''retention and disposal'' section to cite the applicable General Records Schedule approved by NARA for government-wide use.

VII. FTC Miscellaneous Systems of Records

FTC–VII–3 (Computer Systems User Identification and Access Records—FTC). This SORN covers records that the FTC maintains on individual users of computer systems operated by the FTC or on its behalf in order to monitor and control their usage of such systems. The Commission has updated the official title and contact information for the ''system manager(s)''. The Commission is also updating the ''retention and disposal'' section to cite the applicable General Records Schedule approved by NARA for government-wide use.

FTC–VII–4 (Call Detail Records—FTC). This SORN covers records that the FTC maintains on FTC telephone usage by its employees, contractors, and other individuals. The Commission has updated the official title and contact information for the ''system manager(s)''. The Commission is also updating the ''retention and disposal'' section to cite the applicable General Records Schedule approved by NARA for government-wide use.

FTC–VII–5 (Property Management System—FTC). This SORN covers property logs or other records that the FTC maintains to account for FTC office equipment, keys, or other FTC property assigned to individual employees or others. The Commission is updating the contact information for the ''system manager(s)''. Finally, the Commission is updating the ''retention and disposal'' section to cite the applicable General Records Schedule approved by NARA for government-wide use.

FTC–VII–7 (Information Technology Service Ticket System—FTC). This SORN applies to records maintained by or on behalf of the agency to track FTC ''help desk'' requests or other information from or about FTC employees and contractors relating to computer assistance, repairs, loss, etc., of FTC equipment and IT resources. The Commission has updated the official title and contact information for the ''system manager(s)''. The Commission is also updating the ''retention and disposal'' section to cite the applicable General Records Schedule approved by NARA for government-wide use.

FTC–VII–8 (Administrative Service Order System—FTC). This SORN covers the database system used by the FTC's Administrative Service Office to track and fulfill requests made by employees or other individuals for building repairs, maintenance, or other administrative services. The Commission has updated the official title and contact information for the ''system manager(s)''. The Commission is also updating the ''retention and disposal'' section to cite the applicable General Records Schedule approved by NARA for government-wide use.

FTC Systems of Records Notices

In light of the updated SORN template set forth in revised OMB Circular A–108 (2016), the FTC is reprinting the entire text of each amended SORN for the public's benefit, to read as follows:

* * * * *

II. Federal Trade Commission Personnel Systems of Records

SYSTEM NAME AND NUMBER:

Learning Management System–FTC (FTC–II–12).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. For other locations where records may be maintained or accessed, see Appendix III (Locations of FTC Buildings and Regional Offices), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 80 FR 9460, 9465 (Feb. 23, 2015).

SYSTEM MANAGER(S):

Chief Human Capital Officer, Human Capital Management Office (HCMO), Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, email: *SORNs@ftc.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act, 15 U.S.C. 41 *et seq.;* 5 U.S.C. ch. 41; 5 CFR 410.701.

PURPOSE(S) OF THE SYSTEM:

To provide information to agency managers necessary to indicate the

training that has been requested and provided to individual employees; to determine course offerings and frequency; and to manage the training program administered by the Human Capital Management Office. Since this system is legally part of the OPM's Government-wide system of records notice for this system, OPM/GOVT–1, it is subject to the same purposes set forth for that system by OPM, see OPM/GOVT–1, or any successor OPM system notice that may be published for this system (visit *www.opm.gov* for more information).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who, at the time the records are added to the system, are FTC employees who registered to attend training courses offered by the Human Capital Management Office.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee name, position title, pay plan, series, grade, organizational code, work address, work phone number, supervisor, work email address, course number, course title, course date and time, attendance indicator, separation date, etc.

RECORD SOURCE CATEGORIES:

Individual about whom the record is maintained, supervisors, managers, and Human Capital Management Office staff responsible for the training program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Since this system is legally part of the OPM's Government-wide system of records notice for this system, OPM/GOVT–1, it is subject to the same routine uses set forth for that system by OPM, see OPM/GOVT–1, or any successor OPM system notice that may be published for this system (visit *www.opm.gov* for more information).

For other ways that the Privacy Act permits the FTC to use or disclose system records outside the agency, see Appendix I (Authorized Disclosures and Routine Uses Applicable to All FTC Privacy Act Systems of Records), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 83 FR 55541, 55542–55543 (Nov. 6, 2018).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in electronic record systems and temporary paper printouts.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Indexed by employee name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Employee training records are generally retained according to General Records Schedule (GRS) 2.6, issued by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access is restricted to agency personnel or contractors whose responsibilities require access. Paper records are maintained in lockable rooms or file cabinets. Access to electronic records is controlled by ''user ID'' and password combination and/or other appropriate electronic access and network controls (*e.g.,* firewalls). FTC buildings are guarded and monitored by security personnel, cameras, ID checks, and other physical security measures.

RECORD ACCESS PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

CONTESTING RECORD PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

NOTIFICATION PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

75 FR 52749–52751 (August 27, 2010)
73 FR 33591–33634 (June 12, 2008).

SYSTEM NAME AND NUMBER:

Staff Time and Activity Reporting (STAR) System–FTC (FTC–II–13).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Financial Management Office, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. For other locations where records may be maintained or accessed, see Appendix III (Locations of FTC Buildings and Regional Offices), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 80 FR 9460, 9465 (Feb. 23, 2015).

SYSTEM MANAGER(S):

Chief Financial Officer, Financial Management Office, Office of the Executive Director, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, email: *SORNs@ftc.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C., subtitle III, chapter 35; 31 U.S.C. 1104, 1105, and 1115; 5 U.S.C. 306; OMB Circular A–11; OMB Bulletin 97–01.

PURPOSE(S) OF THE SYSTEM:

To track the time spent by FTC staff on individual investigations, projects, and other activities of the agency and to compare expended staff time against statutory mandates and FTC policy; to generate program and performance information for annual budget submissions, Government Performance and Results Act (GPRA) plans and reports, and agency financial statements that are provided to Congress, the Office of Management and Budget (OMB), the Commission, and others.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former FTC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee names; staff time reported in hours, by mission, organization, and specific FTC matter, activity, or program.

RECORD SOURCE CATEGORIES:

FTC employees and consultants, including staff responsible for STAR data entry, STAR coordinators, STAR administrative officers, STAR approving officials, and STAR administrators.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system may be disclosed to or shared with Congress, OMB, or others where relevant and necessary in connection with annual budget submissions, GPRA plans and reports, and agency financial statements.

For other ways that the Privacy Act permits the FTC to use or disclose

system records outside the agency, see Appendix I (Authorized Disclosures and Routine Uses Applicable to All FTC Privacy Act Systems of Records), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 83 FR 55541, 55542–55543 (Nov. 6, 2018).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Data are stored in an electronic database. Paper may be used for inputs and paper

printouts generated by the database. Records are stored either on site or at an off-site managed information storage facility.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Indexed by employee name and by various codes for mission, organization and specific FTC matter, activity, or program.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained in accordance with the National Archives and Records Administration's General Records Schedule 5.7.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

For records other than those made public, access is restricted to agency personnel or contractors whose responsibilities require access. Paper records are maintained in lockable rooms or file cabinets. Access to electronic records is controlled by ''user ID'' and password combination and/or other appropriate electronic access or network controls (*e.g.,* firewalls). FTC buildings are guarded and monitored by security personnel, cameras, ID checks, and other physical security measures.

RECORD ACCESS PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

CONTESTING RECORD PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

NOTIFICATION PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

73 FR 33591–33634 (June 12, 2008).

* * * * *

SYSTEM NAME AND NUMBER:

Travel Management System—FTC (FTC–III–2).

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Financial Management Office, Federal Trade Commission, 600 Pennsylvania Ave. NW, Washington, DC 20580. This system of records is principally operated and maintained off-site for the FTC under an interagency agreement with the Department of the Treasury's Administrative Resource Center, which is part of the Bureau of Fiscal Services, although this system is also intended to include any miscellaneous official FTC travel data that may be maintained on-site by individual FTC offices and retrieved by name or other personally assigned identifier about individuals on official FTC travel. For other locations where records may be maintained or accessed, see Appendix III (Locations of FTC Buildings and Regional Offices), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 80 FR 9460, 9465 (Feb. 23, 2015).

SYSTEM MANAGER(S):

Chief Financial Officer, Financial Management Office, Federal Trade Commission, 600 Pennsylvania Ave. NW, Washington, DC 20580, email: *SORNs@ftc.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3511, 3512 and 3523; 5 U.S.C. Chapter 57; and implementing Federal Travel Regulations (41 CFR parts 301–304).

PURPOSE(S) OF THE SYSTEM:

To plan, authorize, arrange, process and manage official FTC travel; to maintain records on individuals who are current FTC employees on travel and individuals being provided travel by the Government; to obtain travel authorizations; to prepare and submit local travel vouchers; to generate travel expense reports; and to enable travel agents who are under contract to the Federal government to issue and account for travel provided to individuals.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FTC employees or other individuals (*e.g.,* witnesses) who travel on official business; FTC administrative staff who perform administrative tasks in the system on behalf of traveling employees or other individuals; and FTC supervisors who approve travel plans for employees or others.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, Social Security numbers, home and/or business phone numbers, home and/or business addresses, vendor ID numbers, email addresses, emergency contact information (names, addresses, and phone numbers), and credit card information (personal and/or government-issued). For traveling FTC employees or other individuals (*e.g.,* witnesses) only, additional data may be maintained, such as passport numbers (for international travelers), frequent flyer or other rewards membership numbers, and trip-specific information (travel dates, flight numbers, destinations, accommodations, vehicle rental, miscellaneous expenses claimed).

Other types of records covered by this system are set out in the Department of Treasury's Treasury.009 (Treasury Financial Management Systems), and the General Services Administration's (GSA) separate government-wide Privacy Act system of records notice applicable to this system, GSA/GOVT–4, or any successor system notice for this system.

RECORD SOURCE CATEGORIES:

Traveling employees or other individuals (*e.g.,* witnesses), FTC administrative staff, FTC supervisors, credit card companies and travel service providers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) For any routine use noted in the GSA Privacy Act system of records notice applicable to this system, GSA/GOVT–4, or any successor system notice for this system.

For other ways that the Privacy Act permits the FTC to use or disclose system records outside the agency, see Appendix I (Authorized Disclosures and Routine Uses Applicable to All FTC Privacy Act Systems of Records), available on the FTC's website at

https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems and at 83 FR 55541, 55542–55543 (Nov. 6, 2018).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Data are entered into system database by traveling individuals and/or administrative staff through system website and stored electronically; temporary paper printouts. Miscellaneous travel data maintained by individual FTC offices are stored in electronic files on secured agency servers.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Indexed by individual name and travel order number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

See National Archives and Records Administration's General Records Schedules 1.1, 2.2 and 5.1.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access is restricted to agency personnel or contractors whose responsibilities require access. Paper records are maintained in lockable rooms or file cabinets. Access to electronic records is controlled by ''user ID'' and password combination and/or other appropriate electronic access or network controls (*e.g.,* firewalls). FTC buildings are guarded and monitored by security personnel, cameras, ID checks, and other physical security measures. See GSA/GOVT–4 for additional safeguards applicable to electronic records in this system.

RECORD ACCESS PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

CONTESTING RECORD PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

NOTIFICATION PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

82 FR 50872–50882 (November 2, 2017);

75 FR 52749–52751 (August 27, 2010);

73 FR 33591–33634 (June 12, 2008).

SYSTEM NAME AND NUMBER:

Financial Management System—FTC (FTC–III–3).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Financial Management Office, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. This system of records is principally operated and maintained off-site for the FTC under interagency agreement with the Department of the Treasury's Administrative Resource Center (ARC), which is part of the Bureau of Fiscal Services.

For other locations where records may be maintained or accessed, see Appendix III (Locations of FTC Buildings and Regional Offices), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 80 FR 9460, 9465 (Feb. 23, 2015).

SYSTEM MANAGER(S):

(1) Chief Financial Officer, Financial Management Office, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, email: *SORNs@ftc.gov;*

(2) The following system manager has overall responsibility for the Federal Financial System: Fiscal Accounting, Assistant Commissioner, Department of the Treasury's Administrative Resource Center (ARC).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4111(b), 5514, 5701 *et seq.;* 26 U.S.C. 6103(m); 31 U.S.C. 3512, 3711, 3716; 41 CFR parts 301–304; U.S. Treasury Financial Manual.

PURPOSE(S) OF THE SYSTEM:

To perform core accounting functions, which includes but is not limited to supporting and documenting expenses incurred in the performance of official agency duties; to bill and follow-up; to pay creditors; to account for goods and services received; to account for funds paid and received; and to process travel authorizations and claims.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who claim reimbursement from the FTC for travel or other reimbursable expenses personally incurred; individuals doing business as sole proprietors; and individuals who are reimbursed by the FTC for travel or other miscellaneous expenses.

CATEGORIES OF RECORDS IN THE SYSTEM:

For current and former FTC employees, records include names, home addresses, employee supplier numbers, Social Security numbers, banking account numbers for electronic fund transfer payments, invoices and claims for reimbursements.

For non-employee individuals and sole proprietors, records include names, home or business addresses, Social Security numbers, banking account numbers for electronic fund transfer payments, invoices and claims for reimbursement. Records in this system are subject to the Privacy Act only to the extent, if any, they are about an individual within the meaning of the Act, and not if they are about a business or other non-individual.

The FTC system is also covered by the system notice published by the ARC for this system, Treasury.009 (Treasury Financial Management Systems), or any successor system notice published by ARC for this system.

RECORD SOURCE CATEGORIES:

Employees and former employees seeking reimbursement from the FTC for expenses personally incurred, vendor as a corporate entity or federal agency, individual vendor (*e.g.,* sole proprietors), and individual point of contact for a vendor.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system:

(1) May be disclosed for any routine use noted in the Department of Treasury Privacy Act system of records notice applicable to their system, Treasury.009 (Treasury Financial Management Systems, or any successor system notice for this system; and

(2) To the extent they pertain to FTC acquisition activities, may be transmitted or disclosed to the General Service Administration's Federal Procurement Data System, a central repository for statistical information on Government contracting, for purposes of providing public access to Government-wide data about agency contract actions.

For other ways that the Privacy Act permits the FTC to use or disclose system records outside the agency, see Appendix I (Authorized Disclosures and Routine Uses Applicable to All FTC Privacy Act Systems of Records), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 83 FR 55542–55543 (Nov. 6, 2018).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Stored on magnetic disks and tape and on paper.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrievable electronically, and are indexed or indexable by virtually any data field available (see record categories above).

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are retained in accordance with the applicable National Archives and Records Administration schedules, including GRS 1.1, Item 10. Most records are destroyed 6 years after final payment or cancellation, but longer retention is authorized if required for business use.

RECORD ACCESS PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

CONTESTING RECORD PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

NOTIFICATION PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

80 FR 9460–9465 (February 23, 2015) 73 FR 33591–33634 (June 12, 2008).

SYSTEM NAME AND NUMBER:

Automated Acquisitions System–FTC (FTC–III–4).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. This system of records is principally operated and maintained off-site for the FTC under interagency agreement with the Department of the Treasury's Administrative Resource Center (ARC), which is part of the Bureau of Fiscal Services.

For other locations where records may be maintained or accessed, see Appendix III (Locations of FTC Buildings and Regional Offices), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 80 FR 9460, 9465 (Feb. 23, 2015).

SYSTEM MANAGER(S):

Chief, Acquisitions Branch, Financial Management Office, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, email: *SORNs@ftc.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3512; 41 U.S.C. 401 *et seq.;* Federal Acquisition Regulation, 48 CFR.

PURPOSE(S) OF THE SYSTEM:

To manage the work and fulfillment process for the procurement (acquisition) of goods and services by the FTC, and provide short-term electronic storage of FTC procurement records; to help prepare agency financial reports.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former agency vendors, if any, who are ''individuals'' within the meaning of the Privacy Act; FTC staff who have requisitioned goods or services; FTC authorizing officials; FTC staff who are on the routing list for the requisition.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of vendor; business address, business telephone, tax identification number (*i.e.,* employer identification number or Social Security number), and bank routing and account number(s); supporting documents and related correspondence from active contracts and also from pending contracts prior to formal acceptance; name, phone or other administrative point-of-contact information for FTC staff involved in the requisition. Records in this system are subject to the Privacy Act only to the extent, if any, they are about an individual within the meaning of the Act, and not if they are about a business or other non-individual.

The FTC system is also covered by the system notice published by the government-wide GSA/GOVT–10 (Federal Acquisition Regulation (FAR) Data Collection System), or any successor system notice published for this system.

RECORD SOURCE CATEGORIES:

Vendors, FTC staff who requisition goods or services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system pertaining to FTC acquisition activities may be transmitted or disclosed to the General Service Administration's Federal Procurement Data System, a central repository for statistical information on Government contracting, for purposes of providing public access to Government-wide data about agency contract actions.

For other ways that the Privacy Act permits the FTC to use or disclose system records outside the agency, see Appendix I (Authorized Disclosures and Routine Uses Applicable to All FTC Privacy Act Systems of Records), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 83 FR 55542–55543 (Nov. 6, 2018).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Data entered and stored in a structured electronic database using a commercial software application. Paper may be used for inputs and paper printouts generated by the database. Records are stored either on site or at an off-site managed information storage facility.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Indexed by requisition number, contract number, vendor name and number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and destroyed in accordance with General Records Schedule (GRS) 1.1. Inputs, outputs, and ad hoc reports are covered by GRS 5.2, item 020, and can be destroyed upon verification of successful creation of the final document or file, or when no longer needed for business use, whichever is later.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access is restricted to agency personnel or contractors whose responsibilities require access. Paper records are maintained in lockable rooms or file cabinets. Access to electronic records is controlled by ''user ID'' and password combination and/or other network access or security controls (*e.g.,* firewalls). FTC buildings are guarded and monitored by security personnel, cameras, ID checks, and other physical security measures. This system is also subject to periodic internal reviews and annual audits by the FTC Office of the Inspector General.

RECORD ACCESS PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

CONTESTING RECORD PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

NOTIFICATION PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

73 FR 33591–33634 (June 12, 2008).

* * * * *

SYSTEM NAME AND NUMBER:

National Do Not Call Registry System—FTC (FTC–IV–3).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. System database is maintained and operated off-site by a contractor. For other locations where records may be maintained or accessed, see Appendix III (Locations of FTC Buildings and Regional Offices), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 80 FR 9460, 9465 (Feb. 23, 2015).

SYSTEM MANAGER(S):

National Do Not Call Registry Program Manager, Division of Consumer Response and Operations, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, email: *SORNs@ftc.gov.*

See Treasury/FMS.017 for the system manager and address of the *www.pay.gov* system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act, 15 U.S.C. 41 *et seq.,* Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101–6108; Do-Not-Call Implementation Act, Pub. L. 108–10 (2003); Do-Not-Call Improvement Act of 2007, Pub. L. 110–187 (2008); Do-Not-Call Registry Fee Extension Act of 2007, Pub. L. 110–188 (2008).

PURPOSE(S) OF THE SYSTEM:

To maintain records of the telephone numbers of individuals who do not wish to receive telemarketing calls; to disclose such records to telemarketers, sellers, and their agents in order for them to reconcile their do-not-call lists with the Registry and comply with the do-not-call provisions of the Commission's Telemarketing Sales Rule, 16 CFR part 310; to enable the Commission and other law enforcement officials to determine whether a company is complying with the Rule; to provide statistical data that may lead to or be incorporated into law enforcement investigations and litigation; or for other law enforcement, regulatory or informational purposes. Information submitted by or compiled on telemarketers, sellers, and their agents is used for purposes of fee collection, authorizing their access to the system, and related purposes and uses as described in this notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who notify the Commission that they do not wish to receive telemarketing calls. Individually identifiable information (*e.g.,* name, email address) that telemarketers, sellers, or their agents must submit when paying for and obtaining access to the system is covered by this system only to the extent, if any, that such information is ''about [the] individual'' within the meaning of the Privacy Act, and is not about the telemarketer, seller, or agent acting in a non-individual business capacity.

CATEGORIES OF RECORDS IN THE SYSTEM:

Telephone numbers of individuals who do not wish to receive telemarketing calls; information automatically generated by the system, including date and/or time that the telephone number was placed on or removed from the Registry; and other information that the individual may be asked to provide voluntarily (such as email address, if the individual registers through the National Do Not Call Registry website). Telemarketers, sellers, and their agents are also required to submit information to pay for and obtain authorized access to the system, including the names of, or other identifiers that may be associated with, individuals (*e.g.,* name of contact person, name of the person to whom the credit card is issued, email address, etc.). Such information is part of this FTC system of records only to the extent, if any, that such information is maintained in the FTC's records and is ''about [the] individual'' within the meaning of the Privacy Act, and not about a telemarketer, seller, or agent acting in a non-individual business capacity.

Otherwise, user fee payment data from telemarketers, sellers, and their agents required to participate in the National Do Not Call Registry are principally collected and maintained on behalf of the Government by the *www.pay.gov* website operated by the Department of Treasury Financial Management Service (FMS). Those data are covered by the applicable system notice published by Treasury/FMS, Treasury/FMS.017 (Collections Records), and any successor system notice that may be published for that system

RECORD SOURCE CATEGORIES:

Individuals who inform the Commission through the procedures established by the Commission that they do not wish to receive telemarketing calls. Some records may come from do-not-call lists that some states or organizations separately maintain. Record sources for this system may also include telemarketers, sellers, and agents, but only to the extent, if any, that they are ''individuals'' within the meaning of the Privacy Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Telephone numbers, but not any email addresses, submitted by individuals may be made available or

referred on an automatic or other basis to telemarketers, sellers, and their agents for the purpose of determining or verifying that an individual does not wish to receive telemarketing calls;

(2) Information submitted by or compiled on telemarketers, sellers, and their agents may be used and disclosed to other Federal, state, or local government authorities for payment or billing purposes, including referral to debt collection agencies or other governmental entities for collection, tax reporting, or other related purposes. Information that is submitted by or compiled on telemarketers, sellers, and their agents and that is incorporated into the *www.pay.gov* system shall also be subject to routine uses, if any, that may be separately published for that system, Treasury/FMS.017 (Collections Records), or any successor system notice for that system.

For other ways that the Privacy Act permits the FTC to use or disclose system records outside the agency, see Appendix I (Authorized Disclosures and Routine Uses Applicable to All FTC Privacy Act Systems of Records), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 83 FR 55542–55543 (Nov. 6, 2018).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in the system are collected and maintained by an off-site FTC contractor in an electronic database with Web-based access subject to strict security controls (see ''Safeguards'' below).

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Indexed by area code and phone number of individuals who have informed the Commission that they do not wish to receive telemarketing calls. May also be retrieved by other data, if any, compiled or otherwise maintained with the record. For information submitted by or compiled on telemarketers, sellers, or their agents, records may be indexed and retrieved by any category of data that is submitted by or compiled on such telemarketers, sellers, or agents.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Information is retained until the individual requests deletion of their information from the system or when the agency determines it no longer has a business need for the data. Disposition is in accordance with applicable records schedules issued or approved by the National Archives and Records Administration (GRS 5.2, item 020 Intermediary records) and in accordance with agency electronic data deletion procedures. The retention and destruction of payment data collected from telemarketers, sellers, and their agents by Treasury's FMS is described in the system notice for the *www.pay.gov* system, Treasury/FMS.017.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access is generally restricted to those agency personnel, contractors and other law enforcement users subject to confidentiality agreements whose responsibilities require access, or to approved telemarketers, sellers, and their agents. Electronic access is subject to login ID, password, and other electronic access and security controls (*e.g.,* firewalls). Contractors are required to sign confidentiality and nondisclosure agreements.

RECORD ACCESS PROCEDURES:

To request access to any information maintained with your registration that is not available to you through the automated dial-in system or the designated website described in the notification procedures above, you must submit your request in writing. See Appendix II for details. The same access procedure applies to the extent, if any, that the Privacy Act applies to information submitted by or compiled on telemarketers, sellers, or their agents, where that information is not made available for review or amendments when the telemarketer, seller, or agent accesses the system.

CONTESTING RECORD PROCEDURES:

Where an individual believes the system has erroneously recorded or omitted information that is collected and maintained by the system, the individual will be afforded the opportunity to register, change, or delete that information after the automated system identifies and verifies the telephone number from which the individual is calling, if the individual is using the designated website, or the individual provides other identifying information, if requested by the automated system. To contest the accuracy of any other information that is not accessible to the individual through the automated dial-in system or website as described in the ''Notification procedures'' section above, the request must be submitted to the FTC in writing. See Appendix II for details. The same written request requirement applies to telemarketers, sellers, or their agents (to the extent, if any, that they are ''individuals'' within the meaning of the Privacy Act) when seeking to contest the accuracy of system information maintained on them, except for system information, if any, that can be contested or corrected through the automated system.

NOTIFICATION PROCEDURES:

To obtain notification of whether the system contains a record pertaining to that individual (*i.e.,* the individual's telephone number), individuals use a dial-in system or a designated website that will enable the identification and verification of their telephone numbers. Individuals filing written requests pursuant to 16 CFR 4.13 will be acknowledged and directed to use those automated systems. To the extent, if any, that the Privacy Act applies to information submitted by or compiled on telemarketers, sellers, or their agents, the system provides notice (*i.e.,* confirms) that the system is maintaining such information when an individual accesses the system using the account number that was previously assigned to the telemarketer, seller, or agent at the time that entity originally entered information into the system to establish the relevant account.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

74 FR 17863–17866 (April 17, 2009)
73 FR 33591–33634 (June 12, 2008).

* * * * *

SYSTEM NAME AND NUMBER:

Computer Systems User Identification and Access Records–FTC (FTC–VII–3).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

For other locations where records may be maintained or accessed, see Appendix III (Locations of FTC Buildings and Regional Offices), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 80 FR 9460, 9465 (Feb. 23, 2015).

SYSTEM MANAGER(S):

Core Engineering and ISSO Services Program Manager, Office of the Chief Information Officer, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, email: *SORNs@ftc.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act, 15 U.S.C. 41 *et seq.;* Federal Information

Security Management Act of 2002, Pub. L. 107–347, Title III.

PURPOSE(S) OF THE SYSTEM:

To monitor usage of computer systems; to support server and desktop hardware and software; to ensure the availability and reliability of the agency computer facilities; to help document and/or control access to various computer systems; to audit, log, and alert responsible FTC personnel when certain personally identifying information is accessed in specified systems; to prepare budget requests for automated services; to identify the need for and to conduct training programs, which can include the topics of information security, acceptable computer practices, and FTC information security policies and procedures; to monitor security on computer systems; to add and delete users; to investigate and make referrals for disciplinary or other action if improper or unauthorized use is suspected or detected.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Commission employees and others (*e.g.,* contractors) with access to FTC computer systems, including various system platforms, applications, and databases (*e.g.,* Outlook, Business Objects, Oracle, Redress, STAFFID, CIS, etc.), operated by the FTC or by a contractor for the FTC.

CATEGORIES OF RECORDS IN THE SYSTEM:

This Privacy Act system consists of the login and other user identification and access records that FTC computer systems routinely compile and maintain about users of those systems. These records include user data such as: user name; email address; employee or other user identification number; organization code; systems or services to which the individual has access; systems and services used; amount of time spent using each system; number of usage sessions; and user profile. These system records include log-in, passphrase, and other system usage files and directories when they contain data on specific users. Many FTC computer systems collect and maintain additional information, other than system use data, about individuals inside and outside the FTC. See a complete list of FTC Privacy Act systems on the FTC's website, *http://www.ftc.gov/foia/listofpaysystems.shtm,* to learn about other categories of information collected and maintained about individuals in the FTC's computer systems.

RECORD SOURCE CATEGORIES:

Individual about whom record is maintained; internal and external information systems that record usage.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system may be disclosed to contractors in connection with developing, maintaining, operating or servicing FTC computerized systems.

For other ways that the Privacy Act permits the FTC to use or disclose system records outside the agency, see Appendix I (Authorized Disclosures and Routine Uses Applicable to All FTC Privacy Act Systems of Records), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 83 FR 55542–55543 (Nov. 6, 2018).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic and paper records.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Indexed by individual's name; employee identification number; and organization code, or other searchable data fields or codes.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained according to GRS 3.2, item 030, and are destroyed when business use ceases.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access is restricted to agency personnel and contractors whose responsibilities require access. Paper records, if any, maintained in lockable rooms or file cabinets. Access to electronic records is controlled by ''user ID'' and passphrase combination and/or other appropriate electronic access or network controls (*e.g.,* firewalls). FTC buildings are guarded and monitored by security personnel, cameras, ID checks, and other physical security measures.

RECORD ACCESS PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

CONTESTING RECORD PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

NOTIFICATION PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

80 FR 9460–9465 (February 23, 2015)
74 FR 17863–17866 (April 17, 2009)
73 FR 33591–33634 (June 12, 2008).

SYSTEM NAME AND NUMBER:

Call Detail Records–FTC (FTC–VII–4).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

For other locations where records may be maintained or accessed, see Appendix III (Locations of FTC Buildings and Regional Offices), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 80 FR 9460, 9465 (Feb. 23, 2015).

SYSTEM MANAGER(S):

Core Engineering and ISSO Services Program Manager, Office of the Chief Information Officer, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, email: *SORNs@ftc.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*

PURPOSE(S) OF THE SYSTEM:

To manage agency telecommunications resources; to monitor appropriate use of such resources; to detect and deter possible improper or unauthorized use of such resources; in cases where such use is detected, to determine whether disciplinary or other action, assessment, charge, or referral is warranted; to determine appropriate types and levels of service that should be available to agency staff; and to review and authorize payment of telecommunications invoices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FTC personnel, consultants, and contractors assigned office telephones, cell phones, telephone calling cards, pagers or other telecommunications resources.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, office telephone number, cell phone number, telephone calling card number, pager number, originating telephone number, telephone numbers called, length of telephone calls, cost of telephone calls.

RECORD SOURCE CATEGORIES:

Telephone assignment records; computer software that captures telephone call information and permits query and reports generation; logs, reports, or other service records that the FTC may receive from telecommunications service providers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system may be disclosed:

(1) To a telecommunications company and/or the General Services Administration when providing the FTC with telecommunications support in order to verify billing or perform other servicing to the account; and

(2) To respond to a Federal agency's request made in connection with the hiring or retention of an employee, the letting of a contract or issuance of a grant, license or other benefit by the requesting agency, but only to the extent that the information disclosed is relevant and necessary to the requesting agency's decision on the matter.

For other ways that the Privacy Act permits the FTC to use or disclose system records outside the agency, see Appendix I (Authorized Disclosures and Routine Uses Applicable to All FTC Privacy Act Systems of Records), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 83 FR 55542–55543 (Nov. 6, 2018).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Maintained in paper and/or other digital or non-digital formats.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Indexed by office telephone number, cell phone number, pager number, or telephone calling card number, or individual's name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

See National Archives and Records Administration General Records Schedule 3.1, item 020, regarding information technology operations and maintenance records which are destroyed three years after project completion, but longer retention is authorized if required for business use. See GRS 5.5, item 20, regarding mail, printing, and telecommunication services control records that are retained for one year, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access is restricted to agency and contractor personnel whose official responsibilities require access. Paper records are maintained in lockable cabinets or offices. Access to electronic records is protected by ''user ID'' and password combination and/or other electronic access and network controls (*e.g.,* firewalls). FTC buildings are guarded and monitored by security personnel, cameras, ID checks, and other physical security measures.

RECORD ACCESS PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

CONTESTING RECORD PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

NOTIFICATION PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

80 FR 9460–9465 (February 23, 2015)
74 FR 17863–17866 (April 17, 2009)
73 FR 33591–33634 (June 12, 2008).

SYSTEM NAME AND NUMBER:

Property Management System–FTC (FTC–VII–5).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

For other locations where records may be maintained or accessed, see Appendix III (Locations of FTC Buildings and Regional Offices), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 80 FR 9460, 9465 (Feb. 23, 2015).

SYSTEM MANAGER(S):

Director, Administrative Services Office, Office of the Executive Director, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, email: *SORNs@ftc.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act, 15 U.S.C. 41 *et seq.;* Federal Property and Administrative Services Act of 1949; Pub. L. 84–863 (1956).

PURPOSE(S) OF THE SYSTEM:

To maintain and control physical resources, including to document the assignment to and acknowledgment of individual responsibility for such resources; to conduct routine and periodic maintenance on equipment; to maintain, confirm, and audit an inventory of physical resources.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present Commission employees or others assigned responsibility for Commission physical resources.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of individual; employee or other identification number; property item assigned to individual; equipment maintenance information. This system also includes miscellaneous property management records pertaining to individuals assigned specific items of agency property, such as property passes or acknowledgment forms completed and signed by individuals.

RECORD SOURCE CATEGORIES:

Individual responsible for the equipment and staff responsible for maintaining the equipment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system may be disclosed to contractors in connection

with surveying, maintaining, or otherwise servicing or tracking agency physical resources.

For other ways that the Privacy Act permits the FTC to use or disclose system records outside the agency, see Appendix I (Authorized Disclosures and Routine Uses Applicable to All FTC Privacy Act Systems of Records), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 83 FR 55542–55543 (Nov. 6, 2018).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic and paper records.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Indexed by employee name, employee identification number, and assigned organization.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The applicable retention schedules are National Archives and Records Administration (NARA) General Records Schedules (GRS) 5.4 and 5.6. Retention periods can vary from 3 months to 3 years, depending on the record. At the FTC, records are generally retained for the life of the physical resource.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access is restricted to agency personnel or contractors whose responsibilities require access. Paper records are maintained in lockable rooms or file cabinets. Access to electronic records is controlled by ''user ID'' and password combination and/or other appropriate electronic access and network controls (*e.g.,* firewalls). FTC buildings are guarded and monitored by security personnel, cameras, ID checks, and other physical security measures.

RECORD ACCESS PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

CONTESTING RECORD PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

NOTIFICATION PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

73 FR 33591–33634 (June 12, 2008).

* * * * *

SYSTEM NAME AND NUMBER:

Information Technology Service Ticket System–FTC (FTC–VII–7).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. System data are currently maintained off-site by an FTC contractor.

For other locations where records may be maintained or accessed, see Appendix III (Locations of FTC Buildings and Regional Offices), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 80 FR 9460, 9465 (Feb. 23, 2015).

SYSTEM MANAGER(S):

Core Engineering and ISSO Services Program Manager, Office of the Chief Information Officer, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, email: *SORNs@ftc.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*

PURPOSE(S) OF THE SYSTEM:

To register, track and control usage of office telephones, cell telephones and other telecommunication devices by individual users; to record the receipt of requests for information technology (IT) service by the FTC's enterprise service desk (*i.e.,* help desk) and the actions taken to resolve those requests; to provide agency management with information identifying trends in questions and problems for use in managing the Commission's hardware and software resources. The FTC's help desk, currently operated by a contractor, generates and maintains these records (''service tickets'') in the course of fulfilling requests or orders to create or close email and other network accounts when an individual begins or ends employment at the FTC, to answer questions or provide assistance when FTC staff have problems with computer or network access or other FTC IT equipment or software issues, etc.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FTC employees, contractors or other authorized individuals who have requested service related to the automated information technology equipment and systems available to the FTC staff (*e.g.,* computers, laptops, etc.).

CATEGORIES OF RECORDS IN THE SYSTEM:

FTC personnel, consultants, and contractors assigned office telephones, cell phones, or other telecommunications resources; name of requesting individual, organization code, telephone number, date of reported problem, nature of problem, and action taken to resolve problem.

RECORD SOURCE CATEGORIES:

Individual about whom the record is maintained and staff who responded to the request for service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system may be compiled and used by the FTC's contractors to track and fulfill IT service requests. For other ways that the Privacy Act permits the FTC to use or disclose system records outside the agency, see Appendix I (Authorized Disclosures and Routine Uses Applicable to All FTC Privacy Act Systems of Records), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 83 FR 55542–55543 (Nov. 6, 2018).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Data are entered and stored in the system electronically by the FTC's help desk contractor using proprietary software in a structured database.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Indexed by employee name and tracking number assigned to each service request.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained according to GRS 5.8 and are destroyed 1 year after resolved, or when no longer needed for business use, whichever is appropriate.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access is restricted to agency personnel and contractors whose

responsibilities require access. Electronic access to FTC records in the contractor's database is provided via the internet, using unique IDs and password combinations, and can be accessed only from internet Protocol (IP) addresses belonging to the FTC. When not in use, access automatically ''times out'' (cuts off) after 30 minutes. The contractor's servers have firewalls and intrusion detection, and are maintained in locked rooms secured with electronic card access.

RECORD ACCESS PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

CONTESTING RECORD PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

NOTIFICATION PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

80 FR 9460-9465 (February 23, 2015)
73 FR 33591–33634 (June 12, 2008).

SYSTEM NAME AND NUMBER:

Administrative Service Call System–FTC (FTC–VII–8).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

For other locations where records may be maintained or accessed, see Appendix III (Locations of FTC Buildings and Regional Offices), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 80 FR 9460, 9465 (Feb. 23, 2015).

SYSTEM MANAGER(S):

Chief Administrative Services Officer, Administrative Services Office, Office of the Executive Director, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, email: *SORNs@ftc.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*

PURPOSE(S) OF THE SYSTEM:

To record the receipt of requests for service and the actions taken to resolve those requests; to provide agency management with information identifying trends in questions and problems for use in managing the Commission's office space, furniture, or other physical resources and property.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former FTC employees, contractors, or other authorized individuals who request or previously requested service related to FTC building maintenance and administrative support services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include name of requesting individual, organization code, telephone number, date of reported problem, nature of problem, and action taken to resolve problem.

RECORD SOURCE CATEGORIES:

Individual about whom the record is maintained and staff who responded to the request for service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system may be disclosed to FTC contractors as needed for purposes of fulfilling service requests. For other ways that the Privacy Act permits the FTC to use or disclose system records outside the agency, see Appendix I (Authorized Disclosures and Routine Uses Applicable to All FTC Privacy Act Systems of Records), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 83 FR 55542–55543 (Nov. 6, 2018).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Service call records are maintained in an electronic database using a commercial software application. Work orders are generated from these records and printed out.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Indexed by name of requesting individual and tracking number assigned to each service request.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained according to GRS 5.8 and are destroyed 1 year after resolved, or when no longer needed for business use, whichever is appropriate.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access is restricted to agency personnel or contractors whose responsibilities require access. Access to electronic records is controlled by ''user ID'' and password combination and/or other appropriate electronic access and network controls (*e.g.,* firewalls). FTC buildings are guarded and monitored by security personnel, cameras, ID checks, and other physical security measures.

RECORD ACCESS PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

CONTESTING RECORD PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

NOTIFICATION PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

73 FR 33591–33634 (June 12, 2008).

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2020–06071 Filed 3–20–20; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Supplemental Evidence and Data Request on Platelet-rich Plasma for Wound Care in the Medicare Population

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for Supplemental Evidence and Data Submissions.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review on *Platelet-rich Plasma for Wound Care in the Medicare Population,* which is currently being conducted by the AHRQ's Evidence-based Practice Centers (EPC) Program. Access to published and unpublished pertinent scientific information will improve the quality of this review.

DATES: *Submission Deadline* on or before 30 days after the date of publication of this notice in the **Federal Register**.

ADDRESSES: *Email submissions: epc@ahrq.hhs.gov.*

Print submissions:

Mailing Address: Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E53A, Rockville, MD 20857

Shipping Address (FedEx, UPS, etc.): Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E77D, Rockville, MD 20857

FOR FURTHER INFORMATION CONTACT: Jenae Benns, Telephone: 301–427–1496 or Email: *epc@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency for Healthcare Research and Quality has commissioned the Evidence-based Practice Centers (EPC) Program to complete a review of the evidence for Platelet-rich Plasma for Wound Care in the Medicare Population. AHRQ is conducting this systematic review pursuant to Section 902(a) of the Public Health Service Act, 42 U.S.C. 299a(a).

The EPC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (*e.g.,* details of studies conducted). We are looking for studies that report on *Platelet-rich Plasma for Wound Care in the Medicare Population,* including those that describe adverse events. The entire research protocol is available online at: *https://www.ahrq.gov/sites/default/files/wysiwyg/research/findings/ta/topicrefinement/platelet-rich-plasma-protocol.pdf.*

This is to notify the public that the EPC Program would find the following information on *Platelet-rich Plasma for Wound Care in the Medicare Population* helpful:

- *A list of completed studies that your organization has sponsored for this indication.* In the list, please indicate whether results are available on *ClinicalTrials.gov* along with the *ClinicalTrials.gov* trial number.
- *For completed studies that do not have results on ClinicalTrials.gov,* a summary, including the following elements: Study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- *A list of ongoing studies that your organization has sponsored for this indication.* In the list, please provide the *ClinicalTrials.gov* trial number or, if the trial is not registered, the protocol for the study including a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.
- Description of whether the above studies constitute *ALL Phase II and above clinical trials* sponsored by your organization for this indication and an index outlining the relevant information in each submitted file.

Your contribution is very beneficial to the Program. Materials submitted must be publicly available or able to be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or information on indications not included in the review cannot be used by the EPC Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EPC Program website and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *https://www.effectivehealthcare.ahrq.gov/email-updates.*

The systematic review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions.

Key Questions (KQ)

Comparative Effectiveness Questions

KQ 1. What are the benefits and harms of treatment strategies including PRP alone with or without other wound care treatments compared to other wound care treatments in patients with diabetic, venous and pressure chronic wounds, for patient oriented outcomes such as at least the following: Completely closed/healed wounds (skin closure with complete re-epithelialization without drainage or dressing requirements), time to complete wound closure, wound reoccurrence, risk of developing wound infection, amputation, hospitalization (frequency and duration), return to baseline activities and function, reduction of wound size, pain, opioid medication use, exudate and odor, quality of life and adverse effects.

KQ 1.a. Describe the risk of bias in the studies examined by chronic wound type and study design.

KQ 1.b. What are the differences in formulation techniques and components between these preparations? What are the differences in application techniques, frequency of application and ''dosage'' (amounts applied)?

KQ 1.c. What are the study characteristics (such as those listed below) in each included investigation for each chronic wound type treated by PRP?

a. Comparator (if standard care, describe in detail)

b. Study inclusion/exclusion criteria and patient characteristics of enrollees, including at least age, gender, and general health (*e.g.,* status of HbA1c, diabetes, peripheral vascular disease, obesity, smoking, renal), wound characteristics, and prior and concurrent wound treatments.

c. Wound characteristics of enrollees including at least wound type, wound size/depth/duration/severity, vascular status, infection status and whether there were inter- and intra-rater checks of wound measurements.

d. Basic study design and conduct information including at least method of patient enrollment, care setting, and use of run-in period

e. Definition of wound characteristics: Definition of ''failure to heal'', and

definition of a successfully healed wound (re-epithelialization)

f. Method of applying skin PRP including provider, frequency of application, definition of standard of care, and handling of infections

g. Measurement and assessment methods including method of assessment(s); frequency and time points for assessment(s) (including long term assessments for durability of heal); and blinding of assessors

KQ 1.d. Based on the included studies, what are the patient characteristics commonly considered for the initiation and continuation/discontinuation of PRP in patients with chronic wounds?

Contextual Questions

KQ 2. What types of PRP preparations are currently being marketed in US medical practices (gel, liquid, etc.)?

Future Research Questions:

KQ 3. What PRP preparations are currently being investigated in ongoing trials?

KQ 4. What best practices in study design could be used to produce high quality evidence on PRP?

KQ 5. What are the evidence gaps found in this body of research?

PICOTS (Populations, Interventions, Comparators, Outcomes, Timing, Settings)

PICOTS elements	Inclusion criteria	Exclusion criteria
Populations	Adult patients (18 years and older) with • Lower extremity diabetic wounds • Lower extremity venous ulcers • Pressure wounds in any location	• Animals. • Children (age <18 years). • Wounds of other etiologies. • Studies with mixed, non stratified diabetic wounds/venous ulcers/pressure wounds. • Traumatic wounds. • Peripheral arterial disease (PAD) related wounds in non diabetics (i.e., diabetic wounds are to be included regardless of the presence of PAD, but PAD alone wounds without diabetes are a reason of exclusion). • Wounds <4 weeks.
Intervention	Any preparation of autologous platelet-rich plasma with or without other treatments.	
Comparators	Any other wound care without PRP	None.
Outcomes	• Completely closed/healed wounds (skin closure with complete re-epithelialization without drainage or dressing requirements versus failure to heal). • Time to complete wound closure. • Healing durability (Time to wound reoccurrence). • Wound infection (improvement of wound infection or reduced risk of developing wound infection). • Amputation. • Hospitalization. • Return to baseline activities of daily living and function. • Wound size. • Pain. • Opioid medication use. • Quality of life. • Adverse effects.	None.
Timing		None.
Settings	Any	None.
Study design	KQ 1 • Original data • Any sample size • RCTs • Comparative observational studies • Relevant systematic reviews, or meta-analyses (used for identifying additional studies).	*In vitro* studies, non-original data (*e.g.*narrative reviews, editorials, letters, or erratum), single-arm observational studies, case series, qualitative studies, cost-benefit analysis, cross-sectional (*i.e.,* non-longitudinal) studies, before-after studies that do not have a comparison group, survey.
Subgroup analysis	• Age. • Gender. • Settings. • Comorbidities (*e.g.,* status of HbA1c, diabetes, peripheral vascular disease, obesity, smoking, renal disease, liver disease). • Wound characteristics (wound type, area, depth, volume, duration, severity, vascular status, infection status, and prior and concurrent wound treatments). • Anatomical location (lower extremity diabetic wounds only). • PRP formulation techniques. • PRP components. • PRP application techniques. • PRP frequency. • PRP "dosage" (amounts applied). • PRP offloading procedures (*e.g.,* total contact casting, removable CAM WalkerTM, irremovable offloading devices). • Use of immunosuppressant medication. • Nutrition status. • Pain medication (opioids, others).	

PICOTS elements	Inclusion criteria	Exclusion criteria
Publications	Studies published in English only	Foreign language studies.

Abbreviations: KQ = key question; PICOTS = populations, interventions, comparators, outcomes, timing, and settings; RCT = randomized controlled trial.

Dated: March 17, 2020.

Virginia Mackay-Smith,

Associate Director, Office of the Director, AHRQ.

[FR Doc. 2020–05994 Filed 3–20–20; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–20–0881]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Data Calls for the Laboratory Response Network'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on October 18, 2019 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) 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; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Data Calls for the Laboratory Response Network (OMB Control Number 0920–0881, Exp. 3/31/2020)—Extension—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The LRN Program Office maintains a database of information for each member laboratory that includes contact information as well as staff and equipment inventories. However, during emergency response, the LRN Program Office may conduct a Special Data Call to obtain additional information from LRN Member Laboratories in regards to biological preparedness. The LRN has not used the Generic 0920–0881 in the previous three years but it is critical that the LRN retain its ability to survey its members in a timely fashion during emergencies. Special Data calls may be conducted via queries that are distributed by broadcast emails or by survey tools (*i.e.,* Survey Monkey). This is a request for an extension to this generic clearance. CDC requests approval for 68 annual burden hours. There is no cost to respondents other than their time to respond to the data call.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Public Health Laboratorians	Special Data Call	136	1	30/60

Jeffrey M. Zirger,
Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–06021 Filed 3–20–20; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–20–1173]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Assessment of Potential Exposure from Private Wells for Drinking Water'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on September 17, 2019, to obtain comments from the public and affected agencies. CDC received five comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) 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; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Assessment of Potential Exposure from Private Wells for Drinking Water (OMB Control No. 0920–1173, Exp. 03/31/2020)—Extension—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Safe Drinking Water Act of 1974 (SDWA) ensures that most Americans are provided access to water that meets established public health standards. However, for over 38 million Americans who rely on private wells or other drinking water not protected by the SDWA (herein referred to as private wells), that is not the case. There is no comprehensive knowledge about the locations of private wells, the populations served by these sources, potential contaminants that might be present in private well water in specific areas of the country, or the potential health risks associated with drinking water from these sources.

The purpose of this generic clearance information collection request (Generic ICR) is to assess the health risks associated with exposure to contaminants in drinking water from private wells across varied geographic areas of the United States in partnership with the requesting agency (state, territorial, local, or tribal health department). The information obtained from these investigations will be used to describe health risks from exposure to contaminants in drinking water from private wells within a defined time period and geographic distribution. This information will be used to inform public health protection activities conducted by the requesting agencies.

The respondents are defined as adults at least 18 years old, who use private wells for drinking water, who are willing to receive and return a tap water sampling kit and urine specimen kit or to provide a blood specimen, and who are willing to answer survey questions. They will be recruited from geographic areas of interest as defined by the requesting agency.

This is an extension ICR. There are no changes to the number of respondents or burden hours requested. Based on our historical activities, we estimate that CDC will conduct up to 10 investigations per year. Each investigation will involve on average 200 respondents, for which CDC will screen 250 potential respondents. The total time burden requested is 2,084 hours. There will be no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Adults at least 18 years old using a private well for tap water.	Screening Form	2,500	1	6/60
	Questionnaire	2,000	1	35/60
	Urine Specimen and Tap Water Sample Collection.	2,000	1	20/60

Jeffrey M. Zirger,
Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–06022 Filed 3–20–20; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-20–0004; Docket No. CDC–2020–0031]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled National Disease Surveillance Program—II. Disease Summaries information collection. This collection is used to determine the prevalence of disease and for planning and evaluating programs for prevention and control of infectious diseases.

DATES: CDC must receive written comments on or before May 22, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0031 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. 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;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

National Disease Surveillance Program II Disease Summaries (OMB Control Number 0920–0004, Expiration Date 10/31/2020) — Revision — National Center for Immunization and Respiratory Diseases (NCIRD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC requests a three-year approval for the revision of the National Disease Surveillance Program II Disease Summaries information collection. As with the previous approval, these data are essential for measuring trends in diseases, evaluating the effectiveness of current preventive strategies, and determining the need to modify current preventive measures. The following diseases in this surveillance program are Influenza Virus, Caliciviruses, Respiratory and Enteric Viruses. Proposed revisions include removal of the National Outbreak Reporting System (NORS) from this information collection request (NORS is now being submitted as its own information collection request, separate from 0920–0004), and addition of bocavirus and norovirus to two worksheets (CDC 55.83A and CDC 55.83D). The data will enable rapid detection and characterization of outbreaks of known pathogens, as well as potential newly emerging viral pathogens.

The total burden estimate for all collection instruments in this revision request is 24,115. The frequency of response for each form will depend on the disease and surveillance need. This reduction in burden hours is primarily attributed to the removal of NORS from this information collection.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Epidemiologist	Attachment E—WHO COLLABORATING CENTER FOR INFLUENZA Influenza Virus Surveillance.	53	52	10/60	459
Epidemiologist	Attachment F—U.S. WHO Collaborating Laboratories Influenza Testing Methods Assessment.	113	1	10/60	19

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Epidemiologist	Attachment G—U.S. Outpatient Influenza-like Illness Surveillance Network (ILINet) Weekly—CDC 55.20.	1,800	52	10/60	15,600
Epidemiologist	Attachment H—U.S. Outpatient Influenza-like Illness Surveillance Network (ILINet) Workfolder 55.20E.	1,800	1	5/60	150
Epidemiologist	Attachment J—Influenza-Associated Pediatric Mortality—Case Report Form.	57	2	30/60	57
Epidemiologist	Attachment K—Human Infection with Novel Influenza A Virus Case Report Form.	57	2	30/60	57
Epidemiologist	Attachment M—Human Infection with Novel Influenza A Virus Severe Outcomes.	57	1	90/60	86
Epidemiologist	Attachment P—Novel Influenza A Virus Case Screening Form.	57	1	15/60	14
Epidemiologist	Attachment T—Antiviral Resistant Influenza Infection Case Report Form.	57	3	30/60	86
Epidemiologist	Attachment U—National Respiratory & Enteric Virus Surveillance System (NREVSS) (55.83A, B, D) (electronic).	550	52	15/60	7,150
Epidemiologist	Attachment V—National Enterovirus Surveillance Report: (CDC 55.9) (electronic).	20	12	15/60	60
Epidemiologist	Attachment W—National Adenovirus Type Reporting System (NATRS).	13	4	15/60	13
Epidemiologist	Attachment X—Middle East Respiratory Syndrome (MERS) Patient Under Investigation (PUI) Short Form.	57	3	25/60	71
Epidemiologist	*Attachment Y—Viral Gastroenteritis Outbreak Submission Form.*	20	5	5/60	8
Epidemiologist	Attachment AA—Influenza Virus (Electronic, Year Round), PHLIP_HL7 messaging Data Elements.	57	52	5/60	247
Epidemiologist	Attachment BB—Influenza virus (electronic, year round) (PHIN–MS).	3	52	5/60	13
Epidemiologist	Attachment CC—Suspect Respiratory Virus Patient Form.	10	5	30/60	25
Total					24,115

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–06019 Filed 3–20–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-FY–2020; Docket No. CDC–2020–0032]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on the Customer Surveys Generic Clearance for the National Center for Health Statistics. This collection is used to assess NCHS customers' satisfaction with the content, quality and relevance of the information it produces.

DATES: Written comments must be received on or before May 22, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0032 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov*.

Please note: All public comment should be submitted through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a

60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. 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;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

Customer Surveys Generic Clearance for the National Center for Health Statistics (OMB Control No. 0920–0729, Exp. 09/30/2020)—Extension—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on ''the extent and nature of illness and disability of the population of the United States.'' This is an extension request for a generic approval from OMB to conduct customer surveys over the next three years at an overall burden rate of 4000 hours.

As part of a comprehensive program, the National Center for Health Statistics (NCHS) plans to continue to assess its customers' satisfaction with the content, quality and relevance of the information it produces. NCHS will conduct voluntary customer surveys to assess strengths in agency products and services and to evaluate how well it addresses the emerging needs of its data users. Results of these surveys will be used in future planning initiatives.

The data will be collected using a combination of methodologies appropriate to each survey. These may include: evaluation forms, mail surveys, focus groups, automated and electronic technology (*e.g.,* email, Web-based surveys), and telephone surveys. Systematic surveys of several groups will be folded into the program. Among these are Federal customers and policy makers, state and local officials who rely on NCHS data, the broader educational, research, and public health community, and other data users. Respondents may include data users who register for and/or attend NCHS sponsored conferences; persons who access the NCHS website and the detailed data available through it; consultants; and others. Respondent data items may include (in broad categories) information regarding respondent's gender, age, occupation, affiliation, location, etc., to be used to characterize responses only. Other questions will attempt to obtain information that will characterize the respondents' familiarity with and use of NCHS data, their assessment of data content and usefulness, general satisfaction with available services and products, and suggestions for improvement of surveys, services and products.

In order to capture anticipated feedback opportunities, this extension request allows a total estimated annual burden total of 4,000 hours. There is no cost to respondents other than their time to participate in the survey. The resulting information will be for NCHS internal use.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Questionnaire for conference registrants/attendees.	Public/private researchers, Consultants, and others.	6,000	1	15/60	1,500
Focus groups	Public/private researchers, Consultants, and others.	500	1	1	500
Web-based	Public/private researchers, Consultants, and others.	6,000	1	15/60	1,500
Other customer surveys	Public/private researchers, Consultants, and others.	2,000	1	15/60	500
Total					4,000

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–06023 Filed 3–20–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–0008]

Blood Products Advisory Committee; Postponed

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The meeting of the Blood Products Advisory Committee (BPAC) scheduled for April 2–3, 2020, is postponed. The Food and Drug Administration (FDA), like other government agencies, is taking the necessary steps to ensure the Agency is prepared to continue our vital public health mission in the event that our day-to-day operations are impacted by the

COVID–19 public health emergency. Therefore, we are canceling or postponing all non-essential meetings through the month of April. We will reassess on an ongoing basis for future months. Therefore, this meeting is being postponed. The meeting was announced in the **Federal Register** on February 13, 2020.

FOR FURTHER INFORMATION CONTACT: Christina Vert, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 6268, Silver Spring, MD 20993–0002, 240–402–8054, *christina.vert@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting, which was announced in the **Federal Register** of February 13, 2020, 85 FR 8299.

Dated: March 18, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–06082 Filed 3–20–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA 2020–N–0956]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry and Food and Drug Administration Staff; Combination Products: How To Prepare a Pre-Request for Designation

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, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the type of information recommended for a Pre-Request for Designation (Pre-RFD) submission.

DATES: Submit either electronic or written comments on the collection of information by May 22, 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 May 22, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 22, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitte, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA 2020–N–0956 for ''Combination Products: How to Prepare a Pre-Request for Designation.'' 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: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget

(OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, 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.

Guidance for Industry and Food and Drug Administration Staff; Combination Products: How to Write a Pre-Request For Designation

OMB Control Number 0845—Extension

The purpose of this guidance is to clarify the type of information the Office of Combination Products (OCP) recommends that a sponsor include in a Pre-RFD. This goal of this guidance is to assist sponsors in obtaining a preliminary assessment from the U.S. Food and Drug Administration (FDA or Agency) through the Pre-RFD process. The Pre-RFD process is available to provide informal, non-binding feedback regarding the regulatory identity or classification of a human medical product as a drug, device, biological product, or combination product. In addition, this informal process provides information about a non-combination or combination product's assignment to the appropriate Agency Center (Center for Drug Evaluation and Research (CDER), Center for Devices and Radiological Health (CDRH), or Center for Biologics Evaluation and Research (CBER)) for premarket review and regulation. Specifically, this guidance explains the Pre-RFD process at the Office of Combination Products (OCP) and helps a sponsor understand the type of information to provide in a Pre-RFD. This guidance describes how to prepare a Pre-RFD submission. The guidance provides recommendations regarding the information that should be submitted in a Pre-RFD request and procedures that should be followed for meetings or conference calls between the Office of Combination Products, the Centers, and industry representatives or sponsors.

The proposed collections of information are necessary to allow the Agency to receive Pre-RFD requests in order to implement this voluntary submission program.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Pre-RFD Submissions	83	1	83	12	996
Pre-RFD Meetings	83	1	83	1	83
Total					1,079

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimated burden for the information collection reflects an overall decrease of 689 hours. We attribute this adjustment to a decrease in response time for the number of submissions we received over the past 3 years.

Dated: March 16, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–06031 Filed 3–20–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–1106]

Policy for Temporary Compounding of Certain Alcohol-Based Hand Sanitizer Products During the Public Health Emergency; Immediately in Effect Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a guidance for industry entitled ''Policy for Temporary Compounding of Certain Alcohol-Based Hand Sanitizer Products During the Public Health Emergency.'' Due to the Coronavirus Disease 2019 (COVID–19) pandemic, FDA has received a number of queries concerning compounding of alcohol-based hand sanitizers. The Agency is issuing this guidance to communicate its policy for the temporary compounding of certain alcohol-based hand sanitizer products by pharmacists in State-licensed pharmacies or Federal facilities and registered outsourcing facilities (referred to collectively in this notice and the guidance as *compounders*) for the duration of the public health emergency declared by the Secretary of Health and Human Services on January 31, 2020. The guidance document is immediately in effect, but it remains subject to comment in accordance with the Agency's good guidance practices.

DATES: The announcement of the guidance is published in the **Federal Register** on March 23, 2020. The guidance document is immediately in

effect, but it remains subject to comment in accordance with the Agency's good guidance practices.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–D–1106 for ''Policy for Temporary Compounding of Certain Alcohol-Based Hand Sanitizer Products During the Public Health Emergency.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

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

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Rosilend Lawson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 240–402–6223.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance entitled ''Policy for Temporary Compounding of Certain Alcohol-Based Hand Sanitizer Products During the Public Health Emergency.'' Due to the COVID–19 pandemic and the resulting public health concerns, FDA has received a number of queries concerning compounding of alcohol-based hand sanitizers. We understand that some consumers and healthcare professionals are currently experiencing difficulties accessing alcohol-based hand sanitizers containing at least 60 percent alcohol or 70 percent isopropyl alcohol. We are also aware of reports that some consumers are producing hand sanitizers for personal use; the Agency lacks information on the methods being used to prepare such products and whether they are safe for use on human skin. We further recognize that pharmacists in State-licensed pharmacies or Federal facilities and registered outsourcing facilities (referred to collectively in this notice and the guidance as *compounders*), relative to untrained consumers, are more familiar with appropriate standards and methods for producing drug products.

The Agency is issuing this guidance to communicate a policy for the temporary compounding of certain alcohol-based hand sanitizer products by compounders for consumer use and for use as healthcare personnel hand rubs for the duration of the public health emergency declared by the Secretary of Health and Human Services on January 31, 2020. In light of the public health emergency posed by COVID–19, FDA has determined that prior public participation for this guidance is not feasible or appropriate and is issuing this guidance without prior public comment (see section 701(h)(1)(C)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(h)(1)(C)(i)) and 21 CFR 10.115(g)(2)). Although this guidance is immediately in effect, FDA will consider all comments received and revise the guidance document as appropriate.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Policy for Temporary Compounding of Certain Alcohol-Based Hand Sanitizer Products During the Public Health Emergency.'' It does not establish any rights for any

person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

This guidance refers to previously approved FDA collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collection of information for ''Current Good Manufacturing Practices for Finished Pharmaceuticals and Medical Gases'' has been approved under OMB control number 0910–0139. The collection of information for ''Postmarketing Adverse Drug Experience Reporting'' has been approved under OMB control number 0910–0230. The collection of information for ''MedWatch: Adverse Event and Product Experience Reporting System (Paper-Based)'' has been approved under OMB control number 0910–0291. The collection of information for ''Format and Content Requirements for Over-the-Counter Drug Product Labeling'' has been approved under OMB control number 0910–0340. The collection of information for ''FDA Adverse Event and Products Experience Reports; Electronic Submissions'' has been approved under OMB control number 0910–0645. The collection of information for ''Adverse Event Reporting for Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act'' has been approved under OMB control number 0910–0800.

IV. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs* or *https://www.regulations.gov*.

Dated: March 17, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–05959 Filed 3–20–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation for Public Comments on Section 209 of the Pandemic and All-Hazards Preparedness and Advancing Innovation Act

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: Request for public comment.

SUMMARY: The Office of the Assistant Secretary for Health in the Department of Health and Human Services seeks public comment regarding Section 209 of the Pandemic and All-Hazards Preparedness and Advancing Innovation Act.

Congress passed the Pandemic and All-Hazards Preparedness and Advancing Innovation Act (PAHPAIA) in June 2019. Section 209 of this legislation states that the Secretary of Health and Human Services shall submit to Congress a report containing recommendations related to maintaining an adequate national blood supply. The legislation poses four specific questions regarding the adequacy of the national blood supply. HHS welcomes any public feedback related to how these questions should be addressed and/or potential solutions. The set of questions is available in the **SUPPLEMENTARY INFORMATION** section below.

DATES: To be assured consideration, electronic or written/paper comments must be submitted no later than midnight Eastern Standard Time (EST) on April 22, 2020.

ADDRESSES: Individuals are encouraged to submit responses electronically to *ACBTSA@hhs.gov.* Please indicate ''RFI RESPONSE'' in the subject line of your email. Written responses should be addressed to: U.S. Department of Health and Human Services, Mary E. Switzer Building, 330 C Street SW, Room L600, Washington, DC 20024 Attn: ACBTSA–PAHPAIA Sec. 209. Mailed paper submissions and electronic submissions received after the deadline will not be reviewed. Responses to this notice are not offers and cannot be accepted by the federal government to form a binding contract or issue a grant.

FOR FURTHER INFORMATION CONTACT: Mr. James Berger, Designated Federal Officer, Office of Infectious Disease and HIV/AIDS Policy, (202) 795–7608.

SUPPLEMENTARY INFORMATION:

(1) Challenges associated with the continuous recruitment of blood donors (including those newly eligible to donate);

(2) Ensuring the adequacy of the blood supply in the case of public health emergencies;

(3) Implementation of the transfusion transmission monitoring system; and

(4) Other measures to promote safety and innovation, such as the development, use, or implementation of new technologies, processes, and procedures to improve the safety and reliability of the blood supply.

Dated: March 11, 2020.

James J. Berger,

Senior Advisor for Blood and Tissue Policy, Office of Infectious Disease and HIV/AIDS Policy.

[FR Doc. 2020–06047 Filed 3–20–20; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

[OIG–1810–N]

Statement of Organization, Functions, and Delegations of Authority

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This notice replaces all language in Part Q (Office of the Secretary) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (HHS or the Department), Office of Inspector General (OIG), (published March 15, 2016).

SUPPLEMENTARY INFORMATION: The Statement of Organization, Functions, and Delegations of Authority conforms to and carries out the statutory requirements for operating OIG. The organizational changes reflected in this notice are primarily to realign the functions within OIG to better reflect the current work environment and priorities and to more clearly delineate responsibilities for the various activities within OIG's offices.

OIG was established by law as an independent and objective oversight unit of the Department to carry out the mission of preventing fraud and abuse and promoting economy, efficiency, and effectiveness of HHS programs and operations. In furtherance of this mission, the organization:

- Conducts and supervises audits, investigations, evaluations, and inspections relating to HHS programs and operations;
- identifies systemic weaknesses giving rise to opportunities for fraud and abuse in HHS programs and operations and makes recommendations to prevent their recurrence;
- leads and coordinates activities to prevent and detect fraud and abuse in HHS programs and operations;
- detects wrongdoers and abusers of HHS programs and beneficiaries so appropriate remedies may be brought to

bear, including imposing administrative sanctions against providers of health care under Medicare and Medicaid who commit certain prohibited acts; and

• keeps the Secretary of Health and Human Services and Congress fully and currently informed about problems and deficiencies in the administration of HHS programs and operations and about the need for and progress of corrective action.

In addition, OIG works with the Department of Justice (DOJ), on behalf of the Secretary, to operate the Health Care Fraud and Abuse Control Program. In accordance with authority enacted in its annual appropriations, OIG also provides protection services to the Secretary and conducts criminal investigations of violations of Federal child support provisions.

In support of its mission, OIG carries out and maintains an internal quality assurance system and a peer-review system with other Offices of Inspector General, including periodic quality assessment studies and quality control reviews, to provide reasonable assurance that applicable laws, regulations, policies, procedures, standards, and other requirements are followed, are effective, and are functioning as intended in OIG operations.

Section Q, Office of Inspector General—Organization

There is at the head of OIG a statutory Inspector General, appointed by the President and confirmed by the Senate. OIG consists of six organizational units:

1. Immediate Office of the Inspector General (QA)
2. Office of Management and Policy (QC)
3. Office of Evaluation and Inspections (QE)
4. Office of Counsel to the Inspector General (QG)
5. Office of Audit Services (QH)
6. Office of Investigations (QJ)

Section Q, Office of Inspector General—Functions

The component sections that follow describe the specific functions of the organization.

Section QA.00, Immediate Office of the Inspector General—Mission

The Immediate Office of the Inspector General is directly responsible for meeting the statutory mission of OIG as a whole and for promoting effective OIG internal quality assurance systems, including quality assessment studies and quality control reviews of OIG processes and products.

Section QA.10, Immediate Office of the Inspector General—Organization

The Immediate Office comprises the Inspector General, Principal Deputy Inspector General, Chief of Staff, several technical advisors, including the Chief Medical Officer, and staff.

Section QA.20, Immediate Office of the Inspector General—Functions

The Inspector General is appointed by the President, with the advice and consent of the Senate, and reports to and is under the general supervision of the Secretary or, to the extent such authority is delegated, the Deputy Secretary. The Inspector General does not report to and is not subject to supervision by any other officer in the Department. In keeping with the independence conferred by the Inspector General Act, the Inspector General assumes and exercises, through line management, all functional authorities related to the administration and management of OIG and all mission-related authorities stated or implied in the law or delegated directly from the Secretary. The Inspector General provides executive leadership to the organization and exercises general supervision over the personnel and functions of its major components. The Inspector General determines the budget needs of OIG, sets OIG policies and priorities, oversees OIG operations, and provides reports to the Secretary and Congress. By statute, the Inspector General exercises general personnel authority, *e.g.,* selection, promotion, and assignment of employees, including members of the Senior Executive Service. The Inspector General delegates related authorities as appropriate. The Principal Deputy Inspector General assists the Inspector General in the management of OIG, and during the absence of the Inspector General, acts as the Inspector General. The Principal Deputy Inspector General supervises the Chief Counsel to the Inspector General, the Deputy Inspectors General, who head the major OIG components, as well as the Chief of Staff.

The Immediate Office interacts with the Department, Congress, and the public and leads OIG's congressional, media, and public affairs functions. The office also plans, conducts, and participates in a variety of interagency cooperative projects and undertakings relating to fraud and abuse with the DOJ, the Centers for Medicare & Medicaid Services (CMS), and other governmental agencies, and is responsible for the reporting and legislative functions required by the Inspector General Act.

Section QC.00, Office of Management and Policy—Mission

The Office of Management and Policy (OMP) provides management, guidance, and resources in support of OIG.

Section QC.10, Office of Management and Policy—Organization

OMP is directed by the Deputy Inspector General for Management and Policy, who, aided by Assistant Inspectors General, assures that OIG has the financial and administrative resources necessary to fulfill its mission. This office carries out its responsibilities through headquarters functions.

Section QC.20, Office of Management and Policy—Functions

The staffs within OMP are responsible for formulating and executing OIG's budget, developing policy, and managing information technology, human resources, executive resources, procurement activities, and physical space. OMP also executes and maintains an internal quality assurance system, which includes quality control reviews of its processes and products to ensure that OIG policies and procedures are followed and function as intended. OMP provides centralized services and management to deliver to OIG data, tools, skills, and support to use data and data analytics. Finally, OMP coordinates organizational performance management activities.

Section QE.00, Office of Evaluation and Inspections—Mission

The Office of Evaluation and Inspections (OEI) is responsible for conducting indepth evaluations of HHS programs, operations, and processes to identify vulnerabilities and recommend corrective action; to prevent and detect fraud and abuse; and to promote efficiency and effectiveness in HHS programs and operations. OEI conducts its work in accordance with the Quality Standards for Inspection and Evaluation issued by the Council of the Inspectors General on Integrity and Efficiency.

Section QE.10, Office of Evaluation and Inspections—Organization

OEI is directed by the Deputy Inspector General for the Office of Evaluation and Inspections, who, aided by Assistant Inspectors General, is responsible for carrying out OIG's responsibilities to evaluate the effectiveness and efficiency of HHS programs and operations. The office is comprised of headquarters and regional functions.

Section QE.20, Office of Evaluation and Inspections—Functions

OEI is responsible for conducting evaluations of HHS programs; conducting data and trend analysis; and recommending changes in programs, procedures, policies, regulations, and legislation. OEI develops evaluation policies, procedures, techniques, and guidelines to be followed by all OEI staff in conducting evaluations. The office maintains an internal quality assurance program. OEI also oversees the activities of State Medicaid Fraud Control Units (MFCUs) to ensure the MFCUs' compliance with Federal grant regulations, administrative rules, and performance standards for the purpose of certifying or recertifying the MFCUs annually. The office also maintains automated data and management information systems used by all OEI employees, a quality assurance/peer-review program, and policy and procedure manuals.

Section QG.00, Office of Counsel to the Inspector General—Mission

In accordance with section 3(g) of the Inspector General Act (5 U.S.C. App. § 3(g)), the Office of Counsel to the Inspector General (OCIG) provides all legal advice to OIG and represents OIG in administrative litigation. OCIG proposes and litigates civil money penalty (CMP) and program exclusion cases within the jurisdiction of OIG. It coordinates False Claims Act matters involving HHS programs and resolves voluntary disclosure cases. OCIG develops guidance to assist providers in establishing compliance programs; monitors ongoing compliance of providers subject to integrity agreements; and promotes industry awareness through advisory opinions, fraud alerts, and special advisory bulletins.

Section QG.10, Office of Counsel to the Inspector General—Organization

OCIG is directed by the Chief Counsel to the Inspector General, who also serves as OIG's Deputy Ethics Counselor and is aided by Assistant Inspectors General. The office carries out its responsibilities through headquarters functions.

Section QG.20, Office of Counsel to the Inspector General—Functions

OCIG provides legal advice to OIG on issues that arise in the exercise of OIG's responsibilities under the Inspector General Act of 1978, as amended. Such issues include the scope and exercise of the Inspector General's authorities and responsibilities; investigative techniques and procedures (including criminal procedure); the sufficiency and impact of legislative proposals affecting OIG and HHS; and the conduct and resolution of investigations, audits, and inspections. The office evaluates the legal sufficiency of OIG findings and recommendations and develops formal legal opinions to support these findings and recommendations. The office also provides legal advice on OIG internal administration and operations, including appropriations, procurement, delegations of authority, OIG regulations, personnel matters, disclosure of information under the Freedom of Information Act (FOIA), and safeguarding information under the Privacy Act. Additionally, OCIG coordinates OIG's regulatory review functions required by the Inspector General Act and responses to all requests made under FOIA. The office is responsible for the clearance and enforcement of OIG subpoenas.

The office represents OIG in administrative litigation and related appeals. This includes representing OIG in personnel and Equal Employment Opportunity matters; coordinating OIG's representation in Federal tort actions involving OIG employees; and representing OIG in bid protests before the Government Accountability Office and the U.S. Court of Federal Claims.

OCIG also determines whether to propose or implement administrative sanctions, including CMPs and assessments within OIG's jurisdiction. The office effectuates mandatory and permissive exclusions from participation in Federal health care programs under the Social Security Act; decides on all requests for reinstatement from, or waiver of, exclusions; and participates in developing standards governing the imposition of these exclusion authorities. The office also oversees OIG's suspension and debarment referral program. The office litigates and resolves all appealed or contested exclusions from participation in Federal health care programs under the Social Security Act. In conjunction with DOJ, the office represents HHS in all False Claims Act cases, including qui tam cases, and is responsible for final approval of civil False Claims Act settlements for the Department, including the resolution of the program exclusion authorities that have been delegated to OIG.

In conjunction with the Office of Investigations, OCIG coordinates resolution of all voluntary and mandatory disclosure under OIG's Provider Self-Disclosure Protocol, the contractor self-disclosure requirement and otherwise. OCIG develops and monitors corporate and individual integrity agreements adopted in connection with settlement agreements, conducts onsite reviews, and develops audit and investigative review standards for monitoring such integrity agreements in conjunction with other OIG components. The office also resolves breaches of integrity agreements through the development of corrective action plans and the imposition of sanctions.

OCIG, through the Whistleblower Protection Coordinator, provides education to agency employees about prohibitions against whistleblower retaliation, and the rights and remedies available for such matters.

Finally, OCIG issues advisory opinions to the health care industry and members of the public on whether a current or proposed activity would constitute grounds for the imposition of a sanction under the anti-kickback statute, the CMP law, or the program exclusion authorities. The office develops procedures for submitting and processing requests for advisory opinions and for determining the fees that will be imposed. It solicits and responds to proposals for new regulatory safe harbors to the anti-kickback statute, modifications to existing safe harbors, and new fraud alerts. OCIG consults with DOJ on proposed advisory opinions and safe harbors before issuance or publication. The office provides legal advice to the components of OIG, other HHS offices, and DOJ concerning matters involving the interpretation of the anti-kickback statute and other legal authorities, and assists those components or offices in analyzing the applicability of the anti-kickback statute to particular practices or activities under review.

Section QH.00, Office of Audit Services—Mission

The Office of Audit Services (OAS) is responsible for protecting the integrity of HHS operations and programs by conducting audits that identify and report ways to improve the economy, efficiency, and effectiveness of operations and services to beneficiaries of HHS programs and to help reduce fraud, waste, abuse, and mismanagement. OAS conducts audits and oversees audit work performed by others. It conducts its work in accordance with Government Auditing Standards and follows applicable legal, regulatory, and administrative requirements.

Section QH.10, Office of Audit Services—Organization

OAS is directed by the Deputy Inspector General for Audit Services,

who, aided by Assistant Inspectors General, performs the functions designated in section 3(d)(1)(A) of the Inspector General Act for the position of Assistant Inspector General for Auditing. The office comprises headquarters and regional functions and includes a designated Whistleblower Protection Ombudsman, and the functions thereof, as required by law (section 3(d)(1)(C) of the Inspector General Act).

Section QH.20, Office of Audit Services—Functions

OAS establishes audit priorities; performs audits; oversees the progress of audits; coordinates with stakeholders on bodies of work; recommends changes in program policies, regulations, and legislation to prevent fraud, waste, and abuse and improve programs and operations; and reports on the impact of audit work. The office develops audit policies, procedures, techniques, and guidelines to be followed by all OAS staff in conducting audits. OAS maintains an internal quality assurance program, conducts peer reviews of other OIGs, and maintains automated data and management information systems used by all OAS employees. The office also provides oversight for audits of State and local governments, universities, and nonprofit organizations conducted by non-Federal auditors.

Section QJ.00, Office of Investigations—Mission

The Office of Investigations (OI) is granted full statutory law enforcement authority under the Homeland Security Act of 2003 (Pub. L. 107–296). OI is responsible for protecting the integrity of the programs administered and/or funded by HHS by conducting criminal, civil, and administrative investigations of fraud and misconduct related to HHS programs, operations, and employees. The office serves as OIG's liaison to DOJ on all matters relating to investigations of HHS programs and personnel and reports to the Attorney General when there are reasonable grounds to believe Federal criminal law has been violated. OI serves as a liaison to CMS, State licensing boards, and other outside organizations and entities with regard to exclusion, compliance, and enforcement activities.

Section QJ.10, Office of Investigations—Organization

OI is directed by the Deputy Inspector General for Investigations, aided by Assistant Inspectors General, and performs the functions designated in the law (section 3(d)(1)(B) of the Inspector General Act) for the position of Assistant Inspector General for Investigations. The office is comprised of headquarters and regional functions.

Section QJ.20, Office of Investigations—Functions

OI conducts criminal, civil, and administrative investigations of allegations of fraud, waste, abuse, mismanagement, and violations of standards of conduct within the jurisdiction of OIG. OI establishes investigative priorities, evaluates the progress of investigations, and reports findings to the Inspector General. The office develops and implements investigative techniques, programs, guidelines, and policies; manages OI's quality assurance/peer-review program, and conducts peer reviews of other OIGs. OI also carries out and maintains an internal quality assurance system. The system includes quality assessment studies and quality control reviews of OI processes and products to ensure that policies and procedures are followed effectively and are functioning as intended. OI implements policies and procedures and plans, develops, implements, and evaluates all levels of training for OI employees. The staff provides for the personal protection of the Secretary and other Department officials, as needed, and all emergency operations preparedness and response. OI coordinates the adoption of advanced digital forensic acquisition and examination and information security technologies to assist in the investigation, prevention, and detection of fraud and abuse; maintains an automated data and management information system used by all OI employees; provides technical expertise on computer applications for investigations; and coordinates and approves investigative computer matches with other agencies. In addition, the office operates a toll-free hotline to permit individuals to report suspected fraud, waste, and abuse within HHS programs.

Dated: March 17, 2020.

Christi A. Grimm,

Principal Deputy Inspector General.

[FR Doc. 2020–06046 Filed 3–20–20; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, March 24, 2020, 10:00 a.m. to March 24, 2020, 01:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on February 25, 2020, 85 FR 10708.

The format of the Special Emphasis Panel; Member Conflicts: Sensory Processes and Pain has been changed to a Virtual Meeting. The meeting date, time and location remain the same. The meeting is closed to the public.

Dated: March 17, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–05968 Filed 3–20–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, March 27, 2020, 01:00 p.m. to March 27, 2020, 05:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 which was published in the **Federal Register** on March 04, 2020, 85 FR 12799.

The format of the Special Emphasis Panel; Member Conflict: Sleep, Stress, Motion, and Taste has been changed to a Telephone Assisted Meeting. The meeting date, time and location remain the same. The meeting is closed to the public.

Dated: March 17, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–05967 Filed 3–20–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Advisory Committee on Research on Women's Health, April 21, 2020, 09:00 a.m. to April 21, 2020, 05:00 p.m., National Institutes of Health, Building 35A, 8600 Rockville Pike, Bethesda, MD, 20892 which was published in the **Federal Register** on March 02, 2020, 85 FR 12310.

The meeting notice is amended to change the meeting location and format. The meeting will now be held as a teleconference at the National Institutes of Health, 6707 Democracy Blvd., Room 7W444, Bethesda, MD 20817. The meeting is open to the public.

Dated: March 17, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–05965 Filed 3–20–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Cancellation of Meeting

Notice is hereby given of the cancellation of the National Cancer Institute Board of Scientific Advisors, March 30, 2020, 8:00 a.m. to March 30, 2020, 6:05 p.m., National Cancer Institute Shady Grove, Shady Grove, 9609 Medical Center Drive, Rockville, MD 20850 which was published in the **Federal Register** on March 9, 2020, 85 FR 13666. This meeting is being postponed in the best interest of the health and safety of employees, contractors, and all board/committee members. The meeting will be rescheduled in either late April or early May.

Dated: March 17, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–05969 Filed 3–20–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Scientific Counselors, April 23, 2020, 9:00 a.m. to 5:00 p.m., National Library of Medicine, Building 38, Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892 which was published in the **Federal Register** on February 4, 2020, 85 FR 23, Page 6209.

The meeting of the Board of Scientific Counselors will now be a closed and virtual meeting due to review of individual investigators and the travel/meeting guidance.

Dated: March 17, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–05971 Filed 3–20–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, March 27, 2020, 11:00 a.m. to March 27, 2020, 04:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD, 20892 which was published in the **Federal Register** on March 09, 2020, 85 FR 13668.

The format of the Special Emphasis Panel: Member Conflict: Auditory Neuroscience and Learning and Memory has been changed to a Telephone Assisted Meeting. The meeting date, time and location remain the same. The meeting is closed to the public.

Dated: March 17, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–05966 Filed 3–20–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, NIA.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual grant applications conducted by the NATIONAL INSTITUTE ON AGING, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIA.

Date: May 19–21, 2020.

Closed: May 19, 2020, 8:00 a.m. to 9:00 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 3rd Floor Conference Room 03C227, 251 Bayview Boulevard, Baltimore, MD 21224.

Open: May 19, 2020, 9:00 a.m. to 11:30 a.m.

Agenda: Committee discussion, individual presentations, laboratory overview.

Place: National Institute on Aging, Biomedical Research Center, 3rd Floor Conference Room 03C227, 251 Bayview Boulevard, Baltimore, MD 21224.

Closed: May 19, 2020, 11:30 a.m. to 11:50 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 3rd Floor Conference Room 03C227, 251 Bayview Boulevard, Baltimore, MD 21224.

Open: May 19, 2020, 11:50 a.m. to 12:50 p.m.

Agenda: Committee discussion, individual presentations, laboratory overview.

Place: National Institute on Aging Biomedical Research Center, 3rd Floor

Conference Room 03C227, 251 Bayview Boulevard, Baltimore, MD 21224.

Closed: May 19, 2020, 12:50 p.m. to 3:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 3rd Floor Conference Room 03C227, 251 Bayview Boulevard, Baltimore, MD 21224.

Open: May 19, 2020, 3:00 p.m. to 4:00 p.m.

Agenda: Committee discussion, individual presentations, laboratory overview.

Place: National Institute on Aging, Biomedical Research Center, 3rd Floor Conference Room 03C227, 251 Bayview Boulevard, Baltimore, MD 21224.

Closed: May 19, 2020, 4:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 3rd Floor Conference Room 03C227, 251 Bayview Boulevard, Baltimore, MD 21224.

Closed: May 20, 2020, 8:00 a.m. to 8:30 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 3rd Floor Conference Room 03C227, 251 Bayview Boulevard, Baltimore, MD 21224.

Open: May 20, 2020, 8:30 a.m. to 12:00 p.m.

Agenda: Committee discussion, individual presentations, laboratory overview.

Place: National Institute on Aging, Biomedical Research Center, 3rd Floor Conference Room 03C227, 251 Bayview Boulevard, Baltimore, MD 21224.

Closed: May 20, 2020, 12:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 3rd Floor Conference Room 03C227, 251 Bayview Boulevard, Baltimore, MD 21224.

Open: May 20, 2020, 2:30 p.m. to 4:30 p.m.

Agenda: Committee discussion, individual presentations, laboratory overview.

Place: National Institute on Aging, Biomedical Research Center, 3rd Floor Conference Room 03C227, 251 Bayview Boulevard, Baltimore, MD 21224.

Closed: May 20, 2020, 4:30 p.m. to 6:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 3rd Floor Conference Room 03C227, 251 Bayview Boulevard, Baltimore, MD 21224.

Contact Person: Luigi Ferrucci, MD, Ph.D., Scientific Director, National Institute on Aging, 251 Bayview Boulevard, Suite 100, Room 4C225, Baltimore, MD 21224, (410) 558–8110, *lf27z@nih.gov*.

In the interest of security, NIH has stringent procedures for entrance into NIH federal property. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: March 17, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–05970 Filed 3–20–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK940000.L14100000.BX0000.20X. LXSS001L0100]

Filing of Plats of Survey: Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Official Filing.

SUMMARY: The plats of survey of lands described in this notice are scheduled to be officially filed in the Bureau of Land Management (BLM), Alaska State Office, Anchorage, Alaska. These surveys were executed at the request of the BLM, are necessary for the management of these lands.

DATES: The BLM must receive protests by April 22, 2020.

ADDRESSES: You may buy a copy of the plats from the BLM Alaska Public Information Center, 222 W 7th Avenue, Mailstop 13, Anchorage, AK 99513. Please use this address when filing written protests. You may also view the plats at the BLM Alaska Public Information Center, Fitzgerald Federal Building, 222 W. 8th Avenue, Anchorage, Alaska, at no cost.

FOR FURTHER INFORMATION CONTACT: Douglas N. Haywood, Chief, Branch of Cadastral Survey, Alaska State Office, Bureau of Land Management, 222 W. 7th Avenue, Anchorage, AK 99513; 907–271–5481; *dhaywood@blm.gov.* People who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the BLM 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 lands surveyed are:

Seward Meridian, Alaska

T. 12 N, R. 1 W, accepted March 17, 2020

T. 12 N, R. 2 W, accepted March 17, 2020

A person or party who wishes to protest one or more plats of survey identified above must file a written notice of protest with the State Director for the BLM in Alaska. The notice of protest must identify the plat(s) of survey that the person or party wishes to protest. You must file the notice of protest before the scheduled date of official filing for the plat(s) of survey being protested. The BLM will not consider any notice of protest filed after the scheduled date of official filing. A notice of protest is considered filed on the date it is received by the State Director for the BLM in Alaska during regular business hours; if received after regular business hours, a notice of protest will be considered filed the next business day. A written statement of reasons in support of a protest, if not filed with the notice of protest, must be filed with the State Director for the BLM in Alaska within 30 calendar days after the notice of protest is filed.

If a notice of protest against a plat of survey is received prior to the scheduled date of official filing, the official filing of the plat of survey identified in the notice of protest will be stayed pending consideration of the protest. A plat of survey will not be officially filed until the dismissal or resolution of all protests of the plat.

Before including your address, phone number, email address, or other personally identifiable information in a notice of protest or statement of reasons, you should be aware that the documents you submit, including your personally identifiable information, may be made publicly available in their entirety at any time. While you can ask the BLM to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C. Chap. 3.

Douglas N. Haywood,

Chief Cadastral Surveyor, Alaska.

[FR Doc. 2020–06062 Filed 3–20–20; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0029883; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Baylor University's Mayborn Museum Complex, (Formerly Baylor University's Strecker Museum; formerly Baylor University Museum), Waco, TX; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Baylor University's Mayborn Museum Complex (formerly Baylor University's Strecker Museum; formerly Baylor University Museum) has corrected an inventory of human remains and associated funerary objects, published in a Notice of Inventory Completion in the **Federal Register** on March 1, 2019. This notice corrects the cultural affiliation. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Baylor University's Mayborn Museum Complex. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Baylor University's Mayborn Museum Complex at the address in this notice by April 22, 2020.

ADDRESSES: Anita L. Benedict, Baylor University's Mayborn Museum Complex, One Bear Place #97154, Waco, TX 76798–7154, telephone (254) 710–4835, email *anita_benedict@baylor.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains and associated funerary objects under the control of Baylor University's Mayborn Museum Complex, Waco, TX. The human remains and associated funerary object were removed from a dry cave 25 miles northwest of Toyah, Reeves County, TX.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the cultural affiliation published in a Notice of Inventory Completion in the **Federal Register** (84 FR 7115–7116, March 1, 2019). An offer of disposition, which was followed by phone calls, emails, and brief in-person conversations, was extended to the Apache Tribe of Oklahoma; Fort McDowell Yavapai Nation, Arizona; Fort Sill Apache Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; and the Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona, hereby referred to as ''The Tribes Whose Aboriginal Territory includes Reeves County, TX'', in compliance with 43 CFR 10.11 before a relationship of shared group identity could be established. Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** (84 FR 7116, March 1, 2019), column 2, paragraph 1 under the heading ''Determinations Made by Baylor University's Mayborn Museum Complex'' is corrected by replacing the paragraph with the following paragraph:

Officials of Baylor University's Mayborn Museum Complex have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American, based on the preservation, associated funerary object, and museum documentation.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the one object described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity can be reasonably traced between the Native American human remains and associated funerary object and the Tonkawa Tribe of Indians of Oklahoma, based on geography and oral tradition.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary object should submit a written request with information in support of the request to Anita L. Benedict, Baylor University's Mayborn Museum Complex, One Bear Place #97154, Waco, TX 76798–7154, telephone (254) 710–4835, email *anita_benedict@baylor.edu,* by April 22, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary object to the Tonkawa Tribe of Indians of Oklahoma may proceed.

The Baylor University's Mayborn Museum Complex is responsible for notifying The Consulted Tribes and The Tribes Whose Aboriginal Territory includes Reeves County, TX, that this notice has been published.

Dated: February 19, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–06034 Filed 3–20–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0029870; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Office of the State Archaeologist, University of Iowa, Iowa City, IA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Office of the State Archaeologist Bioarchaeology Program, previously listed as the Office of the State Archaeologist Burials Program, has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Office of the State Archaeologist Bioarchaeology Program. If no additional requestors come forward, transfer of control of the

human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Office of the State Archaeologist Bioarchaeology Program at the address in this notice by April 22, 2020.

ADDRESSES: Dr. Lara Noldner, Office of the State Archaeologist Bioarchaeology Program, University of Iowa, 700 S Clinton Street, Iowa City, IA 52242, telephone (319) 384–0740, email *lara-noldner@uiowa.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Office of the State Archaeologist Bioarchaeology Program, Iowa City, IA. The human remains were removed from Belle Glade Mound (8PB41) in Palm Beach County, FL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Office of the State Archaeologist Bioarchaeology Program professional staff in consultation with representatives of the Miccosukee Tribe of Indians; Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)); and The Seminole Nation of Oklahoma (hereafter referred to as ''The Tribes'').

History and Description of the Remains

In 1933–1934, human remains representing, at minimum, 35 individuals were removed from Belle Glade Mound (8PB41) in Palm Beach County, FL. The human remains were excavated as part of the Federal Relief Projects. Originally, all of the skeletal remains from this excavation were housed at the Smithsonian Institution in Washington, DC. In 1973, a portion of the Belle Glade material culture was deaccessioned and transferred to the Iowa State University Archaeological Laboratory (ISUAL). The transferred human remains were given accession numbers 8–1 to 8–12, 8–14, 8–16 to 8–18, 8–20, 8–22 to 8–44, 8–46 to 8–51, 8–57, 8–59 to 8–81, 8–83, 8–85, 8–87, 8–89 to 8–91, 8–93, 8–95 to 105, 8–107 to 8–114, 8–116 to 8–134, and 8–136. In 1994, the ISUAL transferred the human remains to the Office of the State Archaeologist Bioarchaeology Program. At least 25 adults, including two possible males and five possible females, are represented by the human remains. Additionally, long bones representing 10 juveniles ranging in age from six months to 13.5 years are present (Burial Project 753). No known individuals were identified. No associated funerary objects are present.

Belle Glade mound is the type site for the Belle Glade culture in Florida, which may have spanned the period from 1000 B.C. to A.D. 1700. Currently, the cultural affiliation of human remains from Belle Glade sites cannot be determined.

Determinations Made by the Office of the State Archaeologist Bioarchaeology Program

Officials of the Office of the State Archaeologist Bioarchaeology Program have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on excavation context.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 35 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of The Tribes.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of The Tribes.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Lara Noldner, Office of the State Archaeologist Bioarchaeology Program, University of Iowa, 700 S Clinton Street, Iowa City, IA 52242, telephone (319) 384–0740, email *lara-noldner@uiowa.edu,* by April 22, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

The Office of the State Archaeologist Bioarchaeology Program is responsible for notifying The Tribes that this notice has been published.

Dated: February 18, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–06036 Filed 3–20–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0029888; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Illinois State Museum, Springfield, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Illinois State Museum has completed an inventory of human remains in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Illinois State Museum. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Illinois State Museum at the address in this notice by April 22, 2020.

ADDRESSES: Dr. Brooke Morgan, Illinois State Museum—Research & Collections Center, 1011 East Ash Street, Springfield, IL 62703, telephone (217)

785–8930, email *Brooke.Morgan@illinois.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Illinois State Museum, Springfield, IL. The human remains were removed from Antioch, Lake County, IL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Illinois State Museum professional staff in consultation with representatives of the Ho-Chunk Nation of Wisconsin and the Peoria Tribe of Indians of Oklahoma. In addition, the following Indian Tribes were invited to consult, but did not participate: Bad River Chippewa Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as the Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Band of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi of Michigan; Minnesota Chippewa Tribe, Minnesota (Six member reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Ottawa Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas); Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; and the Winnebago Tribe of Nebraska. Hereafter, the Tribes listed in this paragraph are referred to as ''The Consulted and Invited Tribes.''

History and Description of the Remains

In 2018, human remains representing, at minimum, one individual were removed from private property in Lake County, IL. The human remains were inadvertently disturbed by a landowner while gardening. Law enforcement was notified, and the Lake County Coroner's Office responded to the scene. The disturbed sediment was screened to collect all bones and bone fragments for analysis. A forensic anthropologist examined the human remains on behalf of the Lake County Coroner's Office. The human remains were then transported to the Illinois State Museum for examination by the museum's physical anthropologist. Jurisdiction of the human remains was transferred to the Illinois State Museum pursuant to 20 ILCS 3440 (Human Skeletal Remains Protection Act) and 17 IAC 4170. The human remains were identified as the nearly complete skeleton of one Native American male, aged 20–30 years. No known individuals were identified. No associated funerary objects are present.

Prior to the arrival of Ojibwe, Ottawa, and Potawatomi groups to the region, Lake County was historically inhabited by the Illinois Indians (today the Peoria Tribe of Indians of Oklahoma) and visited by the Sauk (Sac) and Mesquakie (Fox). The Ho-Chunk (Winnebago) consider Lake County part of their aboriginal homelands, as they resided there prior to the arrival of the Illinois and trace their lineage to the Huber Oneota archaeological period (A.D. 1500–1600) in the Chicagoland region.

Determinations Made by the Illinois State Museum

Officials of the Illinois State Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on non-metric traits including shovel-shaped incisors and femoral curvature.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of The Consulted and Invited Tribes.
- Treaties, Acts of Congress, or Executive Orders indicate that the land from which the Native American human remains were removed is the aboriginal land of The Consulted and Invited Tribes.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary object may be to The Consulted and Invited Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Brooke Morgan, Illinois State Museum—Research & Collections Center, 1011 East Ash St., Springfield, IL 62703, telephone (217) 785–8930, email *Brooke.Morgan@illinois.gov,* by April 22, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Consulted and Invited Tribes may proceed.

The Illinois State Museum is responsible for notifying The Consulted and Invited Tribes that this notice has been published.

Dated: February 19, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–06038 Filed 3–20–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0029885; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: U.S. Department of Agriculture, Forest Service, Tongass National Forest, Petersburg, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, Tongass National Forest, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to Tongass National Forest. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Tongass National Forest at the address in this notice by April 22, 2020.

ADDRESSES: Earl Stewart, Forest Supervisor, Tongass National Forest, Federal Building, 648 Mission Street, Ketchikan, AK 99901, telephone (907) 228–6289, email *earl.stewart@usda.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the U.S. Department of Agriculture, Forest Service, Tongass National Forest, Ketchikan, AK, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Item

In or around the early 1900's, one cultural item described as a ''necklace'' and consisting of a total of 48 component parts was removed from a gravesite in Kah Sheets Bay near Petersburg, AK. The item was discovered after a tree was felled and inside the base of the tree was an ÍXT' (Shaman) grave. The parties cutting down the tree are reported to have divided the grave goods. The unassociated funerary object is an ''ÍXT' necklace'' that Emily Merriam received from Alma Zuver, the wife of Alvah Zuver (one of the parties felling the tree). The Zuvers had special use permits from the Tongass National Forest for fur farming activities in the general vicinity of the area. Emily Merriam gifted the necklace to the Clausen Memorial Museum in 1981. In November 2018, the Clausen Memorial Museum contacted the Tongass National Forest for assistance regarding the necklace, whereupon it was determined that the necklace had been collected from Federal lands, and was identified as an unassociated funerary object. The locations of other funerary objects or the human remains relating to this object are unknown. The object remains in the care of the Clausen Memorial Museum, under a temporary loan agreement with the Tongass National Forest, pending repatriation. The unassociated funerary object is described as a ''Shaman's Necklace'' but more appropriately is a necklace of an ÍXT' consisting of 48 individual components: 33 ground, polished and carved elongated bone pendants; nine pieces of bear and sea mammal teeth (comprising eight teeth); four decorative bone pieces; one claw; and one copper knife. Four of the teeth are carved. One tooth bears the image of a sea lion, a second tooth bears an unidentifiable image, a third tooth bears linear incisions and dots, and a fourth tooth is comprised of two pieces bearing mirror-images of killer whales. Of the decorative bone pieces, one (a bone fragment) bears an oystercatcher carving, a second (a flat bone) bears a carving of a supernatural being and fish, fin, man, and octopus carvings, and a third (a flat bone) bears a halibut carving. The fourth piece (an elongated flat bone carved with a basketry replication design) is bent. Presumably, it served as the back of the necklace. The flat, copper knife bears a shark design and a small drill hole. All but two pieces have a small drilled hole, and have been strung on a string which is not original to the object.

Kah Sheets Bay lies in the traditional territory of the Stikine/Wrangell Tlingit, and is associated with the Petersburg Indian Association and the Wrangell Cooperative Associations. According to Goldschmidt and Haas (1946), the *Kaach.adi* traditionally lived/used the bay. *Kaach.adi* people come from the Stikine and the Kake traditional territories.

On October 29, 2018 the Tongass National Forest initiated consultation on the necklace with the Wrangell Cooperative Association, the Petersburg Indian Association and the Organized Village of Kake. Government-to-government consultation with the Organized Village of Kake and the Petersburg Indian Association occurred between November 2, 2018 and August 19, 2019. Consultation begun on November 2, 2018 with the Wrangell Cooperative Association ended on February 22, 2019, when the Association officially ended its participation.

Government-to-government consultation with the Organized Village of Kake and the Petersburg Indian Association resulted in unanimous agreement that both tribal entities are culturally affiliated with the ÍXT' necklace and a joint repatriation request.

Determinations Made by the U.S. Department of Agriculture, Forest Service, Tongass National Forest

Officials of the U.S. Department of Agriculture, Forest Service, Tongass National Forest have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the one cultural item described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary object and the Petersburg Indian Association and the Organized Village of Kake (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Earl Stewart, Forest Supervisor, Tongass National Forest, Federal Building, 648 Mission Street, Ketchikan, AK 99901, telephone (907) 228–6289, email *earl.stewart@usda.gov,* by April 22, 2020. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary object to The Tribes may proceed.

The U.S. Department of Agriculture, Forest Service, Tongass National Forest is responsible for notifying The Tribes that this notice has been published.

Dated: February 19, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–06037 Filed 3–20–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–29970; 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 February 29, 2020, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by April 7, 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 February 29, 2020. 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:

COLORADO

Douglas County

Bayou Gulch, Address Restricted, Franktown vicinity, SG100005167

MICHIGAN

Wayne County

Michigan Avenue Historic Commercial District, South side of 3301–3461 Michigan Ave., Detroit, SG100005169

NORTH DAKOTA

Burleigh County

Our Lady of the Annunciation Chapel at Annunciation Priory, 7500 University Dr., Bismarck, SG100005177

UTAH

Davis County

Parrish, Joel and Elizabeth, House, 420 North Main St., Centerville, SG100005174

Salt Lake County

Rosenbaum, Edward and Harriet, House, 1428 East Circle Way, Salt Lake City, SG100005175

Sanpete County

Cox Family Big House Complex, 98 North 100 West, Manti, SG100005176

WISCONSIN

Dane County

Sylvan Avenue—Ridge Road Historic District, Roughly bounded by South Franklin St., Ridge Rd., Glenway St., and Sylvan Ave., Madison, SG100005173

Nomination submitted by Federal Preservation Officer:

The State Historic Preservation Officer reviewed the following nomination and responded to the Federal Preservation Officer within 45 days of receipt of the nomination and supports listing the property in the National Register of Historic Places.

NEW YORK

Broome County

United States Post Office and Courthouse, 15 Henry St., Binghamton, SG100005168

Authority: Section 60.13 of 36 CFR part 60.

Dated: March 2, 2020.

Julie H. Ernstein,

Supervisory Archeologist, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2020–05980 Filed 3–20–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0029886; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Los Angeles County Museum of Natural History, Los Angeles, CA; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The Los Angeles County Museum of Natural History has corrected an inventory of human remains, published in a Notice of Inventory Completion in the **Federal Register** on August 5, 2019. This notice corrects the cultural affiliation. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Los Angeles County Museum of Natural History. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Los Angeles County Museum of Natural History at the address in this notice by April 22, 2020.

ADDRESSES: Amy E. Gusick, NAGPRA Officer, Los Angeles County Museum of Natural History, 900 Exposition Boulevard, Los Angeles, CA 90007, telephone (213) 763–3370, email *agusick@nhm.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains under the control of the Los Angeles County Museum of Natural History, Los Angeles, CA. The human remains were removed from the Antelope Valley in northern Los Angeles County and the southeast portion of Kern County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the cultural affiliation published in a Notice of Inventory Completion in the **Federal Register** (84 FR 38048–38050, August 5, 2019). This correction is being made due to additional cultural affiliation information provided. Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** (84 FR 38049, August 5, 2019), column 1, paragraph 2, sentences 1 and 2 under the heading ''Consultation'' are corrected by substituting the following sentences:

A detailed assessment of the human remains was made by the Los Angeles County Museum of Natural History (LACMNH) professional staff in consultation with representatives of the San Manuel Band of Mission Indians, California (previously listed as the San Manual Band of Serrano Mission Indians of the San Manual Reservation); Fernandeño Tataviam Band of Mission Indians, a non-federally recognized Indian group; and the San Fernando Band of Mission Indians, a non-federally recognized Indian group. The Morongo Band of Mission Indians, California (previously listed as the Morongo Band of Cahuilla Mission Indians of the Morongo Reservation); Santa Rosa Indian Community of the Santa Rosa Rancheria, California; and the Tejon Indian Tribe were invited to consult but deferred to the San Manuel Band of Mission Indians, California (previously listed as the San Manual Band of Serrano Mission Indians of the San Manual Reservation).

In the **Federal Register** (84 FR 38050, August 5, 2019), column 2, sentence 1 is corrected by substituting the following sentence:

Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the San Manuel Band of Mission Indians, California (previously listed as the San Manual Band of Serrano Mission Indians of the San Manual Reservation), as well as, the Fernandeño Tataviam Band of Mission Indians and the San Fernando Band of Mission Indians, both of which are non-federally recognized Indian groups.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Amy Gusick, Los Angeles County Museum of Natural History, 900 Exposition Boulevard, Los Angeles, CA 90007, telephone (213) 763–3370, email *agusick@nhm.org,* by April 22, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains to the San Manuel Band of Mission Indians, California (previously listed as the San Manual Band of Serrano Mission Indians of the San Manual Reservation); Fernandeño Tataviam Band of Mission Indians (if joined to a request from the San Manuel Band of Mission Indians, California), and the San Fernando Band of Mission Indians (if joined to a request from the San Manuel Band of Mission Indians, California) may proceed.

The Los Angeles County Museum of Natural History is responsible for notifying The Consulted and Invited Indian Tribes and Groups that this notice has been published.

Dated: February 19, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–06035 Filed 3–20–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0029917; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Pueblo Grande Museum, Phoenix, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Pueblo Grande Museum has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Pueblo Grande Museum. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Pueblo Grande Museum at the address in this notice by April 22, 2020.

ADDRESSES: Lindsey Vogel-Teeter, Pueblo Grande Museum, 4619 E Washington Street, Phoenix, AZ 85034, telephone (602) 534–1572, email *lindsey.vogel-teeter@phoenix.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary object under the control of the Pueblo Grande Museum, Phoenix, AZ. The human remains and associated funerary objects were removed from Manitowoc County, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Pueblo Grande Museum professional staff in consultation with representatives of the Fort McDowell Yavapai Nation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona); and the Zuni Tribe of the Zuni Reservation, New Mexico. The Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Menominee Indian Tribe of Wisconsin; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as Huron Potawatomi, Inc.); Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas) were invited to consult but did not participate. Hereafter, all Indian Tribes listed in this section are referred to as ''The Consulted and Notified Tribes.''

History and Description of the Remains

In 1937, human remains representing, at minimum, one individual were removed from an unidentified site in Two Rivers, Manitowoc County, WI. Notes indicate that the unidentified collector worked for a sewer company and found this individual while excavating under a playground. The individual was described as having a ''tomahawk in skull.'' In January 1999, this individual was transferred to

Pueblo Grande Museum by citizen Evelyn Anderes. The human remains are fragmentary and belong to an adult 18-to-25 years old, possibly female. No known individuals were identified. No associated funerary objects are present.

Staff at Pueblo Grande Museum have attempted to find additional information about the individual described in this notice. Staff have contacted the Anderes family and the Wisconsin State Historic Preservation Office (WI SHPO). A researcher affiliated with the WI SHPO was unable to locate additional information regarding the collection of this individual.

Determinations Made by the Pueblo Grande Museum

Officials of the Pueblo Grande Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Menominee Indian Tribe of Wisconsin; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as Huron Potawatomi, Inc.); Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas). Hereafter, these Indian Tribes are referred to as ''The Aboriginal Land Tribes.''
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to The Aboriginal Land Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to request to Lindsey Vogel-Teeter, Pueblo Grande Museum, 4619 E Washington Street, Phoenix, AZ 85034, telephone (602) 534–1572, email *lindsey.vogel-teeter@phoenix.gov,* by April 22, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Aboriginal Land Tribes may proceed.

The Pueblo Grande Museum is responsible for notifying The Consulted and Notified Tribes that this notice has been published.

Dated: February 21, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–06032 Filed 3–20–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0029916; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Pueblo Grande Museum, Phoenix, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Pueblo Grande Museum has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Pueblo Grande Museum. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Pueblo Grande Museum at the address in this notice by April 22, 2020.

ADDRESSES: Lindsey Vogel-Teeter, Pueblo Grande Museum, 4619 E Washington Street, Phoenix, AZ 85034, telephone (602) 534–1572, email *lindsey.vogel-teeter@phoenix.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Pueblo Grande Museum, Phoenix, AZ. The human remains and associated funerary objects were removed from AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Pueblo Grande Museum professional staff in consultation with representatives of the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; and the Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Tribes'').

History and Description of the Remains

At an unknown date, prior to 1967, human remains representing, at minimum, four individuals were removed from an unknown site identified as ''Sheep's Crossing'' in Arizona. In 1967, the human remains were documented at Pueblo Grande Museum. In 1995, additional human remains with the same catalog number were found in Pueblo Grande Museum storage. In 2006, additional human remains with the same catalog number were found at residence of former Pueblo Grande Museum Director Don Hiser. The human remains range from complete to partial in preservation, and belong to an elderly adult female, a possible adult male, and two adult individuals of indeterminant sex. No known individuals were identified. The 11 associated funerary objects include one lot lithics, one shell bracelet fragment, one lot shell, one lot Tularosa and Reserve Black-on-white sherds, one Cibola whiteware sherd, two lots brown ware sherds, one unidentified glaze ware sherd, one polychrome sherd, one lot Tularosa style red-on-white sherds, and one lot faunal bone. Based on the associated funerary object types, these human remains are likely Ancestral Pueblo.

At an unknown date, likely in the 1900s, human remains representing, at minimum, four individuals, were removed from an unidentified site along Highway 87 between Payson and Winslow in Coconino, Gila, or Navajo County, AZ. Sometime prior to 1995, these human remains and associated funerary objects were transferred to Pueblo Grande Museum, and were identified during a Museum collection inventory. The partial human remains include skulls and isolated teeth. They represent four individuals: A young adult female, an infant of indeterminant sex, an adult of indeterminant sex, and a young-to-middle aged adult of indeterminant sex. No known individuals were identified. The three associated funerary objects include one St. John's black-on-red sherd, one corrugated sherd, and one black-on-white sherd. Based on the associated funerary object types and geographic location, these human remains are likely Ancestral Pueblo.

Cultural affiliation between Ancestral Pueblo and modern-day Pueblo tribes is demonstrated by geographic, historical, architectural, and oral traditional evidence. These Tribes include the Pueblo of Acoma, New Mexico and the Zuni Tribe of the Zuni Reservation, New Mexico.

The Hopi Tribe of Arizona considers all of Arizona to be within traditional Hopi lands or within areas where Hopi clans migrated in the past. Oral traditions and material culture demonstrate continuity between the prehistoric Ancestral Pueblo people and the Hopi people.

Determinations Made by the Pueblo Grande Museum

Officials of the Pueblo Grande Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of eight individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 14 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and The Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Lindsey Vogel-Teeter, Pueblo Grande Museum, 4619 E. Washington Street, Phoenix, AZ 85034, telephone (602) 534–1572, email *lindsey.vogel-teeter@phoenix.gov,* by April 22, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The Pueblo Grande Museum is responsible for notifying The Tribes that this notice has been published.

Dated: February 21, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–06033 Filed 3–20–20; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Amended Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received an amended complaint entitled *Certain Spa Pumps, Jet Pump Housings, Pedicure Spas, Components Thereof, and Products Containing the Same, DN 3432;* the Commission is soliciting comments on any public interest issues raised by the amended complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the amended complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received an amended complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Luraco Health & Beauty, LLC on March 17, 2020. The original complaint was filed on February 4, 2020 and a notice of receipt of complaint; solicitation of comments relating to the public interest published in the **Federal Register** on February 10, 2020. The amended complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain spa pumps, jet pump housings, pedicure spas, components thereof, and products containing same. The amended complaint names as respondents: GTP International Corporation of Dallas TX. The amended complaint alleges infringement of U.S. Patent Nos. 9,926,933; D622,736; D751,723; and 10,451,071. The complainant requests that the Commission issue a general exclusion, or in the alternative issue a limited exclusion order, and a cease desist order.

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the amended complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the

United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3432'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures).[1] Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: March 17, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–06010 Filed 3–20–20; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0076]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 30 Day notice.

SUMMARY: The Department of Justice, Federal Bureau of Investigation, Training Division is submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: The Department of Justice encourages public comment and will accept input until April 22, 2020.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Kevin R. Furtick, Chief, Evaluation and Assessment Unit, 1234 Range Road, Quantico, VA, *krfurtick@fbi.gov,* 703–632–3222. Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

➢ Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Department of Justice, Federal Bureau of Investigation, Training Division, including whether the information will have practical utility;

➢ Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

➢ Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

➢ Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* New Collection.

2. *The Title of the Form/Collection:* FBI Training Generic Clearance.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no agency form number for this collection. The applicable component within the Department of Justice is the Federal Bureau of Investigation, Training Division, Evaluation and Assessment Unit.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents of this collection include members of the State, Local or Tribal Government Law Enforcement

community and Federal Government Law Enforcement partners. This collection will gather feedback from FBI training programs to ensure the training delivered is realistic and relevant to today's law enforcement partners.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Respondents are estimated to be 10,000 annually with an estimated time to complete each survey to be less than 10 minutes each per respondent per collection.

6. *An estimate of the total public burden (in hours) associated with the collection:* The total estimated time for respondents to complete these evaluations is approximately 8,750 hours.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: March 17, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–05976 Filed 3–20–20; 8:45 am]

BILLING CODE 4410–18–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), as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the following extension of a currently approved collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before April 22, 2020 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by contacting Mackie Malaka at (703) 548–2704, emailing *PRAComments@ncua.gov,* or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0094.

Title: Suspicious Activity Report, 12 CFR part 748.1.

Form: None.

Type of Review: Extension of a currently approved collection.

Abstract: The Financial Crimes Enforcement Network (FinCEN), Department of the Treasury, was granted broad authority to require suspicious transaction reporting under the Bank Secrecy Act (BSA) (31 U.S.C. 5318(g)). FinCEN joined with the bank regulators in adopting and requiring reports of suspicious transactions on a consolidated suspicious activity report (SARs) form. This simplified the process through which banks inform their regulators and law enforcement about suspected criminal activity. In 2011, FinCEN transitioned from industry specific paper forms to one electronically filed dynamic and interactive BSA–SAR for use by all filing institutions. Information about suspicious transactions conducted or attempted by, at, through, or otherwise involving credit unions are collected through FinCEN's BSA E-filing system by credit unions. A SAR is to be filed no later than 30 calendar days from the date of the initial detection of facts that may constitute a basis for filing a SAR. If no suspect can be identified, the period for filing a SAR is extended to 60 days. FinCEN and law enforcement agencies use the information on BSA–SARs and the supporting documentation retained by the banks for criminal investigation and prosecution purposes.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 191,019.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on March 18, 2020.

Dated: March 18, 2020.

Mackie I. Malaka,

NCUA PRA Clearance Officer.

[FR Doc. 2020–06069 Filed 3–20–20; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Environmental Research and Education

AGENCY: Office of Integrative Activities, Office of the Director, National Science Foundation.

ACTION: Notice of open meeting: Cancellation.

SUMMARY: On February 21, 2020, the National Science Foundation published a notice of open meeting announcing a meeting on March 25–26, 2020 of the Advisory Committee for Environmental Research and Education. This notice announces the cancellation of this meeting.

DATES: The meeting scheduled for March 25–26, 2020, announced in the February 21, 2020, issue of the **Federal Register** (FR Doc. 2020–03469, 85 FR 10197), is cancelled.

FOR FURTHER INFORMATION CONTACT: Brandi Schottel, Executive Secretary, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Phone: (703) 292–4798; email: *bschotte@nsf.gov.*

Dated: March 17, 2020.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2020–05974 Filed 3–20–20; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0085]

Information Collection: NRC Forms 366, 366A, and 366B, ''Licensee Event Report''; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; extension of comment period; and correction.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is correcting a notice that was published in the **Federal Register** (FR) on February 26, 2020, providing notice of submission to the Office of Management and Budget and requesting comment. This action is necessary to amend the annual responses and burden hours to include the burden and responses associated cyber security events. The NRC has decided to extend the public comment period to allow more time for members of the public to develop and submit their comments. The public comment

period was originally scheduled to close on March 27, 2020.

DATES: The correction is effective March 23, 2020. The due date of comments requested in the document published on February 26, 2020 (85 FR 11126) is extended. Comments should be filed no later than April 22, 2020. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit comments directly to the OMB reviewer at: OMB Office of Information and Regulatory Affairs (3150–0104), Attn: Desk Officer for the Nuclear Regulatory Commission, 725 17th Street NW, Washington, DC 20503; email: *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** on February 26, 2020, in FR Doc. 2020–03826 on page 11127, in the first column, the response to question 7 is changed from ''350'' to ''542 (442 reporting responses plus 100 recordkeepers).'' In the second column, the response to question 9 is changed from ''The total estimated burden for completing Licensee Event Reports is 28,000 hours (based on 80 hours for each of 350 reports).'' to ''The total estimated burden from completing Licensee Event Reports is 35,360 hours (28,288 hours reporting plus 7,072 hours recordkeeping).''

Dated at Rockville, Maryland, this 18th day of March 2020.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2020–06064 Filed 3–20–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc., Vogtle Electric Generating Plant, Units 3 and 4 Inspections, Tests, Analyses, and Acceptance Criteria

AGENCY: Nuclear Regulatory Commission.

ACTION: Determination of the successful completion of inspections, tests, and analyses.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff has determined that specified inspections, tests, and analyses have been successfully completed, and that specified acceptance criteria are met for the Vogtle Electric Generating Plant (VEGP), Units 3 and 4.

DATES: Determinations of the successful completion of inspections, tests, and analyses for VEGP Units 3 and 4 are effective on the dates indicated in the NRC staff's verification evaluation forms for the inspections, tests, analyses, and acceptance criteria (ITAAC).

ADDRESSES: Please refer to Docket ID NRC–2008–0252 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–2008–0252. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *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: Cayetano Santos, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7270, email: *Cayetano.Santos@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Licensee Notification of Completion of ITAAC

Southern Nuclear Operating Company, Inc. (SNC), Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC., MEAG Power SPVJ, LLC., MEAG Power SPVP, LLC., and the City of Dalton, Georgia, (hereafter called the licensee) has submitted ITAAC closure notifications (ICNs) under section 52.99(c)(1) of title 10 of the *Code of Federal Regulations* (10 CFR), informing the NRC that the licensee has successfully performed the required inspections, tests, and analyses, and that the acceptance criteria are met for:

VEGP Unit 3 ITAAC

2.1.02.08d.ii (33), 2.2.03.08c.xii (197), 2.2.03.09a.ii (202), 2.5.02.08b.i (542), 2.5.02.10 (549), 2.5.02.11 (550), 2.5.02.12 (551), 3.2.00.02 (745), 3.3.00.02a.ii.f (769), 3.3.00.04b (782), and E.3.9.05.01.07 (855).

VEGP Unit 4 ITAAC

2.5.02.10 (549), 2.5.02.12 (551), and 3.3.00.04b (782).

The ITAAC for VEGP Unit 3 are in Appendix C of the VEGP Unit 3 combined license (ADAMS Accession No. ML14100A106). The ITAAC for VEGP Unit 4 are in Appendix C of VEGP Unit 4 combined license (ADAMS Accession No. ML14100A135).

II. Licensee ITAAC Post-Closure Notifications (IPCNs)

Since the last **Federal Register** notice of the NRC staff's determinations of successful completion of inspections, tests, and analyses for VEGP Units 3 and 4, the NRC staff has not made additional determinations of the successful completion of inspections, tests, and analyses based on licensee IPCNs submitted under 10 CFR 52.99(c)(2).

III. NRC Staff Determination of Completion of ITAAC

The NRC staff has determined that the specified inspections, tests, and analyses have been successfully completed, and that the specified acceptance criteria are met. The documentation of the NRC staff's determination is in the ITAAC Closure Verification Evaluation Form (VEF) for each ITAAC. The VEF is a form that represents the NRC staff's structured process for reviewing ICNs and IPCNs.

Each ICN presents a narrative description of how the ITAAC was completed. The NRC's ICN review process involves a determination on whether, among other things: (1) Each ICN provides sufficient information, including a summary of the methodology used to perform the ITAAC, to demonstrate that the inspections, tests, and analyses have been successfully completed; (2) each ICN provides sufficient information to demonstrate that the acceptance criteria

of the ITAAC are met; and (3) any NRC inspections for the ITAAC have been completed and any ITAAC findings associated with that ITAAC have been closed. The NRC's review process for IPCNs is similar to that for ICNs but focuses on how the licensee addressed the new, material information giving rise to the IPCN.

The NRC staff's determination of the successful completion of these ITAAC is based on information available at this time and is subject to the licensee's ability to maintain the condition that the acceptance criteria are met. If the NRC staff receives new information that suggests the NRC staff's determination on any of these ITAAC is incorrect, then the NRC staff will determine whether to reopen that ITAAC (including withdrawing the NRC staff's determination on that ITAAC). The NRC staff's determination will be used to support a subsequent finding, pursuant to 10 CFR 52.103(g), at the end of construction that all acceptance criteria in the combined license are met. The ITAAC closure process is not finalized for these ITAAC until the NRC makes an affirmative finding under 10 CFR 52.103(g). Any future updates to the status of these ITAAC will be reflected on the NRC's website at *https://www.nrc.gov/reactors/new-reactors/oversight/itaac.html.*

This notice fulfills the NRC staff's obligations under 10 CFR 52.99(e)(1) to publish a notice in the **Federal Register** of the NRC staff's determination of the successful completion of inspections, tests, and analyses.

Vogtle Electric Generating Plant Unit 3, Docket No. 5200025

A complete list of the review status for VEGP Unit 3 ITAAC, including the submission date and ADAMS Accession Number for each ICN received, the ADAMS Accession Number for each VEF, and the ADAMS Accession Numbers for the inspection reports associated with these specific ITAAC, can be found on the NRC's website at *https://www.nrc.gov/reactors/new-reactors/new-licensing-files/vog3-icnsr.pdf.*

Vogtle Electric Generating Plant Unit 4, Docket No. 5200026

A complete list of the review status for VEGP Unit 4 ITAAC, including the submission date and ADAMS accession number for each ICN and IPCN received, the ADAMS accession number for each VEF, and the ADAMS accession numbers for the inspection reports associated with these specific ITAAC, can be found on the NRC's website at *https://www.nrc.gov/reactors/new-reactors/new-licensing-files/vog4-icnsr.pdf.*

Dated at Rockville, Maryland, this 17th day of March 2020.

For the Nuclear Regulatory Commission.

Victor E. Hall,

Chief, Vogtle Project Office, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–06057 Filed 3–20–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Re-notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will convene a meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on March 30, 2020. This meeting notice, published in the **Federal Register** on February 19, 2020, is being re-noticed to inform members of the public that this meeting will now be conducted on March 30, 2020 via teleconference.

DATES: March 30, 2020 from 9:30 a.m. to 5:00 p.m. Eastern Standard Time.

FOR FURTHER INFORMATION CONTACT: Ms. Kellee Jamerson, email: *Kellee.Jamerson@nrc.gov,* telephone: (301) 415–7408.

SUPPLEMENTARY INFORMATION: The current agenda and any updates are available at *http://www.nrc.gov/reading-rm/doc-collections/acmui/meetings/2020.html* or by emailing Ms. Kellee Jamerson at the contact information above. The agenda is subject to change.

Purpose: Discuss issues related to 10 CFR part 35 Medical Use of Byproduct Material.

Public Participation: Any member of the public who wishes to participate in the meeting should contact Ms. Jamerson using the information above. The meeting will also use the WebEx application.

Conduct of the Meeting

Darlene Metter, M.D. will chair the meeting. Dr. Metter will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit an electronic copy to Ms. Jamerson using the contact information listed above. All submittals must be received by March 25, 2020, three business days before the meeting, and must pertain to the topics on the agenda for the meeting.

2. Questions and comments from members of the public will be permitted at designated times during the meeting, at the discretion of the ACMUI Chairman.

3. The draft transcript and meeting summary will be available on the ACMUI's website *http://www.nrc.gov/reading-rm/doc-collections/acmui/meetings/2020.html* on or about May 12, 2020.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10 of the *Code of Federal Regulations,* Part 7.

Dated at Rockville, Maryland this 18th day of March, 2020.

For the U.S. Nuclear Regulatory Commission.

Russell E. Chazell,

Advisory Committee Management Officer.

[FR Doc. 2020–06073 Filed 3–20–20; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0216, We Need Important Information About Your Eligibility for Social Security Disability Benefits, RI 98–7

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR), We Need Important Information About Your Eligibility for Social Security Disability Benefits, RI 98–7.

DATES: Comments are encouraged and will be accepted until May 22, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://*

www.regulations.gov as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via email to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or reached via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection (OMB No. 3206–0216). The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

RI 98–7 is used by OPM to verify receipt of Social Security Administration (SSA) disability benefits, to lessen or avoid overpayment to Federal Employees Retirement System (FERS) disability retirees. It notifies the annuitant of the responsibility to notify OPM if SSA benefits begin and the overpayment that will occur with the receipt of both benefits.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: We Need Important Information About Your Eligibility for Social Security Disability Benefits.

OMB Number: 3206–0216.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 4,300.

Estimated Time per Respondent: 5 minutes.

Total Burden Hours: 358.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–06018 Filed 3–20–20; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0142, Designation of Beneficiary: Civil Service Retirement System (CSRS), SF 2808

AGENCY: Office of Personnel Management.

ACTION: 60-day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR), Designation of Beneficiary: Civil Service Retirement System, SF 2808.

DATES: Comments are encouraged and will be accepted until May 22, 2020.

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

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

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

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent by email to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or reached via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection (OMB No. 3206–0142). The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

SF 2808 is used by persons covered by CSRS to designate a beneficiary to receive the lump sum payment due from the Civil Service Retirement and Disability Fund in the event of their death.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Designation of Beneficiary: Civil Service Retirement System.

OMB: 3206–0142.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 2,000.

Estimated Time per Respondent: 15 minutes.

Total Burden Hours: 500.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–06030 Filed 3–20–20; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0190, Application for Deferred or Postponed Retirement: Federal Employees Retirement System, RI 92–19

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR), Application for Deferred or Postponed Retirement: Federal Employees Retirement System, RI 92–19.

DATES: Comments are encouraged and will be accepted until May 22, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

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

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415–0001, Attention: Cyrus S. Benson, or sent via email to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or reached via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection (OMB No. 3206–0190). The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

RI 92–19 is used by separated employees to apply for either a deferred or a postponed FERS annuity benefit.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Application for Deferred or Postponed Retirement: Federal Employees Retirement System (FERS).

OMB Number: 3206–0190.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 1964.

Estimated Time per Respondent: 60 minutes.

Total Burden Hours: 1964.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–06029 Filed 3–20–20; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0218, Death Benefit Payment Rollover Election, RI 94–7

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR), Death Benefit Payment Rollover Election, RI 94–7.

DATES: Comments are encouraged and will be accepted until May 22, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

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

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or reached via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection (OMB No. 3206–0218). The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

RI 94–7 provides Federal Employees Retirement System (FERS) surviving spouses and former spouses with the means to elect payment of FERS rollover-eligible benefits directly or to an Individual Retirement Arrangement (IRA), eligible employer plan or Thrift Savings Plan (TSP) account.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Death Benefit Payment Rollover Election Form.

OMB Number: 3206–0218.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 3,444.

Estimated Time per Respondent: 1 hour.

Total Burden Hours: 3,444.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–06013 Filed 3–20–20; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0144, We Need the Social Security Number of the Person Named Below, RI 38–45

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection request (ICR), We Need the Social Security Number of the Person Named Below, RI 38–45.

DATES: Comments are encouraged and will be accepted until May 22, 2020.

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

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

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

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent by email to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or reached via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection (OMB No. 3206–0144). The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of OPM, including whether the information will have practical utility;

2. Evaluate the accuracy of OPM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

RI 38–45 is used by the Civil Service Retirement System and the Federal Employees Retirement System to identify the records of individuals with similar or the same names. It is also needed to report payments to the Internal Revenue Service.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: We Need the Social Security Number of the Person Named Below.

OMB Number: 3206–0144.

Frequency: On occasion.

Affected Public: Individual or Households.

Number of Respondents: 3,000.

Estimated Time Per Respondent: 5 minutes.

Total Burden Hours: 250.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–06027 Filed 3–20–20; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0144, We Need the Social Security Number of the Person Named Below, RI 38–45

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection request (ICR), We Need the Social Security Number of the Person Named Below, RI 38–45.

DATES: Comments are encouraged and will be accepted until May 22, 2020.

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

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

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

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent by email to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or reached via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection (OMB No. 3206–0144). The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of OPM, including whether the information will have practical utility;

2. Evaluate the accuracy of OPM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

RI 38–45 is used by the Civil Service Retirement System and the Federal Employees Retirement System to identify the records of individuals with similar or the same names. It is also

needed to report payments to the Internal Revenue Service.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: We Need the Social Security Number of the Person Named Below.

OMB Number: 3206–0144.

Frequency: On occasion.

Affected Public: Individual or Households.

Number of Respondents: 3,000.

Estimated Time per Respondent: 5 minutes.

Total Burden Hours: 250.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–06017 Filed 3–20–20; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0237, Information and Instructions on Your Reconsideration Rights, RI 38–47

AGENCY: Office of Personnel Management.

ACTION: 60-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection request (ICR), Information and Instruction on Your Reconsideration Rights, RI 38–47.

DATES: Comments are encouraged and will be accepted until May 22, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

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

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent by email to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or reached via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection (OMB No. 3206–0237). The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of OPM, including whether the information will have practical utility;

2. Evaluate the accuracy of OPM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

RI 38–47 outlines the procedures required to request reconsideration of an initial OPM decision about Civil Service or Federal Employees retirement, Federal or Retired Federal Employees Health Benefits requests to enroll or change enrollment or Federal Employees' Group Life Insurance coverage. This form lists the procedures and time periods required for requesting reconsideration.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Information and Instruction on Your Reconsideration Rights.

OMB: 3206–0237.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 3,100.

Estimated Time per Respondent: 45 minutes.

Total Burden Hours: 2,325 hours.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–06016 Filed 3–20–20; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0233, Civil Service Retirement System Survivor Annuitant Express Pay Application for Death Benefits, RI 25–51

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR), Civil Service Retirement System Survivor Annuitant Express Pay Application for Death Benefits, RI 25–51.

DATES: Comments are encouraged and will be accepted until May 22, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

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

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or reached via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection (OMB No. 3206–0233). The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

RI 25–51 will be used by the Civil Service Retirement System solely to pay benefits to the widow(er) of an annuitant. This application is intended for use in immediately authorizing payments to an annuitant's widow or widower, based on the report of death, when our records show the decedent elected to provide benefits for the applicant.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Civil Service Retirement System Survivor Annuitant Express Pay Application for Death Benefits.

OMB: 3206–0233.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 34,800.

Estimated Time per Respondent: 30 minutes.

Total Burden Hours: 17,400.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–06028 Filed 3–20–20; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0235, Letter Reply To Request for Information, RI 20–64; Former Spouse Survivor Annuity Election, RI 20–64A; Information on Electing a Survivor Annuity for Your Former Spouse, RI 20–64B

AGENCY: Office of Personnel Management.

ACTION: 60-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection request (ICR), Letter Reply to Request for Information, RI 20–64 and Information on Electing a Survivor Annuity for Your Former Spouse, RI 20–64A.

DATES: Comments are encouraged and will be accepted until May 22, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

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

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or reached via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection (OMB No. 3206–0235). The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of OPM, including whether the information will have practical utility;

2. Evaluate the accuracy of OPM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses. RI 20–64, Letter Reply to Request for Information, is used by the Civil Service Retirement System (CSRS) to provide information about the amount of annuity payable after a survivor reduction, to explain the annuity reductions required to pay for the survivor benefit, and to give the beginning rate of survivor annuity. RI 20–64A, Former Spouse Survivor Annuity Election, is used by the CSRS to obtain a survivor benefits election from annuitants who are eligible to elect to provide survivor benefits for a former spouse. RI 20–64B, Information on Electing a Survivor Annuity for Your Former Spouse, is a pamphlet that provides important information to retirees under the CSRS who want to provide a survivor annuity for a former spouse.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Letter Reply to Request for Information; Former Spouse Survivor Annuity Election.

OMB Number: 3206–0235.

Frequency: On occasion.

Affected Public: Individual or Households.

Number of Respondents: 38.

Estimated Time Per respondent: 45 minutes for RI 20–64A and 8 minutes for RI 20–64.

Total Burden Hours: 24.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–06026 Filed 3–20–20; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0032, Self-Certification of Full-Time School Attendance for the School Year, RI 25–14 and Information and Instructions for Completing the Self-Certification of Full-Time School Attendance For The School Year, RI 25–14A

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR), Self-Certification of Full-Time School

Attendance For The School Year, RI 25–14 and Information and Instructions for Completing the Self-Certification of Full-Time School Attendance For The School Year, RI 25–14A.

DATES: Comments are encouraged and will be accepted until May 22, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

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

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via email to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or reached via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection (OMB No. 3206–0032). The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

RI 25–14 is used to survey survivor annuitants who are between the ages of 18 and 22 to determine if they meet the requirements of Section 8341(a)(4)(C), and Section 8441, title 5, U.S. Code, to receive benefits as a student. RI 25–14A provides instructions for completing the Self-Certification of Full-Time School Attendance For The School Year survey form.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Self-Certification of Full-Time School Attendance For The School Year and Information and Instructions for Completing the Self-Certification of Full-Time School Attendance For The School Year.

OMB Number: 3206–0032.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 14,000.

Estimated Time per Respondent: 12 minutes.

Total Burden Hours: 2,800.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–06020 Filed 3–20–20; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Information Collection: Standard Form 3119—Application for Court-Ordered Benefits for Former Spouses

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a new information collection, Standard Form 3119—Application for Court-Ordered Benefits for Former Spouses.

DATES: Comments are encouraged and will be accepted until May 22, 2020.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to Retirement Services, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415, Attention: Alberta Butler, Room 2347–E, or sent via electronic mail to *Alberta.Butler@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this information collection instrument with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) OPM is soliciting comments for this collection (OMB No. 3206–NEW). We are particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Standard Form 3119 will be used to collect the necessary information on the inaugural attempt, which eliminates the need to re-contact the customer to gather additional required information, ensure that OPM can process the apportionment correctly, and eliminate any delay in payment to the customers.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Application for Court-Ordered Benefits for Former Spouses (SF 3119).

OMB Number: 3206–NEW.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: approximately 2,500 annually.

Estimated Time per Respondent: 60 minutes.

Total Burden Hours: 2,500 hours.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–06014 Filed 3–20–20; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket No. C2020–1; Order No. 5455]

Complaint Proceeding

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is appointing a presiding officer to set a procedural schedule and conduct limited discovery for the purpose of determining disputed issues of fact in the case. This notice informs the public of the filing and takes other administrative steps.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction and Procedural History
II. Complaint
III. Motion To Dismiss
IV. Response to Motion To Dismiss
V. Information Requests and Reply
VI. Commission Analysis and Limited Discovery
VII. Ordering Paragraphs

I. Introduction and Procedural History

On December 23, 2019, Randall Ehrlich (Complainant) filed a complaint pursuant to 39 U.S.C. 3662(a) and 403(c) concerning an ongoing suspension of mail service to his home.[1]

On January 13, 2020, the Postal Service filed a motion to dismiss the Complaint, asserting that the Complainant fails to state a claim upon which relief can be granted, the Commission lacks statutory authority to grant the remedy requested, and that *res judicata* precludes the Commission from considering the allegations set forth in the Complaint.[2] The Postal Service's Motion to Dismiss here stands in place of an answer as required by 39 CFR 3030.12 because the Motion to Dismiss contains the material issues of fact which the Postal Service relied upon in determining that it did not unlawfully discriminate against the Complainant. *See* 39 CFR 3030.14.

Complainant timely responded to the Motion to Dismiss on January 31, 2020.[3] The Response disputes the basis of the Postal Service's claims and alleges that genuine issues of fact and law exist that preclude the Commission from granting the Motion to Dismiss. *See* Response at 11–15.

Chairman's Information Request No. 1 was issued on January 16, 2020,[4] which the Postal Service responded to on January 23, 2020.[5] Chairman's Information Request No. 2[6] was issued February 4, 2020, to which the Postal Service responded on February 18, 2020,[7] after requesting[8] and receiving[9] an extension of time to respond. Complainant replied to the Response to CHIR No. 2 on February 24, 2020.[10]

For the reasons discussed below, the Commission concludes that the Complaint raises material issues of fact, and therefore denies the Postal Service's Motion to Dismiss pursuant to 39 U.S.C. 3662(b) and 39 CFR 3030.30(a)(1). Accordingly, the Commission appoints a presiding officer to set a procedural schedule and conduct limited discovery for the purpose of determining disputed issues of fact in the case. 39 CFR 3030.21. The scope of the discovery proceeding will be limited only to fact-finding conducted by the presiding officer on specific matters of fact identified in this order.

II. Complaint

Complainant alleges that shortly after an encounter between his dog Cookie and a mail carrier at his residence in July of 2015, mail has not been delivered to his porch mailbox in violation of 39 U.S.C. 403(c). Complaint at 4–5. He states the cessation of mail has continued despite the fact that Cookie no longer resides at Complainant's home. *Id.* at 5. He states that he attempted to contact postal representatives at the Ballard Postal Annex to inquire about the non-delivery of his mail and request restoration of mail service to his porch. *Id.* at 5–6. Complainant claims that he notified Postal Service representatives that Cookie had been adopted out of his residence but that notification did not result in the restoration of his mail. *Id.* at 6. Specifically, he states that he received a visit from a Postal Service inspector who had a positive interaction with the remaining dog at his residence, but that this report ''had no impact on management'' as the hold on Complainant's mail continued. *Id.* at 5.

Complainant alleges that the Postal Service's proffered solution to his mail delivery issue was to relocate his mailbox to the intersection of his driveway and sidewalk, which was unacceptable to Complainant because of his ongoing concerns about theft from his mailbox. *Id.* at 4, 7, Exhibit A. He states that his attempts at mounting the mailbox at another location on his side fence located ''approximately 10 feet 6 inches from the sidewalk'' were rebuffed by the Postal Service. Complaint at 9–10. He claims that his treatment was discriminatory because other similarly situated mailers, including neighbors with well-behaved dogs and ''other resident[s] whose premises present no dangers to the letter carrier'' are still receiving mail at their residences. Complaint at 13. He requests that the Commission require delivery to be restored to his porch mailbox and ''that all discriminatory acts and omissions'' against Complainant ''cease immediately.'' *Id.* at 14.

III. Motion To Dismiss

The Postal Service contends that dismissing the Complaint is appropriate because Complainant fails to state a claim upon which relief can be granted, and cites lack of Commission jurisdiction, mootness, and *res judicata* as additional grounds for dismissal. Motion to Dismiss at 8, 20, 22. It justifies the cessation of mail delivery to Complainant's residence by framing the matter as one of carrier safety. *Id.* at 5–6. It cites section 623.3 of the Postal Operations Manual, which provides that '' '[d]elivery service may be suspended when there is an immediate threat (including, but not limited to threats due to loose animals) to the delivery employee . . .' '' *Id.* at 6 n.24. The Postal Service states that contrary to Complainant's claim, he is not similarly situated to other postal customers with well-behaved dogs and whose premises present no dangers to the letter carrier because ''he has been and remains the owner of at least one dog that behaved in such a manner that a dog hold was issued.'' *Id.* at 10 (footnote omitted). As

[1] Complaint of Randall Ehrlich, December 23, 2019 (Complaint).

[2] United States Postal Service Motion to Dismiss with Prejudice the Complaint of Randall Ehrlich, January 13, 2020 (Motion to Dismiss).

[3] Response to Motion to Dismiss, January 31, 2020 (Response). Concurrent with the Response, Complainant also filed a motion requesting that the Commission accept his delayed filing. Motion for Extension of Time of Approximately Ninety Minutes, January 31, 2020 (Complainant's Motion). The Commission hereby grants the Complainant's Motion.

[4] Chairman's Information Request No. 1, January 16, 2020 (CHIR No. 1).

[5] Responses of the United States Postal Service to Questions No 1–2 of Chairman's Information Request No. 1, January 23, 2020 (Response to CHIR No. 1).

[6] Chairman's Information Request No. 2, February 4, 2020 (CHIR No. 2).

[7] United States Postal Service Response to Questions 1–4 or Chairman's Information Request No. 2, February 18, 2020 (Response to CHIR No. 2).

[8] United States Postal Service Motion for Extension of Time to File Response to Questions 1–4 of Chairman's Information Request No. 2, February 11, 2020 (Postal Service Motion).

[9] Order Granting Motion for Extension of Time to File Responses to Chairman's Information Request No. 2, February 12, 2020 (Order No. 5425). Order No. 5425 also granted Complainant additional time to respond to the Postal Service's answers.

[10] Response to USPS's Answers to Chairman Information Request No. 2, with Third Ehrlich Declaration, February 24, 2020 (Reply to CHIR No. 2 Responses).

such, it goes on to state, the allegations in the Complaint do not violate § 403(c) as any disparate treatment between him and well-behaved dog owners is reasonable to ensure carrier safety. *Id.* at 15. The Postal Service alleges that the Complainant ''admits he has been and remains the owner of at least one dog whose behavior required the issuance of a dog hold.'' *Id.* at 13.

On the issue of mailbox placement, the Postal Service cites section 623.1 of the Postal Operations Manual for the proposition that the Postal Service may withdraw service to a delivery point if a customer does not provide a mail receptacle in a postal-approved location after being given written notification to do so. *Id.* at 16. According to the Postal Service, the Complainant's refusal to comply with mailbox placement at the alternate location approved by the Postal Service is a legitimate reason to continue suspending mail delivery to the Complainant's residence. *Id.* at 18.

IV. Response to Motion To Dismiss

In the Response, the Complainant claims that without an individualized assessment of the dogs currently at his residence, the Postal Service is ''excessive, unreasonable, and highly discriminatory'' in applying a dog hold in perpetuity to a residence where the offending dog may no longer reside. Response at 9. Complainant also notes that the Seattle District's Animal/Insect Policy [11] provides that mail delivery may be resumed when the carrier feels no immediate threat. Response at 13. Complainant notes that after the singular incident in July 2015, no further complaints were made and failure to restore mail to the porch mailbox after Cookie left constitutes an abuse of discretion by the district manager. *Id.*

V. Information Requests and Reply

The Postal Service clarified that it does not have specific knowledge of the dogs currently residing at Complainant's residence, but states that ''dog holds are not specific to a particular dog or animal at a customer's residence.'' Response to CHIR No. 1, question 1.a. It goes on to state that once a ''dog hold'' letter is issued, it ''remains in effect indefinitely until management, in consultation with the letter carrier, determines that mail can safely be resumed.'' *Id.* (footnote omitted).

The Postal Service states that Complainant's offer to mount a mail box on his side fence is unacceptable because it would compromise the mail carrier's safety by exposing the carrier to a greater risk of an unexpected dog attack. *Id.* question 2. It states that the location chosen by the Postal Service is safer because it does not place the mail carrier in the direct path of the front door, should a dog run out. *Id.* It also allows the letter carrier to see the front door and have a few more seconds of warning to take cover by the bushes alongside the fence if a dog were to attack from Complainant's residence. *Id.*

In Response to CHIR No. 2, the Postal Service states that after Cookie was adopted out, the Complainant allegedly acquired a second dog, who ''also behaved aggressively when the letter carrier attempted to deliver mail to Complainant's residence.'' Response to CHIR No. 2, question 1.a. (footnote omitted). It goes on to state that if the Complainant contends that the second dog is also no longer present, the Postal Service may still continue to withhold mail from Complainant's residence. According to the Postal Service, this ongoing hold is justified because Complainant has not notified management that there is no longer an aggressive dog present, has not demonstrated that the dog hold should be lifted, and has failed to comply with the mailbox relocation necessitated by the original dog hold. Response to *Id.* question 1.b. It states that Occupational Safety and Health Administration (OSHA) issued a complaint on February 15, 2017, related to Complainant's aggressive dog(s), which resulted in a determination by local management that Complainant's mailbox needed to be moved to ensure mail carrier safety. *Id.* question 1.d., Exhibit 3. The Postal Service also states that ''a single, positive interaction with an animal while its owner/caregiver is present and nearby—whether experienced by a Postal Service employee or an OSHA inspector—is insufficient to warrant the discontinuance of a dog hold.'' Response to CHIR No. 2, question 2.a.

In the Reply to CHIR No. 2 Responses, Complainant disputes a number of allegations made by the Postal Service, including: (1) That Cookie never attacked or was aggressive toward the mail carrier in 2015; (2) that any of the dogs residing at his home have been aggressive towards the mail carrier; and (3) the sidewalk fence mailbox location is not a viable option due to theft concerns. Reply to CHIR No. 2 Responses, Third Declaration of Randall Ehrlich at 2–4.

VI. Commission Analysis and Limited Discovery

The Commission finds that the pleadings raise issues of fact relevant to whether the actions or inactions of the Postal Service violate 39 U.S.C. 403(c). Viewed in the light most favorable to Complainant, the allegations in the Complaint may raise a cognizable claim of undue or unreasonable discrimination. The Commission also recognizes that the Postal Service has a legitimate interest in ensuring mail carrier safety and providing a work environment consistent with OSHA regulations. Accordingly, the Commission's role in this inquiry is not to question that interest, but to determine if the current postal policy, as applied to the Complainant, presents a potential violation of 39 U.S.C. 403(c).

Additionally, the Commission finds the Postal Service's arguments of lack of jurisdiction, mootness, and *res judicata* unpersuasive. The Postal Service alleges lack of jurisdiction and mootness as overlapping grounds for dismissal, in effect stating that because an aggressive dog still resides at Complainant's residence, the Commission has no authority to override internal postal policy on mail delivery [12] and that the Postal has ''already offered any remedy the Commission might provide.'' *See id.* at 20. Because the Postal Service assumes that aggressive dogs still reside at Complainant's residence, despite Complainant's statements, the Postal Service's arguments regarding mootness and lack of jurisdiction necessarily fail. Similarly, it states that the Commission is precluded from considering the allegations set forth in the Complaint due to *res judicata. Id.* at 22. The Commission notes that although it has dismissed a previous complaint brought by the Complainant with some similar allegations,[13] the instant complaint raises new allegations of discriminatory treatment distinct from other similarly situated mailers. Complaint at 13.

Therefore, the Postal Service's Motion to Dismiss is denied pursuant to 39 U.S.C. 3662(b).

The outstanding issues of fact required to resolve whether a violation of 39 U.S.C. 403(c) occurred are:

1. Whether any dogs remain at Complainant's residence that are aggressive or could be a threat to carrier safety.

2. Whether postal management followed non-discriminatory processes in its continuance of a dog hold on complainant's residence.

3. Whether the alternate mailbox site proposed by the Complainant was a reasonable compromise between carrier safety and complainant's security concerns.

[11] *See* Response to CHIR No. 1, Exhibit 1 at 1.

[12] *See* Motion to Dismiss at 18–19.

[13] Docket No. C2019–1, Order Granting Motion To Dismiss, December 12, 2018 (Order No. 4924).

4. Whether the Complainant is obligated to comply with a mailbox relocation if there are no aggressive dogs remaining at his residence.

5. Whether a locked mailbox at the mailbox site approved by the Postal Service would alleviate Complainant's security concerns.

Pursuant to 39 CFR 3001.23, the Commission appoints Lauren D'Agostino to serve as presiding officer to ascertain outstanding issues of material fact in this matter. Parties may request that the presiding officer obtain specific discovery, but may not independently propound discovery. The presiding officer shall examine the disputed issues identified above and provide a public, written intermediate decision including findings of fact and conclusions of law on the issues raised in this proceeding. 39 CFR 3001.39.

The Commission finds good cause to waive the appointment of an officer of the Commission designated to represent the interests of the general public in this proceeding as required by 39 CFR 3030.30(c) because the violations alleged in the Complaint pertain solely to Complainant, who is represented by counsel, and not to the general public.

VII. Ordering Paragraphs

It is ordered:

1. The Commission finds that the Complaint of Randall Ehrlich, filed December 23, 2019, raises material issues of fact.

2. The Motion of the United States Postal Service to Dismiss with Prejudice the Complaint of Randall Ehrlich, filed January 13, 2020, is denied.

3. Pursuant to 39 CFR 3001.23, the Commission appoints Lauren D'Agostino as a presiding officer in this proceeding.

4. Parties may request that the presiding officer obtain specific discovery but may not independently propound discovery.

5. The presiding officer shall, pursuant to 39 CFR 3001.39, provide a public written intermediate decision including findings of fact and conclusions of law on the issues raised in this proceeding.

6. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2020–06048 Filed 3–20–20; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

TIME AND DATE: March 19, 2020, at 8:00 a.m.

PLACE: Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Matters.
2. Strategic Matters.

On March 19, 2020, a majority of the members of the Board of Governors of the United States Postal Service voted unanimously to hold and to close to public observation a special meeting in Washington, DC, via teleconference. The Board determined that no earlier public notice was practicable.

General Counsel Certification: The General Counsel of the United States Postal Service has certified that the meeting may be closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Michael J. Elston, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1000. Telephone: (202) 268–4800.

Michael J. Elston,

Secretary.

[FR Doc. 2020–06164 Filed 3–19–20; 4:15 pm]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88398; File No. SR–NYSEARCA–2020–22]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change of a Temporary Waiver of the Co-Location Hot Hands Fee

March 17, 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 March 16, 2020, NYSE Arca, Inc. (''NYSE Arca'' 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a temporary waiver of the co-location ''Hot Hands'' fee beginning on March 16, 2020 through March 29, 2020. 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 a temporary suspension of the co-location [4] ''Hot Hands'' fee beginning on March 16, 2020 through March 29, 2020, after which the Mahwah, New Jersey data center (''Data Center'') is scheduled to reopen to third parties.

The Exchange is an indirect subsidiary of Intercontinental Exchange, Inc. (''ICE''). Through its ICE Data Services (''IDS'') business, ICE operates the Data Center, from which the Exchange provides co-location services to Users.[5]

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2010. *See* Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR–NYSEArca–2010–100).

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82). As specified in the NYSE Arca Options Fees and Charges and the NYSE Arca Equities Fees and Charges (together, the ''Fee Schedules''), a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service

Among those services is a ''Hot Hands'' service, which allows Users to use on-site Data Center personnel to maintain User equipment, support network troubleshooting, rack and stack a server in a User's cabinet; power recycling; and install and document the fitting of cable in a User's cabinet(s).[6] The Hot Hands fee is $100 per half hour.

ICE has announced to each User that, starting March 16, 2020, the Data Center will be closed to third parties through March 29, 2020. Pursuant to the ICE contingency plan, the Data Center is being closed to third parties to help avoid the spread of COVID–19, which could negatively impact Data Center functions. The President of the Exchange has taken the actions required under NYSE Arca Rules 7.1–E and 7.1–O to close the co-location facility of the Exchange to third parties.[7] While the Rules 7.1–E and 7.1–O closures are in effect, User representatives will not be allowed access to the Data Center.

If a User's equipment requires work while the Rules 7.1–E and 7.1–O closures are in effect, the User will have no option but to use the Hot Hands service and, absent the proposed waiver, would incur Hot Hands fees for the work. Given that, the Exchange proposes to waive all Hot Hands fees from the date of the closing through March 29, 2020, and to add text to the Hot Hands Fee in the Fee Schedules noting the waiver. The Exchange believes that there will be sufficient Data Center staff on-site to comply with User requests for Hot Hands service.

The proposed waiver would apply equally to all Users. The proposed fee waiver would not apply differently to distinct types or sizes of market participants. Rather, it would apply uniformly to all Users.

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[9] 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. In addition, it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposed Rule Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable for the following reasons.

While the Rules 7.1–E and 7.1–O closures are in effect, User representatives will not be allowed access to the Data Center. If a User's equipment requires work during such period, the User will have to use the Hot Hands service and, absent a waiver, would incur Hot Hands fees for the work. The Exchange believes that it is reasonable to grant the proposed waiver because Users would have no option other than using the Hot Hands service.

The proposed relief would allow a User to have work carried out on its equipment notwithstanding the closure of the Data Center without incurring Hot Hands fees.

The Proposed Rule Change Is Equitable

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits for the following reasons.

The proposed waiver would apply equally to all Users. The proposed fee waiver would not apply differently to distinct types or sizes of market participants. Rather, it would apply uniformly to all Users.

The Exchange believes that the proposal is equitable because all similarly-situated Users would not be charged a fee to use the Hot Hands service that the User would have to use because of the Data Center closure.

The Proposed Change Is Not Unfairly Discriminatory and Would Protect Investors and the Public Interest

The Exchange believes that the proposed change is not unfairly discriminatory for the following reasons.

The proposed waiver would not apply differently to distinct types or sizes of market participants. Rather, all Users whose equipment requires work during the Data Center closure would have the resulting fees waived, and the waiver would apply uniformly to all Users from March 16, 2020 through March 29, 2020. For the reasons above, the proposed changes do not unfairly discriminate between or among market participants.

In addition, the Exchange believes that the proposed rule change would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest because it would allow a User to have work carried out on its equipment notwithstanding the closure of the Data Center pursuant to Rules 7.1–E and 7.1–O without incurring Hot Hands fees. Accordingly, the Exchange believes that the requested relief is designed to perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest by facilitating the uninterrupted availability of Users' equipment.

For all of the above 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,[10] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that the proposed change would place any burden on intramarket competition that is not necessary or appropriate.

The proposal it is not designed to affect competition, but rather to provide relief to Users that, while the Rules 7.1–E and 7.1–O closures are in effect, have no option but to use the Hot Hands service.

The proposed waiver would not apply differently to distinct types or sizes of

charged by the Exchange's affiliates the New York Stock Exchange LLC (''NYSE''), NYSE American LLC (''NYSE American''), NYSE Chicago, Inc. (''NYSE Chicago''), and NYSE National, Inc. (''NYSE National'' and together, the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70173 (August 13, 2013), 78 FR 50459 (August 19, 2013) (SR–NYSEArca–2013–80). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2020–18, SR–NYSEAmer–2020–19, SR–NYSECHX–2020–07, and SR–NYSENAT–2020–10.

[6] *See* Securities Exchange Act Release No. 72720 (July 30, 2014), 79 FR 45577 (August 5, 2014) (SR–NYSEArca–2014–81).

[7] *See* NYSE Arca Rules 7.1–E(c) through (e) and 7.1–O(c) through (e). *See also* NYSE Rule 7.1, NYSE American Rules 7.1E and 901NY, NYSE Chicago Rule 7.1, and NYSE National Rule 7.1.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

[10] 15 U.S.C. 78f(b)(8).

market participants. All Users who use the Hot Hands service from March 16, 2020 through March 29, 2020 would have the resulting fees waived.

Intermarket Competition

The Exchange does not believe that the proposed change would impose any burden on intermarket competition that is not necessary or appropriate.

The Exchange believes that the proposed change would not affect the competitive landscape among the national securities exchanges, as the Hot Hands service is solely charged within co-location to existing Users, and would be temporary.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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) [11] of the Act and subparagraph (f)(2) of Rule 19b–4 [12] 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) [13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEARCA–2020–22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2020–22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2020–22 and should be submitted on or before April 13, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06000 Filed 3–20–20; 8:45 am]

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[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88403; File No. SR–NYSEAMER–2020–19]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change of a Temporary Waiver of the Co-Location Hot Hands Fee

March 17, 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 March 16, 2020, NYSE American LLC (''NYSE American'' 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 a temporary waiver of the co-location ''Hot Hands'' fee beginning on March 16, 2020 through March 29, 2020. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes a temporary suspension of the co-location [4] ''Hot Hands'' fee beginning on March 16, 2020 through March 29, 2020, after which the Mahwah, New Jersey data center (''Data Center'') is scheduled to reopen to third parties.

The Exchange is an indirect subsidiary of Intercontinental Exchange, Inc. (''ICE''). Through its ICE Data Services (''IDS'') business, ICE operates the Data Center, from which the Exchange provides co-location services to Users.[5]

Among those services is a ''Hot Hands'' service, which allows Users to use on-site Data Center personnel to maintain User equipment, support network troubleshooting, rack and stack a server in a User's cabinet; power recycling; and install and document the fitting of cable in a User's cabinet(s).[6] The Hot Hands fee is $100 per half hour.

ICE has announced to each User that, starting March 16, 2020, the Data Center will be closed to third parties through March 29, 2020. Pursuant to the ICE contingency plan, the Data Center is being closed to third parties to help avoid the spread of COVID–19, which could negatively impact Data Center functions. The Chief Executive Officer of the Exchange has taken the actions required under NYSE American Rules 7.1E and 901NY to close the co-location facility of the Exchange to third parties.[7] While the Rules 7.1E and 901NY closures are in effect, User representatives will not be allowed access to the Data Center

If a User's equipment requires work while the Rules 7.1E and 901NY closures are in effect, the User will have no option but to use the Hot Hands service and, absent the proposed waiver, would incur Hot Hands fees for the work. Given that, the Exchange proposes to waive all Hot Hands fees from the date of the closing through March 29, 2020, and to add text to the Hot Hands Fee in the Price List and Fee Schedule noting the waiver. The Exchange believes that there will be sufficient Data Center staff on-site to comply with User requests for Hot Hands service.

The proposed waiver would apply equally to all Users. The proposed fee waiver would not apply differently to distinct types or sizes of market participants. Rather, it would apply uniformly to all Users.

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[9] 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. In addition, it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposed Rule Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable for the following reasons.

While the Rules 7.1E and 901NY closures are in effect, User representatives will not be allowed access to the Data Center. If a User's equipment requires work during such period, the User will have to use the Hot Hands service and, absent a waiver, would incur Hot Hands fees for the work. The Exchange believes that it is reasonable to grant the proposed waiver because Users would have no option other than using the Hot Hands service.

The proposed relief would allow a User to have work carried out on its equipment notwithstanding the closure of the Data Center without incurring Hot Hands fees.

The Proposed Rule Change Is Equitable

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits for the following reasons.

The proposed waiver would apply equally to all Users. The proposed fee waiver would not apply differently to distinct types or sizes of market participants. Rather, it would apply uniformly to all Users.

The Exchange believes that the proposal is equitable because all similarly-situated Users would not be charged a fee to use the Hot Hands service that the User would have to use because of the Data Center closure.

The Proposed Change Is Not Unfairly Discriminatory and Would Protect Investors and the Public Interest

The Exchange believes that the proposed change is not unfairly discriminatory for the following reasons.

The proposed waiver would not apply differently to distinct types or sizes of market participants. Rather, all Users whose equipment requires work during the Data Center closure would have the resulting fees waived, and the waiver would apply uniformly to all Users from March 16, 2020 through March 29, 2020. For the reasons above, the proposed changes do not unfairly discriminate between or among market participants.

In addition, the Exchange believes that the proposed rule change would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest because it would allow a User to have work carried out

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2010. *See* Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR–NYSEAmex–2010–80).

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67). As specified in the NYSE American Equities Price List and Fee Schedule and the NYSE American Options Fee Schedule (together, the ''Price List and Fee Schedule''), a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates the New York Stock Exchange LLC (''NYSE''), NYSE Arca, Inc. (''NYSE Arca''), NYSE Chicago, Inc. (''NYSE Chicago''), and NYSE National, Inc. (''NYSE National'' and together, the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR–NYSEMKT–2013–67). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2020–18, SR–NYSEArca–2020–22, SR–NYSECHX–2020–07, and SR–NYSENAT–2020–10.

[6] *See* Securities Exchange Act Release No. 72719 (July 30, 2014), 79 FR 45502 (August 5, 2014) (SR–NYSEMKT–2014–61).

[7] *See* NYSE American Rules 7.1E(c) through (e) and 901NY (c) through (e). *See also* NYSE Rule 7.1, NYSE Arca Rules 7.1–E and 7.1–O, NYSE Chicago Rule 7.1, and NYSE National Rule 7.1.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

on its equipment notwithstanding the closure of the Data Center pursuant to Rules 7.1E and 901NY without incurring Hot Hands fees. Accordingly, the Exchange believes that the requested relief is designed to perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest by facilitating the uninterrupted availability of Users' equipment.

For all of the above 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,[10] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that the proposed change would place any burden on intramarket competition that is not necessary or appropriate.

The proposal it is not designed to affect competition, but rather to provide relief to Users that, while the Rules 7.1E and 901NY closures are in effect, have no option but to use the Hot Hands service.

The proposed waiver would not apply differently to distinct types or sizes of market participants. All Users who use the Hot Hands service from March 16, 2020 through March 29, 2020 would have the resulting fees waived.

Intermarket Competition

The Exchange does not believe that the proposed change would impose any burden on intermarket competition that is not necessary or appropriate.

The Exchange believes that the proposed change would not affect the competitive landscape among the national securities exchanges, as the Hot Hands service is solely charged within co-location to existing Users, and would be temporary.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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.

[10] 15 U.S.C. 78f(b)(8).

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) [11] of the Act and subparagraph (f)(2) of Rule 19b–4 [12] 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) [13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2020–19 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–NYSEAMER–2020–19. 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–NYSEAMER–2020–19 and should be submitted on or before April 13, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06005 Filed 3–20–20; 8:45 am]

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[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88405; File No. SR–NYSEAMER–2020–16]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE American Options Fee Schedule

March 17, 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 March 10, 2020, NYSE American LLC (''NYSE American'' 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.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE American Options Fee Schedule (''Fee Schedule'') to raise the existing cap on the available credit for certain Qualified Contingent Cross (''QCC'') transactions. The Exchange proposes to implement the fee change effective March 10, 2020. The proposed 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 purpose of this filing is to modify the existing cap on the available credit to Floor Brokers that execute a specified number of Qualified Contingent Cross (''QCC'') transactions.

Currently, Floor Brokers earn a credit for executed QCC orders of $0.07 per contact up to 300,000 contracts or $0.10 per contract above 300,000.[4] QCC executions in which a Customer or Professional Customer is on both sides of the QCC trade are not eligible for the Floor Broker credit.[5] The Exchange currently limits the maximum Floor Broker credit to $375,000 per month per Floor Broker firm.[6] The Exchange proposes to increase this limit to $425,000. The Exchange believes the proposed increase would continue to incent ATP Holders acting as Floor Brokers to achieve the highest credit possible.

The Exchange proposes to implement the fee change effective March 10, 2020.

Background

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.'' [7]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[8] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in the fourth quarter of 2019, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[9]

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 or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees.

In response to this competitive environment, the Exchange has established incentives, including the credits for QCC transactions provided to ATP Holders acting as Floor Brokers, to encourage such ATP Holders to execute QCCs on the Exchange.

As noted above, the Exchange currently limits the maximum Floor Broker rebate for QCCs to $375,000 per month per Floor Broker firm. The Exchange proposes to increase this amount to $425,000.[10] The Exchange believes the proposed increase would continue to incent ATP Holders acting as Floor Brokers to achieve the highest rebate possible.

Proposed Rule Change

Floor Brokers currently earn a rebate for executed QCC orders of $0.07 per contact up to 300,000 contracts or $0.10 per contract above 300,000, provided that a Customer or Professional Customer (collectively, ''Customer'') is not on both sides of the QCC trade.[11] The Exchange currently limits the maximum Floor Broker rebate to $375,000 per month per Floor Broker firm.[12] The Exchange proposes to increase this to $425,000.

The Exchange's fees are constrained by intermarket competition, as ATP Holders acting as Floor Brokers may direct their order flow to any of the 16 options exchanges, including those with similar QCC rebate programs and associated caps on same.[13] Thus, ATP Holders have a choice of where they direct their order flow. This proposed change—which increases the maximum available credit—is designed to incent ATP Holders acting as Floor Brokers to increase their QCC volumes on the Exchange. The Exchange notes that all market participants stand to benefit from increased volume, which promotes market depth, facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants.

The Exchange cannot predict with certainty whether any ATP Holders acting as Floor Brokers would avail themselves of this proposed fee change. Assuming historical behavior can be predictive of future behavior, the Exchange estimates that at least three firms may benefit from this fee change.

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

[4] *See* Fee Schedule, Section I.F., QCC Fees & Credits, n. 1, *available here, https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf.*

[5] *See id.,* note 1.

[6] *See id.* (providing that ''[t]he maximum Floor Broker credit paid shall not exceed $375,000 per month per Floor Broker firm'').

[7] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[8] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, *available here: https://www.theocc.com/market-data/volume/default.jsp.*

[9] Based on OCC data, *see id.,* the Exchange's market share in equity-based options was 9.82% for the month of January 2019 and 8.08% for the month of January 2020.

[10] *See* Fee Schedule, Section I.F., QCC Fees & Credits, n. 1,

[11] *See id.*

[12] *See id.*

[13] *See, e.g.,* NASDAQ PHLX, Options 7 Pricing Schedule, Section 4. Multiply Listed Options Fees, QCC Rebate Schedule, *available here, http://nasdaqphlx.cchwallstreet.com/NASDAQPHLXTools/PlatformViewer.asp?selectednode=chp%5F1%5F1%5F3%5F1&manual=%2Fnasdaqomxphlx%2Fphlx%2Fphlx%2Dllcrules%2F* (providing that ''[t]he maximum QCC Rebate to be paid in a given month will not exceed $550,000'').

[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 Rule Change is Reasonable

The Exchange operates in a highly competitive market. 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.'' [16]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[17] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in the fourth quarter of 2019, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[18]

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 or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees and credits can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes that the proposed modification to increase the allowable cap on the Floor Broker credit for QCC transactions is designed to incent ATP Holders acting as Floor Brokers to increase the number QCC transactions executed on the Exchange. The proposal caps fees on all similar (QCC) transactions, regardless of size and similarly-situated ATP Holders can opt to try to achieve the modified (and increased) credit. The proposal is designed to encourage ATP Holders acting as Floor Brokers to execute all QCC transactions on Exchange. To the extent that the proposed change attracts more QCC trades to the Exchange Trading Floor, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution, which, in turn, promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system.

Finally, to the extent the proposed change continues to attract greater volume and liquidity (to the Floor or otherwise), the Exchange believes the proposed change would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. The Exchange's fees are constrained by intermarket competition, as OTP Holders may direct their order flow to any of the 16 options exchanges, including those with similar QCC credit programs and associated caps on same.[19] Thus, ATP Holders have a choice of where they direct their order flow—including their QCC transactions. The proposed rule change is designed to incent OTP Holders to direct liquidity to the Exchange—in particular QCC transactions, thereby promoting market depth, price discovery and improvement and enhancing order execution opportunities for market participants.

The Exchange cannot predict with certainty whether any ATP Holders acting as Floor Brokers would avail themselves of this proposed fee change. Assuming historical behavior can be predictive of future behavior, the Exchange estimates that at least three firms may benefit from this fee change.

The Proposed Rule Change is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposal is based on the amount and type of business transacted on the Exchange and ATP Holders acting as Floor Brokers can opt to avail themselves of the modified cap on QCC transaction credits (*i.e.,* by executing more QCC transactions) or not. As the proposal is designed to encourage Floor Brokers to execute QCC transactions on the Exchange, any resulting increase in order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes it is not unfairly discriminatory to modify the maximum allowable credit on QCC transactions to Floor Brokers because the proposed modification would be available to all similarly-situated market participants on an equal and non-discriminatory basis.

The proposal is based on the amount and type of business transacted on the Exchange and ATP Holders acting as Floor Brokers are not obligated to try to achieve the modified cap. Rather, the proposal is designed encourage ATP Holders acting as Floor Brokers to utilize the Exchange as a primary trading venue for QCC transactions (if they have not done so previously) or increase volume sent to the Exchange. To the extent that the proposed change attracts more QCC transactions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, 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.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the

[15] 15 U.S.C. 78f(b)(4) and (5).

[16] *See* Reg NMS Adopting Release, *supra* note 7, at 37499.

[17] *See supra* note 8.

[18] Based on OCC data, *see supra* note 9, the Exchange's market share in equity-based options was 9.82% for the month of January 2019 and 8.08% for the month of January 2020.

[19] *See supra* note 13 (regarding NASDAQ PHLX's $550,000 monthly cap on QCC rebate).

Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would 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 all market participants. 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 change is designed to attract additional order flow (particularly QCC trades) to the Exchange. The Exchange believes that the proposed increased QCC Floor Broker credit would incent market participants to direct their QCC volume to the Exchange. Greater liquidity benefits all market participants on the Exchange and increased Strategy Executions would increase opportunities for execution of other trading interest. The proposed increased cap would be available to all similarly-situated market participants that execute QCC transactions, 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 favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[21] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in the fourth quarter of 2019, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[22]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to encourage ATP Holders to direct trading interest (particularly QCC transactions) to the Exchange, to provide liquidity and to attract order flow. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar QCC credits and caps thereon, by encouraging additional orders to be sent to the Exchange for execution.[23] The Exchange also believes that the proposed change is designed to provide the public and investors with a Fee Schedule 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) [24] of the Act and subparagraph (f)(2) of Rule 19b–4 [25] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [26] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–NYSEAMER–2020–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSEAMER–2020–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish

[20] *See* Reg NMS Adopting Release, *supra* note 7, at 37499.

[21] *See supra* note 8.

[22] Based on OCC data, *supra* note 9, the Exchange's market share in equity-based options was 9.82% for the month of January 2019 and 8.08% for the month of January, 2020.

[23] *See supra* note 13.

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f)(2).

[26] 15 U.S.C. 78s(b)(2)(B).

to make available publicly. All submissions should refer to File No. SR–NYSEAMER–2020–16, and should be submitted on or before April 13, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06007 Filed 3–20–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88397; File No. SR–NYSE–2020–18]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change of a Temporary Waiver of the Co-Location Hot Hands Fee

March 17, 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 March 16, 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 a temporary waiver of the co-location ''Hot Hands'' fee beginning on March 16, 2020 through March 29, 2020.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 a temporary suspension of the co-location[4] ''Hot Hands'' fee beginning on March 16, 2020 through March 29, 2020, after which the Mahwah, New Jersey data center (''Data Center'') is scheduled to reopen to third parties.

The Exchange is an indirect subsidiary of Intercontinental Exchange, Inc. (''ICE''). Through its ICE Data Services (''IDS'') business, ICE operates the Data Center, from which the Exchange provides co-location services to Users.[5]

Among those services is a ''Hot Hands'' service, which allows Users to use on-site Data Center personnel to maintain User equipment, support network troubleshooting, rack and stack a server in a User's cabinet; power recycling; and install and document the fitting of cable in a User's cabinet(s).[6] The Hot Hands fee is $100 per half hour.

ICE has announced to each User that, starting March 16, 2020, the Data Center will be closed to third parties through March 29, 2020. Pursuant to the ICE contingency plan, the Data Center is being closed to third parties to help avoid the spread of COVID–19, which could negatively impact Data Center functions. The Chief Executive Officer of the Exchange has taken the actions required under NYSE Rule 7.1 to close the co-location facility of the Exchange to third parties.[7] While the Rule 7.1 closure is in effect, User representatives will not be allowed access to the Data Center.

If a User's equipment requires work while the Rule 7.1 closure is in effect, the User will have no option but to use the Hot Hands service and, absent the proposed waiver, would incur Hot Hands fees for the work. Given that, the Exchange proposes to waive all Hot Hands fees from the date of the closing through March 29, 2020, and to add text to the Hot Hands Fee in the Price List noting the waiver. The Exchange believes that there will be sufficient Data Center staff on-site to comply with User requests for Hot Hands service.

The proposed waiver would apply equally to all Users. The proposed fee waiver would not apply differently to distinct types or sizes of market participants. Rather, it would apply uniformly to all Users.

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[9] 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. In addition, it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2010. *See* Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR–NYSE–2010–56).

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40). As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), NYSE Chicago, Inc. (''NYSE Chicago''), and NYSE National, Inc. (''NYSE National'' and together, the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70206 (August 15, 2013), 78 FR 51765 (August 21, 2013) (SR–NYSE–2013–59). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSEAmer–2020–19, SR–NYSEArca–2020–22, SR–NYSECHX–2020–07, and SR–NYSENAT–2020–10.

[6] *See* Securities Exchange Act Release No. 72721 (July 30, 2014), 79 FR 45562 (August 5, 2014) (SR–NYSE–2014–37).

[7] *See* NYSE Rule 7.1(c) through (e). *See also* NYSE Arca Rules 7.1–E and 7.1–O, NYSE American Rules 7.1E and 901NY, NYSE Chicago Rule 7.1, and NYSE National Rule 7.1.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

discrimination between customers, issuers, brokers, or dealers.

The Proposed Rule Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable for the following reasons.

While the Rule 7.1 closure is in effect, User representatives will not be allowed access to the Data Center. If a User's equipment requires work during such period, the User will have to use the Hot Hands service and, absent a waiver, would incur Hot Hands fees for the work. The Exchange believes that it is reasonable to grant the proposed waiver because Users would have no option other than using the Hot Hands service.

The proposed relief would allow a User to have work carried out on its equipment notwithstanding the closure of the Data Center without incurring Hot Hands fees.

The Proposed Rule Change Is Equitable

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits for the following reasons.

The proposed waiver would apply equally to all Users. The proposed fee waiver would not apply differently to distinct types or sizes of market participants. Rather, it would apply uniformly to all Users.

The Exchange believes that the proposal is equitable because all similarly-situated Users would not be charged a fee to use the Hot Hands service that the User would have to use because of the Data Center closure.

The Proposed Change Is Not Unfairly Discriminatory and Would Protect Investors and the Public Interest

The Exchange believes that the proposed change is not unfairly discriminatory for the following reasons.

The proposed waiver would not apply differently to distinct types or sizes of market participants. Rather, all Users whose equipment requires work during the Data Center closure would have the resulting fees waived, and the waiver would apply uniformly to all Users from March 16, 2020 through March 29, 2020. For the reasons above, the proposed changes do not unfairly discriminate between or among market participants.

In addition, the Exchange believes that the proposed rule change would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest because it would allow a User to have work carried out on its equipment notwithstanding the closure of the Data Center pursuant to Rule 7.1 without incurring Hot Hands fees. Accordingly, the Exchange believes that the requested relief is designed to perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest by facilitating the uninterrupted availability of Users' equipment.

For all of the above 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,[10] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that the proposed change would place any burden on intramarket competition that is not necessary or appropriate.

The proposal it is not designed to affect competition, but rather to provide relief to Users that, while the Rule 7.1 closure is in effect, have no option but to use the Hot Hands service.

The proposed waiver would not apply differently to distinct types or sizes of market participants. All Users who use the Hot Hands service from March 16, 2020 through March 29, 2020 would have the resulting fees waived.

Intermarket Competition

The Exchange does not believe that the proposed change would impose any burden on intermarket competition that is not necessary or appropriate.

The Exchange believes that the proposed change would not affect the competitive landscape among the national securities exchanges, as the Hot Hands service is solely charged within co-location to existing Users, and would be temporary.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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.

[10] 15 U.S.C. 78f(b)(8).

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) [11] of the Act and subparagraph (f)(2) of Rule 19b–4 [12] 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) [13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2020–18 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–2020–18. 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

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 15 U.S.C. 78s(b)(2)(B).

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–2020–18 and should be submitted on or before April 13, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–05999 Filed 3–20–20; 8:45 am]

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[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88406; File No. 4–631]

Joint Industry Plan; Notice of Filing of the Twentieth Amendment to the National Market System Plan To Address Extraordinary Market Volatility by Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, Long-Term Stock Exchange, NASDAQ BX, Inc., NASDAQ PHLX LLC, The Nasdaq Stock Market LLC, NYSE National, Inc., New York Stock Exchange LLC, NYSE American LLC, and NYSE Arca, Inc.

March 17, 2020.

I. Introduction

On February 13, 2020, NYSE Group, Inc., on behalf of the following parties to the National Market System Plan to Address Extraordinary Market Volatility (''the Plan''): [1] Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Chicago Stock Exchange, Inc., the Financial Industry Regulatory Authority, Inc. (''FINRA''), Investors Exchange LLC, Long-Term Stock Exchange (''LTSE''), NASDAQ BX, Inc., NASDAQ PHLX LLC, The NASDAQ Stock Market LLC (''Nasdaq''), New York Stock Exchange LLC (''NYSE''), NYSE Arca, Inc., NYSE National Inc., and NYSE American LLC (collectively, the ''Participants'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (''Exchange Act'') [2] and Rule 608 thereunder,[3] a proposal to amend the Plan (''Twentieth Amendment'').[4] The proposal reflects changes unanimously approved by the Participants. The Twentieth Amendment proposes to: (i) Amend Section II.B of Appendix B, concerning the quarterly reports provided by the Operating Committee to the Commission; and amend the Plan to reflect the name change of the Chicago Stock Exchange, Inc. to NYSE Chicago, Inc. The Commission is publishing this notice to solicit comments from interested persons on the Twentieth Amendment.[5]

II. Description of the Plan

Set forth in this Section II is the statement of the purpose and summary of the Eighteenth Amendment, along with the information required by Rule 608(a)(4) and (5) under the Exchange Act,[6] substantially prepared and submitted by the Participants to the Commission.[7]

A. Statement of Purpose and Summary of the Plan Amendment

The Participants filed the Plan with the Commission on April 5, 2011 to create a market-wide limit up-limit down mechanism intended to address extraordinary market volatility in NMS Stocks, as defined in Rule 600(b)(47) of Regulation NMS under the Exchange Act.[8] The Plan sets forth procedures that provide for market-wide limit up-limit down requirements to prevent trades in individual NMS Stocks from occurring outside of the specified Price Bands. These limit up-limit down requirements are coupled with Trading Pauses, as defined in Section I(Y) of the Plan, to accommodate more fundamental price moves. In particular, the Participants adopted this Plan to address extraordinary volatility in the securities markets, *i.e.,* significant fluctuations in individual securities' prices over a short period of time, such as those experienced during the ''Flash Crash'' on the afternoon of May 6, 2010.

As detailed above, the Plan was amended numerous times between 2011

[1] On May 31, 2012, the Commission approved the Plan, as modified by Amendment No. 1. *See* Securities Exchange Act Release No. 67091, 77 FR 33498 (June 6, 2012) (File No. 4–631) (''Approval Order''). On February 20, 2013, the Commission noticed for immediate effectiveness the Second Amendment to the Plan. *See* Securities Exchange Act Release No. 68953, 78 FR 13113 (February 26, 2013). On April 3, 2013, the Commission approved the Third Amendment to the Plan. *See* Securities Exchange Act Release No. 69287, 78 FR 21483 (April 10, 2013). On August 27, 2013, the Commission noticed for immediate effectiveness the Fourth Amendment to the Plan. *See* Securities Exchange Act Release No. 70273, 78 FR 54321 (September 3, 2013). On September 26, 2013, the Commission approved the Fifth Amendment to the Plan. *See* Securities Exchange Act Release No. 70530, 78 FR 60937 (October 2, 2013). On January 7, 2014, the Commission noticed for immediate effectiveness the Sixth Amendment to the Plan. *See* Securities Exchange Act Release No. 71247, 79 FR 2204 (January 13, 2014). On April 3, 2014, the Commission approved the Seventh Amendment to the Plan. *See* Securities Exchange Act Release No. 71851, 79 FR 19687 (April 9, 2014). On February 19, 2015, the Commission approved the Eight Amendment to the Plan. *See* Securities Exchange Act Release No. 74323, 80 FR 10169 (February 25, 2015). On October 22, 2015, the Commission approved the Ninth Amendment to the Plan. *See* Securities Exchange Act Release No. 76244, 80 FR 66099 (October 28, 2015). On April 21, 2016, the Commission approved the Tenth Amendment to the Plan. *See* Securities Exchange Act Release No. 77679, 81 FR 24908 (April 27, 2016). On August 26, 2016, the Commission noticed for immediate effectiveness the Eleventh Amendment to the Plan. *See* Securities Exchange Act Release No. 78703, 81 FR 60397 (September 1, 2016). On January 19, 2017, the Commission approved the Twelfth Amendment to the Plan. *See* Securities Exchange Act Release No. 79845, 82 FR 8551 (January 26, 2017). On April 13, 2017, the Commission approved the Thirteenth Amendment to the Plan. *See* Securities Exchange Act Release No. 80455, 82 FR 18519 (April 19, 2017). On April 28, 2017, the Commission noticed for immediate effectiveness the Fourteenth Amendment to the Plan. *See* Securities Exchange Act Release No. 80549, 82 FR 20928 (May 4, 2017). On September 26, 2017, the Commission noticed for immediate effectiveness the Fifteenth Amendment to Plan. *See* Securities Exchange Act Release No. 81720, 82 FR 45922 (October 2, 2017). On March 15, 2018, the Commission noticed for immediate effectiveness the Sixteenth Amendment to the Plan. *See* Securities Exchange Act Release No. 82887, 83 FR 12414 (March 21, 2018). On April 12, 2018, the Commission approved the Seventeenth Amendment to the Plan. *See* Securities Exchange Act Release No. 83044, 83 FR 17205 (April 18, 2018). On April 11, 2019, the Commission approved the Eighteenth Amendment to the Plan. *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019). On February 5, 2020, the Commission noticed for immediate effectiveness the Nineteenth Amendment to the Plan. *See* Securities Exchange Act Release No. 88122 (February 5, 2020), 85 FR 7805 (February 11, 2020).

[2] 15 U.S.C. 78k–1(a)(3).

[3] 17 CFR 242.608.

[4] *See* Letter from Elizabeth King, General Counsel and Corporate Secretary, NYSE, to Vanessa Countryman, Secretary, Commission, dated February 13, 2020 (''Transmittal Letter'').

[5] 17 CFR 242.608.

[6] *See* 17 CFR 242.608(a)(4) and (a)(5).

[7] *See* Transmittal Letter, *supra* note 4. The statement of the purpose and summary of the amendment and the information required by Rule 608(a)(4) and (5) is reproduced verbatim from the Transmittal Letter unless otherwise noted; cross-references have been revised to conform with the footnote sequencing of this notice.

[8] 17 CFR 242.600(b)(47).

and 2019. On April 11, 2019, the Commission approved the eighteenth amendment to the Plan,[9] which transitioned the Plan from operating on a pilot to a permanent basis. The eighteenth amendment included changes to the Plan's Appendix B, ''Data and Reporting,'' which revised the Participants' requirements to report data about the Plan's ongoing operation to the Commission. Under the eighteenth amendment, the Plan requires the Participants to provide to the Commission an annual report assessing the Plan's performance, quarterly reports providing basic statistics, and *ad hoc* reports that may be requested by the Commission following significant market events.

Section II.B of Appendix B (''Appendix B.II.B'') concerns the quarterly reports to be provided to the Commission. Appendix B.II.B currently provides that 30 days following the end of each calendar quarter, the Operating Committee shall provide the Commission and make publicly available a report including basic statistics regarding the Plan's operation (''Monitoring Report'') during the preceding calendar quarter as well as aggregated data from the previous 12 quarters beginning with the calendar quarter covered by the first Monitoring Report. Appendix B.II.B requires the Monitoring Report to include data on the number and rate of recurrence of Limit States, Straddle States, and Trading Pauses for each month during the calendar quarter, as well as the performance of reopening procedures following a Trading Pause. Appendix B.II.B also currently provides that the Monitoring Report will include data on the number of Clearly Erroneous Executions that occur during the preceding calendar quarter. In addition, Appendix B.II.B currently states that the data in the Monitoring Report should be partitioned by ''category'' (*i.e.,* type of issue and price range), as well as by the ''time of day'' of the event. [10]

The Participants now propose to amend Appendix B.II.B in order to improve the clarity and transparency of the quarterly reporting requirements. The Participants also propose to make a non-substantive amendment to the Plan to reflect the name change of Chicago Stock Exchange, Inc., to NYSE Chicago, Inc.

1. Proposal To Improve Clarity and Transparency of Appendix B.II.B

The Participants propose to amend Appendix B.II.B to improve its clarity and transparency by revising and supplementing the current language. In preparing to compile and aggregate the data required for the first quarterly report, the Participants determined that the language of Appendix B.II.B could be improved by, among other things: (a) Emphasizing from the outset that the data should be aggregated across primary listing exchanges, (b) specifying the specific partitions that should be applied to each data point, (c) specifying the specific distribution statistics that should be applied to each data point, and (d) providing additional clarity as to what Reopening data should be included.

The Participants emphasize that the intention of this amendment is not to substantively change the requirements in Appendix B.II.B, but to amend the language of Appendix B.II.B to give more complete directions as to the information that should be included in the quarterly Monitoring Reports.

a. Data Aggregated Across Primary Listing Exchanges

The opening paragraph of Appendix B.II.B currently refers to ''aggregate data,'' but is not clear that the data for the quarterly Monitoring Report should be aggregated across primary listing exchanges, as opposed to aggregated in some other fashion. The Participants propose to amend this paragraph to make clear that the quarterly Monitoring Report will include basic statistics aggregated across primary listing exchanges regarding the Plan's operation during the preceding calendar quarter, as well as data aggregated across exchanges from the previous 12 quarters beginning with the calendar covered by the first Monitoring Report.

b. Specific Partitions To Apply to Each Data Category

Appendix B.II.B currently contains provisions entitled ''Partition stocks by category'' and ''Partition by time of day.'' The Participants propose to replace this text to specify more clearly (i) which partitions apply to the data for Limit States, Trading Pauses, Straddle States, and Clearly Erroneous Events, and which partitions apply to the data for Reopenings, which differ; (ii) the 18 different category partitions that apply to the data for Limit States, Trading Pauses, Straddle States, and Clearly Erroneous Events; (iii) the specific time-frames covered by each time-of-day partition; and (iv) that the data provided for Reopenings must take into account the differences between manual and automated reopenings.

First, in preparing to compile the data required for the first quarterly report, the Participants determined that the partitions listed in the current Appendix B.II.B reasonably apply to the data for Limit States, Trading Pauses, Straddle States, and Clearly Erroneous Events, and that the Reopenings data requires different partitions. The Participants therefore propose to restructure Appendix B.II.B into two subsections, each with their own ''Definitions'' section that specifies the partitions that would be applicable to that subsection. Specifically, proposed Appendix B.II.B.1.a would define the partitions that would apply to data about Limit States, Trading Pauses, Straddle States, and Clearly Erroneous Events, and proposed Appendix B.II.B.2.a would define the partitions that would apply to data about Reopenings.

Second, the current version of Appendix B.II.B. lists only eight separate ''categories'' into which securities should be partitioned, but the full language of that provision indicates that 18 categories are actually intended. Appendix B.II.B currently lists the first three categories as ''Tier 1 non-ETP issues > $3.00,'' ''Tier 1 non-ETP >= $0.75 and <= $3.00,'' and ''Tier 1 non-ETP issues < $0.75,'' and then lists five other categories of securities that should also be divided ''in each of the above categories.'' The Participants understand this language to mean that each of the six categories of securities listed—that is, Tier 1 non-ETPs, Tier 1 non-leveraged ETPs, Tier 1 leveraged ETPs, Tier 2 non-ETPs, Tier 2 non-leveraged ETPs, and Tier 2 leveraged ETPs—should each be further subdivided into three subcategories: Greater than $3.00, between $0.75 and $3.00, and less than $0.75. As such, the Participants propose to clearly list in the amended Appendix B.II.B.1.a.i all 18 of the categories of securities into which the Limit State, Trading Pause, Straddle State, and Clearly Erroneous Events data should be partitioned:

(1) Tier 1 non-ETP securities > $3.00
(2) Tier 1 non-ETP securities >= $0.75 and <= $3.00
(3) Tier 1 non-ETP securities < $0.75
(4) Tier 1 non-leveraged ETPs > $3.00
(5) Tier 1 non-leveraged ETPs >= $0.75 and <= $3.00

[9] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (File No. 4–631).

[10] In several places in the Notice describing the Monitoring Report requirements, the Participants state that they ''should'' do certain things or provide certain data. The Commission notes that LULD Plan requires the Participants to meet such obligations and they are not voluntary on the part of the Participants. Therefore, in instances where the Notice states that the Participants ''should'' include something in the Monitoring Report, the Commission notes that the LULD Plan requires that the data be provided.

(6) Tier 1 non-leveraged ETPs < $0.75
(7) Tier 1 leveraged ETPs > $3.00
(8) Tier 1 leveraged ETPs >= $0.75 and <= $3.00
(9) Tier 1 leveraged ETPs < $0.75
(10) Tier 2 non-ETPs > $3.00
(11) Tier 2 non-ETPs >= $0.75 and <= $3.00
(12) Tier 2 non-ETPs < $0.75
(13) Tier 2 non-leveraged ETPs > $3.00
(14) Tier 2 non-leveraged ETPs >= $0.75 and <= $3.00
(15) Tier 2 non-leveraged ETPs < $0.75
(16) Tier 2 leveraged ETPs > $3.00
(17) Tier 2 leveraged ETPs >= $0.75 and <= $3.00
(18) Tier 2 leveraged ETPs < $0.75

Third, the current Appendix B.II.B.3 states that the ''time of day'' partitions are ''Opening (prior to 9:45 a.m. ET),'' ''Regular (between 9:45 a.m. ET and 3:35 p.m. ET),'' ''Closing (after 3:35 p.m. ET),'' and ''Within five minutes of a Trading Pause re-open or IPO open.'' These partitions, however, assume that all trading days are full trading days, and do not account for partial trading days where the markets are scheduled to close early, such as the day after Thanksgiving and December 24. The Participants accordingly propose to amend Appendix B.II.B to add new subsection 1.a.ii, to specify that ''Time of Day'' means the following time spans:

(1) Opening (prior to 9:45 a.m. ET)
(2) Regular (between 9:45 a.m. ET and 25 minutes prior to the end of core trading hours)
(3) Closing (the last 25 minutes of core trading hours)
(4) Within five minutes of a Trading Pause reopen or IPO open

Fourth, the current Appendix B.II.B does not include any language partitioning Reopenings data between manual and automated reopenings.[11] The Participants accordingly propose to amend Appendix B.II.B to add new subsection 2.a.i requiring that they partition Reopening data by whether the reopening is manual or automated. The Participants also propose to add new subsection 2.a.iii, to require that the data for Reopenings be partitioned by the ''Length of the Trading Pause,'' which would be defined as:

- Less than 6 minutes (for manual reopenings) or no extensions of the Trading Pause (for automated reopenings);
- 6 to 10 minutes (for manual reopenings) or one extension of the Trading Pause (for automated reopenings);
- more than 10 minutes (for manual reopenings) or more than one extension of the Trading Pause (for automated reopenings).

c. Specific Distribution Statistics To Apply to Each Data Category for Limit States, Trading Pauses, Straddle States, and Clearly Erroneous Events

The current Appendix II.B.II states in general terms that the Monitoring Report should include data on the ''[n]umber of Limit States, Trading Pauses, and Straddle States per day, including distribution statistics such as the mean, median, minimum and maximum percentiles,'' and the ''[n]umber of NMS Stocks that experience more than one Limit State, Trading Pause, or Straddle State in a single day including the length of each Limit State, Trading Pause, and Straddle State per day.'' The current version also states generally that Participants should ''[P]artition stocks by category'' and ''[P]artition by time of day,'' even though such partitions do not reasonably apply to every data set required to be supplied in the Monitoring Report.

The Participants propose to add clarity to these reporting requirements by amending Appendix B.II.B to specify the precise distribution statistics and partitions to apply to each data request. Accordingly, the Participants propose to amend Appendix B.II.B.1.b clarify that the Monitoring Report would include:

For Limit States

- Monthly distribution statistics (mean, median, 25th percentile, and maximum) on the number of Limit States per day, broken out by Category and Time of Day.
- Monthly distribution statistics (mean, median, 25th percentile, and maximum) on the number of NMS Stocks that experienced more than one Limit State on a single day, broken out by Category.
- Monthly distribution statistics (mean, median, 90th percentile, and 99th percentile) on the number of Limit States experienced per day by individual NMS Stocks that had more than one Limit State on a single day, broken out by Category.
- Monthly distribution statistics (mean, median, 90th percentile, and 99th percentile) on the total length of Limit States experienced per day by individual NMS Stocks that had more than one Limit State on a single day, broken out by Category.

For Trading Pauses

- Monthly distribution statistics (mean, median, 25th percentile, and maximum) on the number of Trading Pauses per day, broken out by Category and Time of Day.
- Monthly distribution statistics (mean, median, 25th percentile, and maximum) on the number of NMS Stocks that experienced more than one Trading Pause on a single day, broken out by Category.
- Monthly distribution statistics (mean, median, 90th percentile, and maximum) on the number of Trading Pauses per day experienced by individual NMS Stocks having more than one Trading Pause on a single day, broken out by Category.

For Straddle States

- Monthly distribution statistics (mean, median, 25th percentile, and maximum) on the number of Straddle States per day, broken out by Category and Time of Day.
- Monthly distribution statistics (mean, median, 25th percentile, and maximum) on the number of NMS Stocks that experienced more than one Straddle State on a single day, broken out by Category.
- Monthly distribution statistics (mean, median, 90th percentile, and 99.9th percentile) on the total time spent in a Straddle State per day for individual NMS Stocks experiencing one or more Straddle States on a single day, broken out by Category

For Clearly Erroneous Events

- The number of Clearly Erroneous Events per day for all NMS Stocks that occurred during the time when Price Bands re disseminated by the Processor, broken out by Category and Time of Day.

d. Additional Clarity on Reopening Data

Finally, regarding Reopening data, Appendix B.II.B currently states that the Monitoring Report should include the ''[n]umber of times an automated reopening process is extended for and the length of the Trading Pause,'' ''[w]hether the reopening process ended in a trade,'' ''[t]he price calculated by an automated reopening process for an NMS Stock existing a Trading Pause,'' and ''[f]or the five minutes following the conclusion of a Trading Pause, the highest price of all last sale eligible trades, the lowest price of all last sale eligible trades, and the average price of all last sale eligible trades.''

These provisions, however, do not specify the specific distribution statistics or partitions that the Participants should apply to any of

[11] For purposes of Appendix B, a reopening is considered ''manual'' if it is facilitated by a member of an exchange (such as a Designated Market Maker on NYSE) that has obligations under that exchange's rules to facilitate the reopening process. (All reopenings on NYSE are manual.)

these data requests. Additionally, the Participants believe that the quality and utility of the Monitoring Report will be enhanced if they supply additional information about Reopening statistics, including how the Trading Pause ended (whether in a trade, a quote, or a potential closing auction), whether the Trading Pause was preceded by a Limit Up state versus a Limit Down state, and the percentage price change between the price that triggered the Trading Pause and the reopening price on exiting the Trading Pause.

Accordingly, the Participants propose to amend the provisions in Appendix B.II.B pertaining to Reopenings to specify that the Monitoring Report should include:

- The number of Trading Pauses per month, broken out by (a) Type of Reopening, (b) Category, and (c) Length of the Trading Pause.
- Monthly distribution statistics (mean, median, 90th percentile, and 99th percentile) on the duration of each Trading Pause, broken out by (a) Type of Reopening and (b) Category.
- The number of Trading Pauses ending in a (a) trade; (b) quote; and (c) potential closing auction, broken out by (i) Type of Reopening, (ii) Category, and (iii) Length of Trading Pause.
- For Trading Pauses in NMS Stocks preceded by a Limit Up state, monthly distribution statistics (mean, median, 90th percentile, and 99th percentile) on the percentage price change from the Limit Up pricing that triggered the Trading Pause to the reopening price on exiting the Trading Pause (*i.e.,* the reopening trade or midpoint price), broken out by (a) Category and (b) whether the Trading Pause ended in a trade or (c) in a quote (*i.e.,* the reopening price was a midpoint).
- For Trading Pauses in NMS Stocks preceded by a Limit Down state, monthly distribution statistics (mean, median, 90th percentile, and 99th percentile) on the percentage price change from the Limit Down pricing that triggered the Trading Pause to the reopening price on exiting the Trading Pause (*i.e.,* the reopening trade or midpoint price), broken out by (a) Category and (b) whether the Trading Pause ended in a trade or (c) in a quote (*i.e.,* the reopening price was a midpoint).
- For Trading Pauses in NMS Stocks where the reopening process ended in a trade or quote (with resulting reference price equal to the midpoint of that quote), monthly distribution statistics (mean, median, 90th percentile, and 99th percentile) on the percentage price change from the reopening price on exiting the Trading Pause (*i.e.,* the reopening trade or midpoint price) to (a) the highest price of all last sale eligible trades, (b) the lowest price of all last sale eligible trades; and (c) the trade-weighted average price of all last sale eligible trades for the five minutes following the conclusion of the Trading Pause, broken out by (i) Category, (ii) whether the Trading Pause was preceded by a Limit Up state or (iii) a Limit Down state, and (iv) whether the Trading Pause ended in a trade or (v) in a quote (*i.e.,* the reopening price was a midpoint).

The Participants believe that the proposed amendments described above will enhance clarity, improve transparency, and provide direction to the Participants in compiling and aggregating the data required in the quarterly Monitoring Reports.

2. Proposal To Change Name of Chicago Stock Exchange, Inc. to NYSE Chicago, Inc.

The Participants also propose to make a non-substantive amendment to the Plan to reflect the name change of Chicago Stock Exchange, Inc. to NYSE Chicago, Inc., and the change of its address from 440 South LaSalle Street, Chicago, Illinois 60605 to 11 Wall Street, New York, New York, 10005.

On October 18, 2018, the Chicago Stock Exchange, Inc. filed a proposed rule change for immediate effectiveness to amend, among other things, its rules to reflect the change of its name to NYSE Chicago, Inc.[12]

B. Governing or Constituent Documents

The governing documents of the Processor, as defined in Section I(P) of the Plan, will not be affected by this proposed amendment to the Plan.

C. Implementation of Amendment

The Participants are filing this proposed amendment pursuant to Rule 608(b)(1) of Regulation NMS under the Exchange Act.[13]

D. Development and Implementation Phases

The Plan has been fully implemented, and the amendments proposed herein are immediately effective, as noted above.[14]

E. Analysis of Impact on Competition

The Participants believe that the proposed amendment does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934 (''Exchange Act''). The proposed amendments to Appendix B.II.B of the Plan pertain to the obligations of the Participants and the Operating Committee to provide periodic reports to the Commission about the Plan's ongoing operation. As such, they do not apply directly to any market participants and would not impose a competitive burden on one category of market participant in favor of another category of market participant. For the same reasons, the Participants do not believe that the proposed Plan introduces terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Exchange Act.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

The Participants have no written understandings or agreements relating to interpretation of the Plan.

G. Approval of Amendment of the Plan

Each of the Participants has approved the amendment in accordance with Section III(C) of the Plan. Specifically, on February 12, 2020, the Operating Committee, duly constituted and chaired by Mr. Robert Books of Cboe Global Markets, Inc., voted unanimously to amend the Plan as set forth herein. The Participants also received and incorporated feedback from the Plan Advisory Committee in preparing this proposal.

H. Terms and Conditions of Access

Section II(C) of the Plan provides that any entity registered as a national securities exchange or national securities association under the Exchange Act may become a Participant by: (1) Becoming a participant in the applicable Market Data Plans, as defined in Section I(F) of the Plan; (2) executing a copy of the Plan, as then in effect; (3) providing each then-current Participant with a copy of such executed Plan; and (4) effecting an amendment to the Plan as specified in Section III(B) of the Plan.

[12] *See* Securities Exchange Act Release No. 84494 (October 26, 2018), 83 FR 54953 (November 1, 2018) (SR–CHX–2018–05).

[13] 17 CFR 242.608.

[14] The Commission notes that the Exchanges incorrectly stated in the Transmittal Letter, *supra* note 4, that the proposed amendments are effective upon filing. These amendments are being proposed pursuant to Rule 608(b)(1) of Regulation NMS under the Exchange Act, and the Commission is publishing the proposed amendments for public comment as required by Rule 608(b)(1). The Commission may approve these proposed amendments if it finds that they are consistent with the standards articulated in Rule 608(b)(2) of Regulation NMS.

I. Method of Determination and Imposition, and Amount of, Fees and Charges

This section is not applicable as the proposed amendment to the Plan does not involve fees or charges.

J. Method and Frequency of Processor Evaluation

This section is not applicable as the operation of the Plan is conducted by the Primary Listing Exchange.

K. Dispute Resolution

Section III(C) of the Plan provides that each Participant shall designate an individual to represent the Participant as a member of an Operating Committee. No later than the initial date of the Plan, the Operating Committee shall designate one member of the Operating Committee to act as the Chair of the Operating Committee. Any recommendation for an amendment to the Plan from the Operating Committee that receives an affirmative vote of at least two-thirds of the Participants, but is less than unanimous, shall be submitted to the Commission as a request for an amendment to the Plan initiated by the Commission under Rule 608.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amendment is consistent with the Exchange Act and the rules thereunder. 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 4–631 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 4–631.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 plan amendment that are filed with the Commission, and all written communications relating to the amendment 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 filing also will be available for inspection and copying at the Participants' offices. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4–631 and should be submitted on or before April 13, 2020.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

Exhibit A

Proposed new language is *italicized;* proposed deletions are in [brackets]

Plan To Address Extraordinary Market Volatility Submitted to the Securities and Exchange Commission Pursuant to Rule 608 of Regulation NMS Under the Securities Exchange Act of 1934

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Preamble

The Participants submit to the SEC this Plan establishing procedures to address extraordinary volatility in NMS Stocks. The procedures provide for market-wide limit up-limit down requirements that prevent trades in individual NMS Stocks from occurring outside of the specified Price Bands. These limit up-limit down requirements are coupled with Trading Pauses to accommodate more fundamental price moves. The Plan procedures are designed, among other things, to protect investors and promote fair and orderly markets. The Participants developed this Plan pursuant to Rule 608(a)(3) of Regulation NMS under the Exchange Act, which authorizes the Participants to act jointly in preparing, filing, and implementing national market system plans.

I. Definitions

(A) ''Eligible Reported Transactions'' shall have the meaning prescribed by the Operating Committee and shall generally mean transactions that are eligible to update the last sale price of an NMS Stock.

(B) ''Exchange Act'' means the Securities Exchange Act of 1934, as amended.

(C) ''Limit State'' shall have the meaning provided in Section VI of the Plan.

(D) ''Limit State Quotation'' shall have the meaning provided in Section VI of the Plan.

(E) ''Lower Price Band'' shall have the meaning provided in Section V of the Plan.

(F) ''Market Data Plans'' shall mean the effective national market system plans through which the Participants act jointly to disseminate consolidated information in compliance with Rule 603(b) of Regulation NMS under the Exchange Act.

(G) ''National Best Bid'' and ''National Best Offer'' shall have the meaning provided in Rule 600(b)(42) of Regulation NMS under the Exchange Act.

(H) ''NMS Stock'' shall have the meaning provided in Rule 600(b)(47) of Regulation NMS under the Exchange Act.

(I) ''Opening Price'' shall mean the price of a transaction that opens trading on the Primary Listing Exchange. If the Primary Listing Exchange opens with quotations, the ''Opening Price'' shall mean the closing price of the NMS Stock on the Primary Listing Exchange on the previous trading day, or if no such closing price exists, the last sale on the Primary Listing Exchange.

(J) ''Operating Committee'' shall have the meaning provided in Section III(C) of the Plan.

(K) ''Participant'' means a party to the Plan.

(L) ''Plan'' means the plan set forth in this instrument, as amended from time to time in accordance with its provisions.

(M) ''Percentage Parameter'' shall mean the percentages for each tier of NMS Stocks set forth in Appendix A of the Plan.

(N) ''Price Bands'' shall have the meaning provided in Section V of the Plan.

(O) ''Primary Listing Exchange'' shall mean the Participant on which an NMS Stock is listed. If an NMS Stock is listed on more than one Participant, the Participant on which the NMS Stock has been listed the longest shall be the Primary Listing Exchange.

(P) ''Processor'' shall mean the single plan processor responsible for the consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Exchange Act.

(Q) ''Pro-Forma Reference Price'' shall have the meaning provided in Section V(A)(2) of the Plan.

(R) ''Reference Price'' shall have the meaning provided in Section V of the Plan.

(S) ''Regular Trading Hours'' shall have the meaning provided in Rule 600(b)(64) of Regulation NMS under the Exchange Act. For purposes of the Plan, Regular Trading Hours can end earlier than 4:00 p.m. ET in the case of an early scheduled close.

(T) ''Regulatory Halt'' shall have the meaning specified in the Market Data Plans.

(U) ''Reopening Price'' shall mean the price of a transaction that reopens trading on the Primary Listing Exchange following a Trading Pause or a Regulatory Halt, or, if the Primary Listing Exchange reopens with quotations, the midpoint of those quotations.

(V) ''SEC'' shall mean the United States Securities and Exchange Commission.

(W) ''Straddle State'' shall have the meaning provided in Section VII(A)(2) of the Plan.

(X) ''Trading center'' shall have the meaning provided in Rule 600(b)(78) of Regulation NMS under the Exchange Act.

(Y) ''Trading Pause'' shall have the meaning provided in Section VII of the Plan.

(Z) ''Upper Price Band'' shall have the meaning provided in Section V of the Plan.

II. Parties

(A) List of Parties

The parties to the Plan are as follows:

(1) Cboe BZX Exchange, Inc., 400 South LaSalle Street, Chicago, Illinois 60605

(2) Cboe BYX Exchange, Inc., 400 South LaSalle Street, Chicago, Illinois 60605

(3) Cboe EDGA Exchange, Inc., 400 South LaSalle Street, Chicago, Illinois 60605

(4) Cboe EDGX Exchange, Inc., 400 South LaSalle Street, Chicago, Illinois 60605

[(5) Chicago Stock Exchange, Inc., 440 South LaSalle Street, Chicago, Illinois 60605]

(*5*[6]) Financial Industry Regulatory Authority, Inc., 1735 K Street NW, Washington, DC 20006

(*6*[7]) Investors Exchange LLC, 4 World Trade Center, 44th Floor, New York, New York 10007

(*7*[8]) NASDAQ BX, Inc., One Liberty Plaza, New York, New York 10006

(*8*[9]) NASDAQ PHLX LLC, 1900 Market Street, Philadelphia, Pennsylvania 19103

(*9*[10]) The Nasdaq Stock Market LLC, 1 Liberty Plaza, 165 Broadway, New York, NY 10006

(1*0*[1]) NYSE National, Inc., 11 Wall Street, New York, NY 10005

(1*1*[2]) New York Stock Exchange LLC, 11 Wall Street, New York, New York 10005

(1*2*[3]) NYSE American LLC, 11 Wall Street, New York, New York 10005

(1*3*[4]) NYSE Arca, Inc., 11 Wall Street, New York, New York 10005

(14) NYSE Chicago, Inc., 11 Wall Street, New York, New York 10005

(B) Compliance Undertaking

By subscribing to and submitting the Plan for approval by the SEC, each Participant agrees to comply with and to enforce compliance, as required by Rule 608(c) of Regulation NMS under the Exchange Act, by its members with the provisions of the Plan. To this end, each Participant shall adopt a rule requiring compliance by its members with the provisions of the Plan, and each Participant shall take such actions as are necessary and appropriate as a participant of the Market Data Plans to cause and enable the Processor for each NMS Stock to fulfill the functions set forth in this Plan.

(C) New Participants

The Participants agree that any entity registered as a national securities exchange or national securities association under the Exchange Act may become a Participant by: (1) Becoming a participant in the applicable Market Data Plans; (2) executing a copy of the Plan, as then in effect; (3) providing each then-current Participant with a copy of such executed Plan; and (4) effecting an amendment to the Plan as specified in Section III (B) of the Plan.

(D) Advisory Committee

(1) *Formation.* Notwithstanding other provisions of this Plan, an Advisory Committee to the Plan shall be formed and shall function in accordance with the provisions set forth in this section.

(2) *Composition.* Members of the Advisory Committee shall be selected for two-year terms as follows:

(A) *Advisory Committee Selections.* By affirmative vote of a majority of the Participants, the Participants shall select at least one representatives from each of the following categories to be members of the Advisory Committee: (1) A broker-dealer with a substantial retail investor customer base; (2) a broker-dealer with a substantial institutional investor customer base; (3) an alternative trading system; (4) a broker-dealer that primarily engages in trading for its own account; and (5) an investor.

(3) *Function.* Members of the Advisory Committee shall have the right to submit their views to the Operating Committee on Plan matters, prior to a decision by the Operating Committee on such matters. Such matters shall include, but not be limited to, proposed material amendments to the Plan.

(4) *Meetings and Information.* Members of the Advisory Committee shall have the right to attend meetings of the Operating Committee and to receive any information concerning Plan matters; provided, however, that the Operating Committee may meet in executive session if, by affirmative vote of a majority of the Participants, the Operating Committee determines that an item of Plan business requires confidential treatment.

III. Amendments to Plan

(A) General Amendments

Except with respect to the addition of new Participants to the Plan, any proposed change in, addition to, or deletion from the Plan shall be effected by means of a written amendment to the Plan that: (1) Sets forth the change, addition, or deletion; (2) is executed on behalf of each Participant; and, (3) is approved by the SEC pursuant to Rule 608 of Regulation NMS under the Exchange Act, or otherwise becomes effective under Rule 608 of Regulation NMS under the Exchange Act.

(B) New Participants

With respect to new Participants, an amendment to the Plan may be effected by the new national securities exchange or national securities association executing a copy of the Plan, as then in effect (with the only changes being the addition of the new Participant's name in Section II(A) of the Plan) and submitting such executed Plan to the SEC for approval. The amendment shall be effective when it is approved by the SEC in accordance with Rule 608 of Regulation NMS under the Exchange Act or otherwise becomes effective

pursuant to Rule 608 of Regulation NMS under the Exchange Act.

(C) Operating Committee

(1) Each Participant shall select from its staff one individual to represent the Participant as a member of an Operating Committee, together with a substitute for such individual. The substitute may participate in deliberations of the Operating Committee and shall be considered a voting member thereof only in the absence of the primary representative. Each Participant shall have one vote on all matters considered by the Operating Committee. No later than the initial date of Plan operations, the Operating Committee shall designate one member of the Operating Committee to act as the Chair of the Operating Committee.

(2) The Operating Committee shall monitor the procedures established pursuant to this Plan and advise the Participants with respect to any deficiencies, problems, or recommendations as the Operating Committee may deem appropriate. The Operating Committee shall establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of this Plan and the Appendixes thereto. With respect to matters in this paragraph, Operating Committee decisions shall be approved by a simple majority vote.

(3) Any recommendation for an amendment to the Plan from the Operating Committee that receives an affirmative vote of at least two-thirds of the Participants, but is less than unanimous, shall be submitted to the SEC as a request for an amendment to the Plan initiated by the Commission under Rule 608 of Regulation NMS.

IV. Trading Center Policies and Procedures

All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up—limit down requirements specified in Sections VI of the Plan, and to comply with the Trading Pauses specified in Section VII of the Plan.

V. Price Bands

(A) Calculation and Dissemination of Price Bands

(1) The Processor for each NMS stock shall calculate and disseminate to the public a Lower Price Band and an Upper Price Band during Regular Trading Hours for such NMS Stock. The Price Bands shall be based on a Reference Price for each NMS Stock that equals the arithmetic mean price of Eligible Reported Transactions for the NMS stock over the immediately preceding five-minute period (except for periods following openings and reopenings, which are addressed below). If no Eligible Reported Transactions for the NMS Stock have occurred over the immediately preceding five-minute period, the previous Reference Price shall remain in effect. The Price Bands for an NMS Stock shall be calculated by applying the Percentage Parameter for such NMS Stock to the Reference Price, with the Lower Price Band being a Percentage Parameter below the Reference Price, and the Upper Price Band being a Percentage Parameter above the Reference Price. The Price Bands shall be calculated during Regular Trading Hours. Between 3:35 p.m. and 4:00 p.m. ET, or in the case of an early scheduled close, during the last 25 minutes of trading before the early scheduled close, the Price Bands shall be calculated by applying double the Percentage Parameters set forth in Appendix A for (i) all Tier 1 NMS Stocks and (ii) Tier 2 NMS Stocks priced equal to or below $3.00. If the Processor has not yet disseminated Price Bands, but a Reference Price is available, a trading center may calculate and apply Price Bands based on the same Reference Price that the Processor would use for calculating such Price Bands until such trading center receives Price Bands from the Processor. If, under Section VII(B)(2), the Primary Listing Exchange notifies the Processor that it is unable to reopen an NMS Stock due to a systems or technology issue and it has not declared a Regulatory Halt, the Processor will calculate and disseminate Price Bands by applying triple the Percentage Parameters set forth in Appendix A for the first 30 seconds such Price Bands are disseminated.

(2) The Processor shall calculate a Pro-Forma Reference Price on a continuous basis during Regular Trading Hours, as specified in Section V(A)(1) of the Plan. If a Pro-Forma Reference Price has not moved by 1% or more from the Reference Price currently in effect, no new Price Bands shall be disseminated, and the current Reference Price shall remain the effective Reference Price. When the Pro-Forma Reference Price has moved by 1% or more from the Reference Price currently in effect, the Pro-Forma Reference Price shall become the Reference Price, and the Processor shall disseminate new Price Bands based on the new Reference Price; provided, however, that each new Reference Price shall remain in effect for at least 30 seconds.

(B) Openings

(1) Except when a Regulatory Halt is in effect at the start of Regular Trading Hours, the first Reference Price for a trading day shall be the Opening Price on the Primary Listing Exchange in an NMS Stock if such Opening Price occurs less than five minutes after the start of Regular Trading Hours. During the period less than five minutes after the Opening Price, a Pro-Forma Reference Price shall be updated on a continuous basis to be the arithmetic mean price of Eligible Reported Transactions for the NMS Stock during the period following the Opening Price (including the Opening Price), and if it differs from the current Reference Price by 1% or more shall become the new Reference Price, except that a new Reference Price shall remain in effect for at least 30 seconds. Subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

(2) If the Opening Price on the Primary Listing Exchange in an NMS Stock does not occur within five minutes after the start of Regular Trading Hours, the first Reference Price for a trading day shall be the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the preceding five minute time period, and subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

(C) Reopenings

(1) Following a Trading Pause in an NMS Stock, and if the Primary Listing Exchange has not declared a Regulatory Halt, if the Primary Listing Exchange reopens trading with a transaction or quotation that does not include a zero bid or zero offer, the next Reference Price shall be the Reopening Price on the Primary Listing Exchange. Subsequent Reference Prices shall be determined in the manner prescribed for normal openings, as specified in Section V(B)(1) of the Plan. If the Primary Listing Exchange notifies the Processor that it is unable to reopen an NMS Stock due to a systems or technology issue, or if the Primary Listing Exchange reopens trading with a quotation that has a zero bid or zero offer, or both, the next Reference Price shall be the last effective Price Band that was in a Limit State before the Trading Pause. Subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

(2) Following a Regulatory Halt, the next Reference Price shall be the Opening or Reopening Price on the Primary Listing Exchange if such Opening or Reopening Price occurs within five minutes after the end of the Regulatory Halt, and subsequent Reference Prices shall be determined in the manner prescribed for normal openings, as specified in Section V(B)(1) of the Plan. If such Opening or Reopening Price has not occurred within five minutes after the end of the Regulatory Halt, the Reference Price shall be equal to the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the preceding five minute time period, and subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

VI. Limit Up-Limit Down Requirements

(A) Limitations on Trades and Quotations Outside of Price Bands

(1) All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trades at prices that are below the Lower Price Band or above the Upper Price Band for an NMS Stock. Single-priced opening, reopening, and closing transactions on the Primary Listing Exchange, however, shall be excluded from this limitation. In addition, any transaction that both (i) does not update the last sale price (except if solely because the transaction was reported late or because the transaction was an odd-lot sized transaction), and (ii) is excepted or exempt from Rule 611 under Regulation NMS shall be excluded from this limitation.

(2) When a National Best Bid is below the Lower Price Band or a National Best Offer is above the Upper Price Band for an NMS Stock, the Processor shall disseminate such National Best Bid or National Best Offer with an appropriate flag identifying it as non-executable. When a National Best Offer is equal to the Lower Price Band or a National Best Bid is equal to the Upper Price Band for an NMS Stock, the Processor shall distribute such National Best Bid or National Best Offer with an appropriate flag identifying it as a ''Limit State Quotation''.

(3) All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. The Processor shall disseminate an offer below the Lower Price Band or bid above the Upper Price Band that may be submitted despite such reasonable policies and procedures, but with an appropriate flag identifying it as non-executable; provided, however, that any such bid or offer shall not be included in National Best Bid or National Best Offer calculations.

(B) Entering and Exiting a Limit State

(1) All trading for an NMS Stock shall immediately enter a Limit State if the National Best Offer equals the Lower Price Band and does not cross the National Best Bid, or the National Best Bid equals the Upper Price Band and does not cross the National Best Offer.

(2) When trading for an NMS Stock enters a Limit State, the Processor shall disseminate this information by identifying the relevant quotation (*i.e.,* a National Best Offer that equals the Lower Price Band or a National Best Bid that equals the Upper Price Band) as a Limit State Quotation. At this point, the Processor shall cease calculating and disseminating updated Reference Prices and Price Bands for the NMS Stock until either trading exits the Limit State or trading resumes with an opening or re-opening as provided in Section V.

(3) Trading for an NMS Stock shall exit a Limit State if, within 15 seconds of entering the Limit State, the entire size of all Limit State Quotations are executed or cancelled.

(4) If trading for an NMS Stock exits a Limit State within 15 seconds of entry, the Processor shall immediately calculate and disseminate updated Price Bands based on a Reference Price that equals the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the immediately preceding five-minute period (including the period of the Limit State).

(5) If trading for an NMS Stock does not exit a Limit State within 15 seconds of entry, the Limit State will terminate when the Primary Listing Exchange declares a Trading Pause pursuant to Section VII of the Plan or at the end of Regular Trading Hours.

VII. Trading Pauses

(A) Declaration of Trading Pauses

(1) If trading for an NMS Stock does not exit a Limit State within 15 seconds of entry during Regular Trading Hours, then the Primary Listing Exchange shall declare a Trading Pause for such NMS Stock and shall notify the Processor.

(2) The Primary Listing Exchange may also declare a Trading Pause for an NMS Stock when an NMS Stock is in a Straddle State, which is when National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State, and trading in that NMS Stock deviates from normal trading characteristics such that declaring a Trading Pause would support the Plan's goal to address extraordinary market volatility. The Primary Listing Exchange shall develop policies and procedures for determining when it would declare a Trading Pause in such circumstances. If a Trading Pause is declared for an NMS Stock under this provision, the Primary Listing Exchange shall notify the Processor.

(3) The Processor shall disseminate Trading Pause information to the public. No trades in an NMS Stock shall occur during a Trading Pause, but all bids and offers may be displayed.

(B) Reopening of Trading During Regular Trading Hours

(1) Five minutes after declaring a Trading Pause for an NMS Stock, and if the Primary Listing Exchange has not declared a Regulatory Halt, the Primary Listing Exchange shall attempt to reopen trading using its established reopening procedures. The Processor will publish the following information that the Primary Listing Exchange provides to the Processor in connection with such reopening: Auction reference price; auction collars; and number of extensions to the reopening auction. The Trading Pause shall end when the Primary Listing Exchange reports a Reopening Price.

(2) The Primary Listing Exchange shall notify the Processor if it is unable to reopen trading in an NMS Stock due to a systems or technology issue and if it has not declared a Regulatory Halt. The Processor shall disseminate this information to the public.

(3) Trading centers may not resume trading in an NMS Stock following a Trading Pause without Price Bands in such NMS Stock.

(4) The Processor shall update the Price Bands as set forth in Section V(C)(1)–(2) of the Plan after receiving notification from the Primary Listing Exchange of a Reopening Price following a Trading Pause (or a resume message in the case of a reopening quote that has a zero bid or zero offer, or both) or that it is unable to reopen trading following a Trading Pause due to a systems or technology issue, provided that if the Primary Listing Exchange is unable to reopen due to a systems or technology issue, the update to the Price Bands will be no earlier than ten

minutes after the beginning of the Trading Pause.

(C) Trading Pauses Within Ten Minutes of the End of Regular Trading Hours

(1) If an NMS Stock is in a Trading Pause during the last ten minutes of trading before the end of Regular Trading Hours, the Primary Listing Exchange shall not reopen trading and shall attempt to execute a closing transaction using its established closing procedures. All trading centers may begin trading the NMS Stock when the Primary Listing Exchange executes a closing transaction.

(2) If the Primary Listing Exchange does not execute a closing transaction within five minutes after the end of Regular Trading Hours, all trading centers may begin trading the NMS Stock.

VIII. Implementation

The initial date of Plan operations shall be April 8, 2013.

IX. Withdrawal From Plan

If a Participant obtains SEC approval to withdraw from the Plan, such Participant may withdraw from the Plan at any time on not less than 30 days' prior written notice to each of the other Participants. At such time, the withdrawing Participant shall have no further rights or obligations under the Plan.

X. Counterparts and Signatures

The Plan may be executed in any number of counterparts, no one of which need contain all signatures of all Participants, and as many of such counterparts as shall together contain all such signatures shall constitute one and the same instrument.

IN WITNESS THEREOF, this Plan has been executed as of the ____day of November *2019* [2018] by each of the parties hereto.

Cboe BZX EXCHANGE, INC.

BY: _____

Cboe EDGA EXCHANGE, INC.

BY: _____

[CHICAGO STOCK EXCHANGE, INC.

BY: _____

INVESTORS EXCHANGE LLC

BY: _____

NASDAQ PHLX LLC

BY: _____

NYSE NATIONAL, INC.

BY: _____

NYSE American LLC

BY: _____

NYSE CHICAGO, INC.

BY: _____

Cboe BYX EXCHANGE, INC.

BY: _____

Cboe EDGX EXCHANGE, INC.

BY: _____

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.

BY: _____

NASDAQ BX, Inc.

BY: _____

THE NASDAQ STOCK MARKET LLC

BY: _____

NEW YORK STOCK EXCHANGE LLC

BY: _____

NYSE ARCA, INC.

BY: _____

Appendix A—Percentage Parameters

I. Tier 1 NMS Stocks

(1) Tier 1 NMS Stocks shall include all NMS Stocks included in the S&P 500 Index[,] *and* the Russell 1000 Index, and the exchange-traded products (''ETP'') identified as Schedule 1 to this Appendix. Schedule 1 to the Appendix will be reviewed and updated semi-annually based on the fiscal year by the Primary Listing Exchange to add ETPs that meet the criteria, or delete ETPs that are no longer eligible. To determine eligibility for an ETP to be included as a Tier 1 NMS Stock, all ETPs across multiple asset classes and issuers, including domestic equity, international equity, fixed income, currency, and commodities and futures will be identified. Leveraged ETPs will be excluded and the list will be sorted by notional consolidated average daily volume (''CADV''). The period used to measure CADV will be from the first day of the previous fiscal half year up until one week before the beginning of the next fiscal half year. Daily volumes will be multiplied by closing prices and then averaged over the period. ETPs, including inverse ETPs, that trade over $2,000,000 CADV will be eligible to be included as a Tier 1 NMS Stock. The semi-annual updates to Schedule 1 do not require an amendment to the Plan. The Primary Listing Exchanges will maintain the updated Schedule 1 on their respective websites.

(2) The Percentage Parameters for Tier 1 NMS Stocks with a Reference Price more than $3.00 shall be 5%.

(3) The Percentage Parameters for Tier 1 NMS Stocks with a Reference Price equal to $0.75 and up to and including $3.00 shall be 20%.

(4) The Percentage Parameters for Tier 1 NMS Stocks with a Reference Price less than $0.75 shall be the lesser of (a) $0.15 or (b) 75%.

(5) The Reference Price used for determining which Percentage Parameter shall be applicable during a trading day shall be based on the closing price of the NMS Stock on the Primary Listing Exchange on the previous trading day, or if no closing price exists, the last sale on the Primary Listing Exchange reported by the Processor.

II. Tier 2 NMS Stocks

(1) Tier 2 NMS Stocks shall include all NMS Stocks other than those in Tier 1, provided, however, that all rights and warrants are excluded from the Plan.

(2) The Percentage Parameters for Tier 2 NMS Stocks with a Reference Price more than $3.00 shall be 10%.

(3) The Percentage Parameters for Tier 2 NMS Stocks with a Reference Price equal to $0.75 and up to and including $3.00 shall be 20%.

(4) The Percentage Parameters for Tier 2 NMS Stocks with a Reference Price less than $0.75 shall be the lesser of (a) $0.15 or (b) 75%.

(5) Notwithstanding the foregoing, the Percentage Parameters for a Tier 2 NMS Stock that is a leveraged ETP shall be the applicable Percentage Parameter set forth in clauses (2), (3), or (4) above, multiplied by the leverage ratio of such product.

(6) The Reference Price used for determining which Percentage Parameter shall be applicable during a trading day shall be based on the closing price of the NMS Stock on the Primary Listing Exchange on the previous trading day, or if no closing price exists, the last sale on the Primary Listing Exchange reported by the Processor.

APPENDIX A—SCHEDULE 1

[as of January 2, 2020]

Ticker	ETP name	Exchange
SPY	SPDR S&P 500 ETF Trust	NYSE Arca.
QQQ	Invesco QQQ Trust	NASDAQ.
IWM	iShares Russell 2000 ETF	NYSE Arca.
EEM	iShares MSCI Emerging Markets ETF	NYSE Arca.
GDX	VanEck Vectors Gold Miners ETF	NYSE Arca.
HYG	iShares iBoxx $ High Yield Corporate Bond ETF	NYSE Arca.
EFA	iShares MSCI EAFE ETF	NYSE Arca.
TLT	iShares 20+ Year Treasury Bond ETF	NASDAQ.
GLD	SPDR Gold Trust	NYSE Arca.
XLF	Financial Select Sector SPDR Fund	NYSE Arca.

APPENDIX A—SCHEDULE 1—Continued

[as of January 2, 2020]

Ticker	ETP name	Exchange
LQD	iShares iBoxx $ Investment Grade Corporate Bond ETF	NYSE Arca.
IVV	iShares Core S&P 500 ETF	NYSE Arca.
XLU	Utilities Select Sector SPDR Fund	NYSE Arca.
EWZ	iShares MSCI Brazil ETF	NYSE Arca.
FXI	iShares China Large-Cap ETF	NYSE Arca.
XLE	Energy Select Sector SPDR Fund	NYSE Arca.
XLK	Technology Select Sector SPDR Fund	NYSE Arca.
XLV	Health Care Select Sector SPDR Fund	NYSE Arca.
VXX	iPath Series B S&P 500 VIX Short-Term Futures ETN	Cboe BZX.
XLI	Industrial Select Sector SPDR Fund	NYSE Arca.
XLP	Consumer Staples Select Sector SPDR Fund	NYSE Arca.
DIA	SPDR Dow Jones Industrial Average ETF Trust	NYSE Arca.
VOO	Vanguard S&P 500 ETF	NYSE Arca.
IEMG	iShares Core MSCI Emerging Markets ETF	NYSE Arca.
IYR	iShares U.S. Real Estate ETF	NYSE Arca.
GDXJ	VanEck Vectors Junior Gold Miners ETF	NYSE Arca.
JNK	SPDR Bloomberg Barclays High Yield Bond ETF	NYSE Arca.
XOP	SPDR S&P Oil & Gas Exploration & Production ETF	NYSE Arca.
SMH	VanEck Vectors Semiconductor ETF	NASDAQ.
IEF	iShares 7–10 Year Treasury Bond ETF	NASDAQ.
VWO	Vanguard FTSE Emerging Markets ETF	NYSE Arca.
IEFA	iShares Core MSCI EAFE ETF	Cboe BZX.
AGG	iShares Core U.S. Aggregate Bond ETF	NYSE Arca.
VNQ	Vanguard Real Estate ETF	NYSE Arca.
EMB	iShares JP Morgan USD Emerging Markets Bond ETF	NASDAQ.
XLY	Consumer Discretionary Select Sector SPDR Fund	NYSE Arca.
VTI	Vanguard Total Stock Market ETF	NYSE Arca.
XBI	SPDR S&P BIOTECH ETF	NYSE Arca.
EWJ	iShares MSCI Japan ETF	NYSE Arca.
MDY	SPDR S&P Midcap 400 ETF Trust	NYSE Arca.
VEA	Vanguard FTSE Developed Markets ETF	NYSE Arca.
XLB	Materials Select Sector SPDR Fund	NYSE Arca.
KRE	SPDR S&P Regional Banking ETF	NYSE Arca.
SLV	iShares Silver Trust	NYSE Arca.
USO	United States Oil Fund LP	NYSE Arca.
IAU	iShares Gold Trust	NYSE Arca.
USMV	iShares Edge MSCI Min Vol USA ETF	Cboe BZX.
IBB	iShares NASDAQ Biotechnology ETF	NASDAQ.
BND	Vanguard Total Bond Market ETF	NASDAQ.
IJR	iShares Core S&P Small Cap ETF	NYSE Arca.
SHV	iShares Short Treasury Bond ETF	NASDAQ.
IWD	iShares Russell 1000 Value ETF	NYSE Arca.
SPLV	Invesco S&P 500 Low Volatility ETF	NYSE Arca.
IWF	iShares Russell 1000 Growth ETF	NYSE Arca.
XRT	SPDR S&P Retail ETF	NYSE Arca.
EWY	iShares MSCI South Korea ETF	NYSE Arca.
MCHI	iShares MSCI China ETF	NASDAQ.
ACWI	iShares MSCI ACWI ETF	NASDAQ.
VCIT	Vanguard Intermediate-Term Corporate Bond ETF	NASDAQ.
AMLP	Alerian MLP ETF	NYSE Arca.
SHY	iShares 1–3 Year Treasury Bond ETF	NASDAQ.
VGK	Vanguard FTSE Europe ETF	NYSE Arca.
BIL	SPDR Bloomberg Barclays 1–3 Month T-Bill ETF	NYSE Arca.
EZU	iShares MSCI Eurozone ETF	Cboe BZX.
IJH	iShares Core S&P Mid-Cap ETF	NYSE Arca.
XLRE	Real Estate Select Sector SPDR Fund	NYSE Arca.
XLC	Communication Services Select Sector SPDR Fund	NYSE Arca.
IWB	iShares Russell 1000 ETF	NYSE Arca.
EWT	iShares MSCI Taiwan ETF	NYSE Arca.
TIP	iShares TIPS Bond ETF	NYSE Arca.
MTUM	iShares Edge MSCI USA Momentum Factor ETF	Cboe BZX.
RSX	VanEck Vectors Russia ETF	Cboe BZX.
VTV	Vanguard Value ETF	NYSE Arca.
INDA	iShares MSCI India ETF	Cboe BZX.
PFF	iShares Preferred & Income Securities ETF	NASDAQ.
EWH	iShares MSCI Hong Kong ETF	NYSE Arca.
VT	Vanguard Total World Stock ETF	NYSE Arca.
MBB	iShares MBS ETF	NASDAQ.
IGV	iShares Expanded Tech-Software Sector ETF	Cboe BZX.
BSV	Vanguard Short-Term Bond ETF	NYSE Arca.
SVXY	ProShares Short VIX Short-Term Futures ETF	NYSE Arca.

APPENDIX A—SCHEDULE 1—Continued

[as of January 2, 2020]

Ticker	ETP name	Exchange
BKLN	Invesco Senior Loan ETF	NYSE Arca.
VIG	Vanguard Dividend Appreciation ETF	NYSE Arca.
OIH	VanEck Vectors Oil Services ETF	NYSE Arca.
EWW	iShares MSCI Mexico ETF	NYSE Arca.
VEU	Vanguard FTSE All-World ex-US Index Fund	NYSE Arca.
VCSH	Vanguard Short-Term Corporate Bond ETF	NASDAQ.
SH	ProShares Short S&P500	NYSE Arca.
IEI	iShares 3–7 Year Treasury Bond ETF	NASDAQ.
GOVT	iShares U.S. Treasury Bond ETF	Cboe BZX.
SOXX	iShares PHLX Semiconductor ETF	NASDAQ.
VGT	Vanguard Information Technology ETF	NYSE Arca.
BNDX	Vanguard Total International Bond ETF	NASDAQ.
ASHR	Xtrackers Harvest CSI 300 China A-Shares ETF	NYSE Arca.
ITOT	iShares Core S&P Total U.S. Stock Market ETF	NYSE Arca.
IWO	iShares Russell 2000 Growth ETF	NYSE Arca.
VUG	Vanguard Growth ETF	NYSE Arca.
JPST	JPMorgan Ultra-Short Income ETF	Cboe BZX.
IWN	iShares Russell 2000 Value ETF	NYSE Arca.
MINT	PIMCO Enhanced Short Maturity Active ETF	NYSE Arca.
VYM	Vanguard High Dividend Yield Index ETF	NYSE Arca.
ITB	iShares U.S. Home Construction ETF	Cboe BZX.
FEZ	SPDR EURO STOXX 50 ETF	NYSE Arca.
QUAL	iShares Edge MSCI USA Quality Factor ETF	Cboe BZX.
EWG	iShares MSCI Germany ETF	NYSE Arca.
MUB	iShares National Muni Bond ETF	NYSE Arca.
IVE	iShares S&P 500 Value ETF	NYSE Arca.
SCHF	Schwab International Equity ETF	NYSE Arca.
VXUS	Vanguard Total International Stock ETF	NASDAQ.
XHB	SPDR S&P Homebuilders ETF	NYSE Arca.
AAXJ	iShares MSCI All Country Asia ex Japan ETF	NASDAQ.
EWU	iShares MSCI United Kingdom ETF	NYSE Arca.
IVW	iShares S&P 500 Growth ETF	NYSE Arca.
KBE	SPDR S&P Bank ETF	NYSE Arca.
VO	Vanguard Mid-Cap ETF	NYSE Arca.
VB	Vanguard Small-Cap ETF	NYSE Arca.
EMLC	VanEck Vectors J.P. Morgan EM Local Currency Bond ETF	NYSE Arca.
SCHX	Schwab U.S. Large-Cap ETF	NYSE Arca.
IGSB	iShares Short-Term Corporate Bond ETF	NASDAQ.
ACWX	iShares MSCI ACWI ex U.S. ETF	NASDAQ.
PSQ	ProShares Short QQQ	NYSE Arca.
FLOT	iShares Floating Rate Bond ETF	Cboe BZX.
IGIB	iShares Intermediate-Term Corporate Bond ETF	NASDAQ.
SJNK	SPDR Bloomberg Barclays Short Term High Yield Bond ETF	NYSE Arca.
UNG	United States Natural Gas Fund LP	NYSE Arca.
XME	SPDR S&P Metals & Mining ETF	NYSE Arca.
BIV	Vanguard Intermediate-Term Bond ETF	NYSE Arca.
NEAR	iShares Short Maturity Bond ETF	Cboe BZX.
DXJ	WisdomTree Japan Hedged Equity Fund	NYSE Arca.
VIXY	ProShares VIX Short-Term Futures ETF	NYSE Arca.
KWEB	KraneShares CSI China Internet ETF	NYSE Arca.
IWR	iShares Russell Midcap ETF	NYSE Arca.
EFAV	iShares Edge MSCI Min Vol EAFE ETF	Cboe BZX.
EWC	iShares MSCI Canada ETF	NYSE Arca.
IXUS	iShares Core MSCI Total International Stock ETF	NASDAQ.
EWA	iShares MSCI Australia ETF	NYSE Arca.
RSP	Invesco S&P 500 Equal Weight ETF	NYSE Arca.
DGRO	iShares Core Dividend Growth ETF	NYSE Arca.
FDN	First Trust Dow Jones Internet Index Fund	NYSE Arca.
SCZ	iShares MSCI EAFE Small-Cap ETF	NASDAQ.
SCHB	Schwab U.S. Broad Market ETF	NYSE Arca.
DVY	iShares Select Dividend ETF	NASDAQ.
SDY	SPDR S&P Dividend ETF	NYSE Arca.
IHI	iShares U.S. Medical Devices ETF	NYSE Arca.
OEF	iShares S&P 100 ETF	NYSE Arca.
SPIB	SPDR Portfolio Intermediate Term Corporate Bond ETF	NYSE Arca.
IWS	iShares Russell Mid-Cap Value ETF	NYSE Arca.
AMJ	J.P. Morgan Alerian MLP Index ETN	NYSE Arca.
SCHO	Schwab Short-Term US Treasury ETF	NYSE Arca.
FTSM	First Trust Enhanced Short Maturity ETF	NASDAQ.
SPYG	SPDR Portfolio S&P 500 Growth ETF	NYSE Arca.
SPAB	SPDR Portfolio Aggregate Bond ETF	NYSE Arca.

APPENDIX A—SCHEDULE 1—Continued

[as of January 2, 2020]

Ticker	ETP name	Exchange
VCLT	Vanguard Long-Term Corporate Bond ETF	NASDAQ.
SCHD	Schwab US Dividend Equity ETF	NYSE Arca.
EWL	iShares MSCI Switzerland ETF	NYSE Arca.
IWV	iShares Russell 3000 ETF	NYSE Arca.
VXF	Vanguard Extended Market ETF	NYSE Arca.
FVD	First Trust Value Line Dividend Index Fund	NYSE Arca.
IYT	iShares Transportation Average ETF	Cboe BZX.
EWQ	iShares MSCI France ETF	NYSE Arca
VMBS	Vanguard Mortgage-Backed Securities ETF	NASDAQ.
ILF	iShares Latin America 40 ETF	NYSE Arca.
SPTL	SPDR Portfolio Long Term Treasury ETF	NYSE Arca.
BLV	Vanguard Long-Term Bond ETF	NYSE Arca.
VBR	Vanguard Small Cap Value ETF	NYSE Arca.
VLUE	iShares Edge MSCI USA Value Factor ETF	Cboe BZX.
EPI	WisdomTree India Earnings Fund	NYSE Arca.
VFH	Vanguard Financials ETF	NYSE Arca.
VGSH	Vanguard Short-Term Treasury ETF	NASDAQ.
SCHP	Schwab US TIPS ETF	NYSE Arca.
USIG	iShares Broad USD Investment Grade Corporate Bond ETF	NASDAQ.
IWP	iShares Russell Mid-Cap Growth ETF	NYSE Arca.
ITA	iShares U.S. Aerospace & Defense ETF	Cboe BZX.
SCHG	Schwab U.S. Large-Cap Growth ETF	NYSE Arca.
PCY	Invesco Emerging Markets Sovereign Debt ETF	NYSE Arca.
IUSG	iShares Core S&P U.S. Growth ETF	NASDAQ.
SPSB	SPDR Portfolio Short Term Corporate Bond ETF	NYSE Arca.
VTEB	Vanguard Tax-Exempt Bond ETF	NYSE Arca.
SPYV	SPDR Portfolio S&P 500 Value ETF	NYSE Arca.
GSLC	Goldman Sachs ActiveBeta U.S. Large Cap Equity ETF	NYSE Arca.
CWB	SPDR Bloomberg Barclays Convertible Securities ETF	NYSE Arca.
VTIP	Vanguard Short-Term Inflation-Protected Securities ETF	NASDAQ.
HYLB	Xtrackers USD High Yield Corporate Bond ETF	NYSE Arca.
FLRN	SPDR Bloomberg Barclays Investment Grade Floating Rate ETF	NYSE Arca.
SPEM	SPDR Portfolio Emerging Markets ETF	NYSE Arca.
VHT	Vanguard Health Care ETF	NYSE Arca.
PGX	Invesco Preferred ETF	NYSE Arca.
EEMV	iShares Edge MSCI Min Vol Emerging Markets ETF	Cboe BZX.
SPDW	SPDR Portfolio Developed World ex-US ETF	NYSE Arca.
NOBL	ProShares S&P 500 Dividend Aristocrats ETF	Cboe BZX.
HDV	iShares Core High Dividend ETF	NYSE Arca.
EWP	iShares MSCI Spain ETF	NYSE Arca.
SHYG	iShares 0–5 Year High Yield Corporate Bond ETF	NYSE Arca.
VBK	Vanguard Small-Cap Growth ETF	NYSE Arca.
IUSV	iShares Core S&P US Value ETF	NASDAQ.
SCHE	Schwab Emerging Markets Equity ETF	NYSE Arca.
VGLT	Vanguard Long-Term Treasury ETF	NASDAQ.
SCHH	Schwab U.S. REIT ETF	NYSE Arca.
SPLG	SPDR Portfolio Large Cap ETF	NYSE Arca.
IEUR	iShares Core MSCI Europe ETF	NYSE Arca.
VV	Vanguard Large-Cap ETF	NYSE Arca.
ACWV	iShares Edge MSCI Min Vol Global ETF	Cboe BZX.
SCHV	Schwab U.S. Large-Cap Value ETF	NYSE Arca.
EFV	iShares MSCI EAFE Value ETF	Cboe BZX.
VPL	Vanguard FTSE Pacific ETF	NYSE Arca.
IJS	iShares S&P Small-Cap 600 Value ETF	NYSE Arca.
VOE	Vanguard Mid-Cap Value ETF	NYSE Arca.
SCHZ	Schwab US Aggregate Bond ETF	NYSE Arca.
VDE	Vanguard Energy ETF	NYSE Arca.
DBEF	Xtrackers MSCI EAFE Hedged Equity ETF	NYSE Arca.
EWI	iShares MSCI Italy ETF	NYSE Arca.
GBIL	Goldman Sachs Access Treasury 0–1 Year ETF	NYSE Arca.
ICSH	iShares Ultra Short-Term Bond ETF	Cboe BZX.
FPE	First Trust Preferred Securities & Income ETF	NYSE Arca.
SCHA	Schwab U.S. Small-Cap ETF	NYSE Arca.
HYD	VanEck Vectors High-Yield Municipal Index ETF	Cboe BZX.
EDV	Vanguard Extended Duration Treasury ETF	NYSE Arca.
HEDJ	WisdomTree Europe Hedged Equity Fund	NYSE Arca.
VPU	Vanguard Utilities ETF	NYSE Arca.
EZA	iShares MSCI South Africa ETF	NYSE Arca.
HYS	PIMCO 0–5 Year High Yield Corporate Bond Index ETF	NYSE Arca.
VGIT	Vanguard Intermediate-Term Treasury ETF	NASDAQ.
LMBS	First Trust Low Duration Opportunities ETF	NASDAQ.

APPENDIX A—SCHEDULE 1—Continued

[as of January 2, 2020]

Ticker	ETP name	Exchange
SCHR	Schwab Intermediate-Term US Treasury ETF	NYSE Arca.
GSY	Invesco Ultra Short Duration ETF	NYSE Arca.
EPP	iShares MSCI Pacific ex-Japan ETF	NYSE Arca.
FBT	First Trust NYSE Arca Biotechnology Index Fund	NYSE Arca.
IYF	iShares U.S. Financials ETF	NYSE Arca.
IYW	iShares U.S. Technology ETF	NYSE Arca.
SRLN	SPDR Blackstone/GSO Senior Loan ETF	NYSE Arca.
VNQI	Vanguard Global ex-U.S. Real Estate ETF	NASDAQ.
USHY	iShares Broad USD High Yield Corporate Bond ETF	Cboe BZX.
IDV	iShares International Select Dividend ETF	Cboe BZX.
MGK	Vanguard Mega Cap Growth ETF	NYSE Arca.
TLH	iShares 10–20 Year Treasury Bond ETF	NYSE Arca.
SPHD	Invesco S&P 500 High Dividend Low Volatility ETF	NYSE Arca.
VTWO	Vanguard Russell 2000 ETF	NASDAQ.
USFR	WisdomTree Floating Rate Treasury Fund	NYSE Arca.
VOT	Vanguard Mid-Cap Growth ETF	NYSE Arca.
KSA	iShares MSCI Saudi Arabia ETF	NYSE Arca.
PDBC	Invesco Optimum Yield Diversified Commodity Strategy No K–1 ETF	NASDAQ.
IGLB	iShares Long-Term Corporate Bond ETF	NYSE Arca.
SCHM	Schwab U.S. Mid-Cap ETF	NYSE Arca.
ISTB	iShares Core 1–5 Year USD Bond ETF	NASDAQ.
IJK	iShares S&P Mid-Cap 400 Growth ETF	NYSE Arca.
GLDM	SPDR Gold MiniShares Trust	NYSE Arca.
DOG	ProShares Short Dow30	NYSE Arca.
KBWB	Invesco KBW Bank ETF	NASDAQ.
EUFN	iShares MSCI Europe Financials ETF	NASDAQ.
EIDO	iShares MSCI Indonesia ETF	NYSE Arca.
XAR	SPDR S&P Aerospace & Defense ETF	NYSE Arca.
RWM	ProShares Short Russell2000	NYSE Arca.
BOND	PIMCO Active Bond ETF	NYSE Arca.
VDC	Vanguard Consumer Staples ETF	NYSE Arca.
UUP	Invesco DB US Dollar Index Bullish Fund	NYSE Arca.
SPTI	SPDR Portfolio Intermediate Term Treasury ETF	NYSE Arca.
FXE	Invesco CurrencyShares Euro Trust	NYSE Arca.
VSS	Vanguard FTSE All-World ex-US Small-Cap ETF	NYSE Arca.
EFG	iShares MSCI EAFE Growth ETF	Cboe BZX.
FXO	First Trust Financials AlphaDEX Fund	NYSE Arca.
XMLV	Invesco S&P MidCap Low Volatility ETF	NYSE Arca.
FTEC	Fidelity MSCI Information Technology Index ETF	NYSE Arca.
SPYD	SPDR Portfolio S&P 500 High Dividend ETF	NYSE Arca.
QTEC	First Trust NASDAQ–100 Technology Sector Index Fund	NASDAQ.
THD	iShares MSCI Thailand ETF	NYSE Arca.
MOAT	VanEck Vectors Morningstar Wide Moat ETF	Cboe BZX.
EWM	iShares MSCI Malaysia ETF	NYSE Arca.
RWR	SPDR Dow Jones REIT ETF	NYSE Arca.
BNO	United States Brent Oil Fund LP	NYSE Arca.
FTCS	First Trust Capital Strength ETF	NASDAQ.
DBC	Invesco DB Commodity Index Tracking Fund	NYSE Arca.
TOTL	SPDR DoubleLine Total Return Tactical ETF	NYSE Arca.
EWS	iShares MSCI Singapore ETF	NYSE Arca.
PTLC	Pacer Trendpilot US Large Cap ETF	Cboe BZX.
SPTS	SPDR Portfolio Short Term Treasury ETF	NYSE Arca.
GUNR	FlexShares Morningstar Global Upstream Natural Resources Index Fund	NYSE Arca.
PRF	Invesco FTSE RAFI US 1000 ETF	NYSE Arca.
ECH	iShares MSCI Chile ETF	Cboe BZX.
SPTM	SPDR Portfolio Total Stock Market ETF	NYSE Arca.
MJ	ETFMG Alternative Harvest ETF	NYSE Arca.
IYE	iShares U.S. Energy ETF	NYSE Arca.
VOX	Vanguard Communication Services ETF	NYSE Arca
IJT	iShares S&P Small-Cap 600 Growth ETF	NASDAQ.
IPAY	ETFMG Prime Mobile Payments ETF	NYSE Arca.
RWX	SPDR Dow Jones International Real Estate ETF	NYSE Arca.
FNDX	Schwab Fundamental US Large Co. Index ETF	NYSE Arca.
IAGG	iShares Core International Aggregate Bond ETF	Cboe BZX.
ANGL	VanEck Vectors Fallen Angel High Yield Bond ETF	NASDAQ.
IEV	iShares Europe ETF	NYSE Arca.
VOOG	Vanguard S&P 500 Growth ETF	NYSE Arca.
FLCB	Franklin Liberty U.S. Core Bond ETF	NYSE Arca.
IJJ	iShares S&P Mid-Cap 400 Value ETF	NYSE Arca
IUSB	iShares Core Total USD Bond Market ETF	NASDAQ.
TBF	Proshares Short 20+ Year Treasury	NYSE Arca.

APPENDIX A—SCHEDULE 1—Continued

[as of January 2, 2020]

Ticker	ETP name	Exchange
BBEU	JPMorgan BetaBuilders Europe ETF	Cboe BZX.
SPSM	SPDR Portfolio Small Cap ETF	NYSE Arca
SIZE	iShares Edge MSCI USA Size Factor ETF	NYSE Arca.
SHM	SPDR Nuveen Bloomberg Barclays Short Term Municipal Bond ETF	NYSE Arca.
TUR	iShares MSCI Turkey ETF	NASDAQ.
RODM	Hartford Multifactor Developed Markets (ex-US) ETF	NYSE Arca.
BBJP	JPMorgan BetaBuilders Japan ETF	Cboe BZX.
MLPI	ETRACS Alerian MLP Infrastructure Index ETN	NYSE Arca.
IXN	iShares Global Tech ETF	NYSE Arca.
LGLV	SPDR SSGA US Large Cap Low Volatility Index ETF	NYSE Arca.
FNDF	Schwab Fundamental International Large Co. Index ETF	NYSE Arca.
SGOL	Aberdeen Standard Physical Gold Shares ETF	NYSE Arca.
IGOV	iShares International Treasury Bond ETF	NASDAQ.
FIXD	First Trust TCW Opportunistic Fixed Income ETF	NASDAQ.
EWD	iShares MSCI Sweden ETF	NYSE Arca.
ICF	iShares Cohen & Steers REIT ETF	Cboe BZX.
VIS	Vanguard Industrials ETF	NYSE Arca.
MDYV	SPDR S&P 400 Mid Cap Value ETF	NYSE Arca.
SPHQ	Invesco S&P 500 Quality ETF	NYSE Arca.
SKYY	First Trust Cloud Computing ETF	NASDAQ.
IGF	iShares Global Infrastructure ETF	NASDAQ.
REM	iShares Mortgage Real Estate ETF	Cboe BZX.
BOTZ	Global X Robotics & Artificial Intelligence ETF	NASDAQ.
FXL	First Trust Technology AlphaDEX Fund	NYSE Arca.
EMLP	First Trust North American Energy Infrastructure Fund	NYSE Arca.
SUB	iShares Short-Term National Muni Bond ETF	NYSE Arca.
SPLB	SPDR Portfolio Long Term Corporate Bond ETF	NYSE Arca.
HEWJ	iShares Currency Hedged MSCI Japan ETF	NYSE Arca.
VONG	Vanguard Russell 1000 Growth ETF	NASDAQ.
IYG	iShares US Financial Services ETF	NYSE Arca.
IYZ	iShares U.S. Telecommunications ETF	Cboe BZX.
VCR	Vanguard Consumer Discretionary ETF	NYSE Arca.
DGS	WisdomTree Emerging Markets SmallCap Dividend Fund	NYSE Arca.
XES	SPDR S&P Oil & Gas Equipment & Services ETF	NYSE Arca.
IHF	iShares U.S. Healthcare Providers ETF	NYSE Arca.
VWOB	Vanguard Emerging Markets Government Bond ETF	NASDAQ.
XSLV	Invesco S&P SmallCap Low Volatility ETF	NYSE Arca.
HEZU	iShares Currency Hedged MSCI Eurozone ETF	NYSE Arca.
ONEQ	Fidelity Nasdaq Composite Index Tracking Stock	NASDAQ.
PULS	PGIM Ultra Short Bond ETF	NYSE Arca.
ARKK	ARK Innovation ETF	NYSE Arca.
SLYV	SPDR S&P 600 Small Cap Value ETF	NYSE Arca.
DGRW	WisdomTree US Quality Dividend Growth Fund	NASDAQ.
FNDE	Schwab Fundamental Emerging Markets Large Co. Index ETF	NYSE Arca.
KIE	SPDR S&P Insurance ETF	NYSE Arca.
USRT	iShares Core U.S. REIT ETF	NYSE Arca.
IYH	iShares U.S. Healthcare ETF	NYSE Arca.
RPV	Invesco S&P 500 Pure Value ETF	NYSE Arca.
DEM	WisdomTree Emerging Markets High Dividend Fund	NYSE Arca.
HEFA	iShares Currency Hedged MSCI EAFE ETF	Cboe BZX.
XSD	SPDR S&P Semiconductor ETF	NYSE Arca.
IXC	iShares Global Energy ETF	NYSE Arca.
MLPA	Global X MLP ETF	NYSE Arca.
ERUS	iShares MSCI Russia ETF	NYSE Arca.
SIL	Global X Silver Miners ETF	NYSE Arca.
DON	WisdomTree U.S. MidCap Dividend Fund	NYSE Arca.
VNLA	Janus Henderson Short Duration Income ETF	NYSE Arca.
AGGY	WisdomTree Yield Enhanced U.S. Aggregate Bond Fund	NYSE Arca.
SPMD	SPDR Portfolio Mid Cap ETF	NYSE Arca.
RPG	Invesco S&P 500 Pure Growth ETF	NYSE Arca.
BBRE	JPMorgan BetaBuilders MSCI U.S. REIT ETF	Cboe BZX.
STIP	iShares 0–5 Year TIPS Bond ETF	NYSE Arca.
FTSL	First Trust Senior Loan Fund	NASDAQ.
PHYS	Sprott Physical Gold Trust	NYSE Arca.
GXC	SPDR S&P China ETF	NYSE Arca.
PPLT	Aberdeen Standard Physical Platinum Shares ETF	NYSE Arca.
FXB	Invesco CurrencyShares British Pound Sterling Trust	NYSE Arca.
TFI	SPDR Nuveen Bloomberg Barclays Municipal Bond ETF	NYSE Arca.
GVI	iShares Intermediate Government/Credit Bond ETF	Cboe BZX.
MLPX	Global X MLP & Energy Infrastructure ETF	NYSE Arca.
IXJ	iShares Global Healthcare ETF	NYSE Arca.

APPENDIX A—SCHEDULE 1—Continued

[as of January 2, 2020]

Ticker	ETP name	Exchange
ESGD	iShares ESG MSCI EAFE ETF	NASDAQ.
FNDA	Schwab Fundamental US Small Co. Index ETF	NYSE Arca.
CEF	Sprott Physical Gold and Silver Trust	NYSE Arca.
SLQD	iShares 0–5 Year Investment Grade Corporate Bond ETF	NASDAQ.
LEMB	iShares J.P. Morgan EM Local Currency Bond ETF	NYSE Arca.
IYC	iShares U.S. Consumer Services ETF	NYSE Arca.
FMB	First Trust Managed Municipal ETF	NASDAQ.
PDP	Invesco DWA Momentum ETF	NASDAQ.
HYLS	First Trust Tactical High Yield ETF	NASDAQ.
DBEU	Xtrackers MSCI Europe Hedged Equity ETF	NYSE Arca.
IDEV	iShares Core MSCI International Developed Markets ETF	NYSE Arca.
REET	iShares Global REIT ETF	NYSE Arca.
RYT	Invesco S&P 500 Equal Weight Technology ETF	NYSE Arca.
HYMB	SPDR Nuveen Bloomberg Barclays High Yield Municipal Bond ETF	NYSE Arca.
MGC	Vanguard Mega Cap ETF	NYSE Arca.
IDU	iShares U.S. Utilities ETF	NYSE Arca.
JPIN	J.P. Morgan Diversified Return International Equity ETF	NYSE Arca.
XLG	Invesco S&P 500 Top 50 ETF	NYSE Arca.
SLYG	SPDR S&P 600 Small Cap Growth ETF	NYSE Arca.
SCHC	Schwab International Small-Cap Equity ETF	NYSE Arca.
RWO	SPDR Dow Jones Global Real Estate ETF	NYSE Arca
VIOO	Vanguard S&P Small-Cap 600 ETF	NYSE Arca.
VRP	Invesco Variable Rate Preferred ETF	NYSE Arca.
FXY	Invesco Currencyshares Japanese Yen Trust	NYSE Arca.
RDIV	Invesco S&P Ultra Dividend Revenue ETF	NYSE Arca.
PXH	Invesco FTSE RAFI Emerging Markets ETF	NYSE Arca.
MGV	Vanguard Mega Cap Value ETF	NYSE Arca.
CORP	PIMCO Investment Grade Corporate Bond Index ETF	NYSE Arca.
VAW	Vanguard Materials ETF	NYSE Arca.
EWN	iShares MSCI Netherlands ETF	NYSE Arca.
BWX	SPDR Bloomberg Barclays International Treasury Bond ETF	NYSE Arca.
EUM	ProShares Short MSCI Emerging Markets	NYSE Arca.
QYLD	Global X NASDAQ 100 Covered Call ETF	NASDAQ.
PGF	Invesco Financial Preferred ETF	NYSE Arca.
FREL	Fidelity MSCI Real Estate Index ETF	NYSE Arca.
IGM	iShares Expanded Tech Sector ETF	NYSE Arca.
IAT	iShares U.S. Regional Banks ETF	NYSE Arca.
TAN	Invesco Solar ETF	NYSE Arca.
VONV	Vanguard Russell 1000 Value ETF	NASDAQ.
FUTY	Fidelity MSCI Utilities Index ETF	NYSE Arca.
KBA	KraneShares Bosera MSCI China A Share ETF	NYSE Arca.
PRFZ	Invesco FTSE RAFI US 1500 Small-Mid ETF	NASDAQ.
FBND	Fidelity Total Bond ETF	NYSE Arca.
FXH	First Trust Health Care AlphaDEX Fund	NYSE Arca.
PSK	SPDR Wells Fargo Preferred Stock ETF	NYSE Arca.
IQLT	iShares Edge MSCI Intl Quality Factor ETF	NYSE Arca.
EPHE	iShares MSCI Philippines ETF	NYSE Arca.
ITM	VanEck Vectors AMT-Free Intermediate Municipal Index ETF	Cboe BZX.
GSIE	Goldman Sachs ActiveBeta International Equity ETF	NYSE Arca.
DLN	WisdomTree U.S. LargeCap Dividend Fund	NYSE Arca.
HACK	ETFMG Prime Cyber Security ETF	NYSE Arca.
DJP	iPath Bloomberg Commodity Index Total Return ETN	NYSE Arca.
FHLC	Fidelity MSCI Health Care Index ETF	NYSE Arca.
DBJP	Xtrackers MSCI Japan Hedged Equity ETF	NYSE Arca.
URTH	iShares MSCI World ETF	NYSE Arca.
VYMI	Vanguard International High Dividend Yield ETF	NASDAQ.
FDT	First Trust Developed Markets ex-US AlphaDEX Fund	NASDAQ.
BSCL	Invesco BulletShares 2021 Corporate Bond ETF	NASDAQ.
FXU	First Trust Utilities AlphaDEX Fund	NYSE Arca.
BSCK	Invesco BulletShares 2020 Corporate Bond ETF	NASDAQ.
IYJ	iShares U.S. Industrials ETF	Cboe BZX.
AGZ	iShares Agency Bond ETF	NYSE Arca.
INTF	iShares Edge MSCI Multifactor Intl ETF	NYSE Arca.
SPMB	SPDR Portfolio Mortgage Backed Bond ETF	NYSE Arca.
GSG	iShares S&P GSCI Commodity Indexed Trust	NYSE Arca.
PSJ	Invesco Dynamic Software ETF	NYSE Arca.
SDIV	Global X Superdividend ETF	NYSE Arca.
VIGI	Vanguard International Dividend Appreciation ETF	NASDAQ
RING	iShares MSCI Global Gold Miners ETF	NASDAQ.
CWI	SPDR MSCI ACWI ex-US ETF	NYSE Arca.
IWY	iShares Russell Top 200 Growth ETF	NYSE Arca.

APPENDIX A—SCHEDULE 1—Continued

[as of January 2, 2020]

Ticker	ETP name	Exchange
ESGU	iShares ESG MSCI USA ETF	NASDAQ.
ZROZ	PIMCO 25+ Year Zero Coupon US Treasury Index ETF	NYSE Arca.
SPIP	SPDR Portfolio TIPS ETF	NYSE Arca.
FNCL	Fidelity MSCI Financials Index ETF	NYSE Arca.
ESGE	iShares ESG MSCI EM ETF	NASDAQ.
BAB	Invesco Taxable Municipal Bond ETF	NYSE Arca.
PZA	Invesco National AMT-Free Municipal Bond ETF	NYSE Arca.
MDYG	SPDR S&P 400 Mid Cap Growth ETF	NYSE Arca.
RDVY	First Trust Rising Dividend Achievers ETF	NASDAQ.
DSI	iShares MSCI KLD 400 Social ETF	NYSE Arca.
BSCM	Invesco BulletShares 2022 Corporate Bond ETF	NASDAQ.
IXG	iShares Global Financials ETF	NYSE Arca.
CIBR	First Trust NASDAQ Cybersecurity ETF	NASDAQ.
JHMM	John Hancock Multifactor Mid Cap ETF	NYSE Arca.
FCG	First Trust Natural Gas ETF	NYSE Arca.
PHB	Invesco Fundamental High Yield Corporate Bond ETF	NYSE Arca.
FV	First Trust Dorsey Wright Focus 5 ETF	NASDAQ.
BSJL	Invesco Bulletshares 2021 High Yield Corporate Bond ETF	NASDAQ.
FNDC	Schwab Fundamental International Small Co. Index ETF	NYSE Arca.
DVYE	iShares Emerging Markets Dividend ETF	NYSE Arca.
DES	WisdomTree U.S. SmallCap Dividend Fund	NYSE Arca.
VONE	Vanguard Russell 1000 ETF	NASDAQ.
GNR	SPDR S&P Global Natural Resources ETF	NYSE Arca.
FPX	First Trust US Equity Opportunities ETF	NYSE Arca.
BSJK	Invesco BulletShares 2020 High Yield Corporate Bond ETF	NASDAQ.
PSLV	Sprott Physical Silver Trust	NYSE Arca.
SUSA	iShares MSCI USA ESG Select ETF	NYSE Arca.
AOM	iShares Core Moderate Allocation ETF	NYSE Arca.
IEO	iShares U.S. Oil & Gas Exploration & Production ETF	Cboe BZX.
XMMO	Invesco S&P MidCap Momentum ETF	NYSE Arca.
PPA	Invesco Aerospace & Defense ETF	NYSE Arca.
NUSI	Nationwide Risk-Managed Income ETF	NYSE Arca.
COMT	iShares Commodities Select Strategy ETF	NASDAQ.
PDEC	Innovator S&P 500 Power Buffer ETF—December	Cboe BZX.
EBND	SPDR Bloomberg Barclays Emerging Markets Local Bond ETF	NYSE Arca.
CMF	iShares California Muni Bond ETF	NYSE Arca.
VOOV	Vanguard S&P 500 Value ETF	NYSE Arca.
IGE	iShares North American Natural Resources ETF	Cboe BZX.
FDL	First Trust Morningstar Dividend Leaders Index Fund	NYSE Arca.
PXF	Invesco FTSE RAFI Developed Markets ex-U.S. ETF	NYSE Arca.
PFFD	Global X U.S. Preferred ETF	Cboe BZX.
ROBO	ROBO Global Robotics & Automation Index ETF	NYSE Arca.
IBDL	iShares iBonds Dec 2020 Term Corporate ETF	NYSE Arca.
IDLV	Invesco S&P International Developed Low Volatility ETF	NYSE Arca.
FFTY	Innovator IBD 50 ETF	NYSE Arca.
SPHB	Invesco S&P 500 High Beta ETF	NYSE Arca.
DLS	WisdomTree International SmallCap Dividend Fund	NYSE Arca.
LRGF	iShares Edge MSCI Multifactor USA ETF	NYSE Arca.
SDOG	ALPS Sector Dividend Dogs ETF	NYSE Arca.
QQEW	First Trust Nasdaq-100 Equal Weighted Index Fund	NASDAQ.
CQQQ	Invesco China Technology ETF	NYSE Arca.
EPOL	iShares MSCI Poland ETF	NYSE Arca.
REZ	iShares Residential Real Estate ETF	NYSE Arca
DBA	Invesco DB Agriculture Fund	NYSE Arca.
ARKW	ARK Next Generation Internet ETF	NYSE Arca.
FSTA	Fidelity MSCI Consumer Staples Index ETF	NYSE Arca.
JXI	iShares Global Utilities ETF	NYSE Arca.
AOR	iShares Core Growth Allocation ETF	NYSE Arca.
MOO	VanEck Vectors Agribusiness ETF	NYSE Arca.
IBDM	iShares iBonds Dec 2021 Term Corporate ETF	NYSE Arca.
GREK	Global X MSCI Greece ETF	NYSE Arca.
PKW	Invesco Buyback Achievers ETF	NASDAQ.
QUS	SPDR MSCI USA StrategicFactors ETF	NYSE Arca.
XT	iShares Exponential Technologies ETF	NASDAQ.
PALL	Aberdeen Standard Physical Palladium Shares ETF	NYSE Arca.
GEM	Goldman Sachs ActiveBeta Emerging Markets Equity ETF	NYSE Arca.
BBCA	JPMorgan BetaBuilders Canada ETF	Cboe BZX.
ESGV	Vanguard ESG U.S. Stock ETF	Cboe BZX.
INDY	iShares India 50 ETF	NASDAQ.
FEX	First Trust Large Cap Core AlphaDEX Fund	NASDAQ.
MNA	IQ Merger Arbitrage ETF	NYSE Arca.

APPENDIX A—SCHEDULE 1—Continued

[as of January 2, 2020]

Ticker	ETP name	Exchange
NFRA	FlexShares STOXX Global Broad Infrastructure Index Fund	NYSE Arca.
RPAR	RPAR Risk Parity ETF	NYSE Arca.
EWX	SPDR S&P Emerging Markets Small Cap ETF	NYSE Arca.
BSJM	Invesco BulletShares 2022 High Yield Corporate Bond ETF	NASDAQ.
FEM	First Trust Emerging Markets AlphaDEX Fund	NASDAQ.
PTF	Invesco DWA Technology Momentum ETF	NASDAQ.
ARKG	ARK Genomic Revolution ETF	Cboe BZX.
JKH	iShares Morningstar Mid-Cap Growth ETF	NYSE Arca.
GBF	iShares Government/Credit Bond ETF	NYSE Arca.
SILJ	ETFMG Prime Junior Silver Miners ETF	NYSE Arca.
SLY	SPDR S&P 600 Small Cap ETF	NYSE Arca.
FTC	First Trust Large Cap Growth AlphaDEX Fund	NASDAQ.
FTA	First Trust Large Cap Value AlphaDEX Fund	NASDAQ.
QDF	FlexShares Quality Dividend Index Fund	NYSE Arca.
IBDN	iShares iBonds Dec 2022 Term Corporate ETF	NYSE Arca.
JPUS	JPMorgan Diversified Return U.S. Equity ETF	NYSE Arca.
AMZA	InfraCap MLP ETF	NYSE Arca.
IBDO	iShares iBonds Dec 2023 Term Corporate ETF	NYSE Arca.
SRET	Global X SuperDividend REIT ETF	NASDAQ.
VNM	VanEck Vectors Vietnam ETF	Cboe BZX.
BSCN	Invesco Bulletshares 2023 Corporate Bond ETF	NASDAQ.
USSG	Xtrackers MSCI USA ESG Leaders Equity ETF	NYSE Arca.
EMHY	iShares Emerging Markets High Yield Bond ETF	Cboe BZX.
IPAC	iShares Core MSCI Pacific ETF	NYSE Arca.
RYU	Invesco S&P 500 Equal Weight Utilities ETF	NYSE Arca.
BSCO	Invesco BulletShares 2024 Corporate Bond ETF	NASDAQ.
PWV	Invesco Dynamic Large Cap Value ETF	NYSE Arca.
ICLN	iShares Global Clean Energy ETF	NASDAQ.
SMMV	iShares Edge MSCI Min Vol USA Small-Cap ETF	Cboe BZX.
FLCO	Franklin Liberty Investment Grade Corporate ETF	NYSE Arca.
CLOU	Global X Cloud Computing ETF	NASDAQ.
PLW	Invesco 1–30 Laddered Treasury ETF	NASDAQ.
IOO	iShares Global 100 ETF	NYSE Arca.
PPH	VanEck Vectors Pharmaceutical ETF	NASDAQ.
SPGP	Invesco S&P 500 GARP ETF	NYSE Arca.
FINX	Global X FinTech ETF	NASDAQ.
KXI	iShares Global Consumer Staples ETF	NYSE Arca.
RHS	Invesco S&P 500 Equal Weight Consumer Staples ETF	NYSE Arca.
DIV	Global X SuperDividend US ETF	NYSE Arca.
FDIS	Fidelity MSCI Consumer Discretionary Index ETF	NYSE Arca.
PFXF	VanEck Vectors Preferred Securities ex Financials ETF	NYSE Arca.
IYM	iShares U.S. Basic Materials ETF	NYSE Arca.
SIVR	Aberdeen Standard Physical Silver Shares ETF	NYSE Arca.
FXG	First Trust Consumer Staples AlphaDEX Fund	NYSE Arca.
PICK	iShares MSCI Global Metals & Mining Producers ETF	Cboe BZX.
TFLO	iShares Treasury Floating Rate Bond ETF	NYSE Arca.
IWC	iShares Micro-Cap ETF	NYSE Arca.
FENY	Fidelity MSCI Energy Index ETF	NYSE Arca.
NUAG	Nuveen Enhanced Yield U.S. Aggregate Bond ETF	NYSE Arca.
JKE	iShares Morningstar Large-Cap Growth ETF	NYSE Arca.
MXI	iShares Global Materials ETF	NYSE Arca.
IBDP	iShares iBonds Dec 2024 Term Corporate ETF	NYSE Arca.
LVHD	Legg Mason Low Volatility High Dividend ETF	NASDAQ.
DBEH	iM DBi Hedge Strategy ETF	NYSE Arca.
FXR	First Trust Industrials/Producer Durables AlphaDEX Fund	NYSE Arca.
IYY	iShares Dow Jones U.S. ETF	NYSE Arca.
EZM	WisdomTree U.S. MidCap Fund	NYSE Arca.
XPH	SPDR S&P Pharmaceuticals ETF	NYSE Arca.
DFJ	WisdomTree Japan SmallCap Dividend Fund	NYSE Arca.
PCEF	Invesco CEF Income Composite ETF	NYSE Arca.
LIT	Global X Lithium & Battery Tech ETF	NYSE Arca.
AOK	iShares Core Conservative Allocation ETF	NYSE Arca.
ILTB	iShares Core 10+ Year USD Bond ETF	NYSE Arca.
IQDF	FlexShares International Quality Dividend Index Fund	NYSE Arca.
USMC	Principal U.S. Mega-Cap Multi-Factor Index ETF	NASDAQ.
IHE	iShares U.S. Pharmaceuticals ETF	NYSE Arca.
FDVV	Fidelity High Dividend ETF	NYSE Arca.
FXD	First Trust Consumer Discretionary AlphaDEX Fund	NYSE Arca.
FM	iShares MSCI Frontier 100 ETF	NYSE Arca.
PTMC	Pacer Trendpilot US Mid Cap ETF	Cboe BZX.
TDIV	First Trust NASDAQ Technology Dividend Index Fund	NASDAQ.

APPENDIX A—SCHEDULE 1—Continued

[as of January 2, 2020]

Ticker	ETP name	Exchange
QLTA	iShares Aaa-A Rated Corporate Bond ETF	NYSE Arca.
ICVT	iShares Convertible Bond ETF	Cboe BZX.
SCHK	Schwab 1000 Index ETF	NYSE Arca.
SMDV	ProShares Russell 2000 Dividend Growers ETF	Cboe BZX.
AVUS	Avantis U.S. Equity ETF	NYSE Arca.
REGL	ProShares S&P MidCap 400 Dividend Aristocrats ETF	Cboe BZX.
FLQL	Franklin LibertyQ U.S. Equity ETF	Cboe BZX.
IXP	iShares Global Comm Services ETF	NYSE Arca.
BBAX	JPMorgan BetaBuilders Developed Asia ex-Japan ETF	Cboe BZX.
PUI	Invesco DWA Utilities Momentum ETF	NASDAQ.
XHE	SPDR S&P Health Care Equipment ETF	NYSE Arca.
XSOE	WisdomTree Emerging Markets ex-State-Owned Enterprises Fund	NYSE Arca.
HYEM	VanEck Vectors Emerging Markets High Yield Bond ETF	NYSE Arca.
FCOM	Fidelity MSCI Communication Services Index ETF	NYSE Arca.
CFA	VictoryShares US 500 Volatility Wtd ETF	NASDAQ.
RYH	Invesco S&P 500 Equal Weight Health Care ETF	NYSE Arca.
DBO	Invesco DB Oil Fund	NYSE Arca.
CGW	Invesco S&P Global Water Index ETF	NYSE Arca.
BAR	GraniteShares Gold Shares	NYSE Arca.
PEY	Invesco High Yield Equity Dividend Achievers ETF	NASDAQ.
IBDQ	iShares iBonds Dec 2025 Term Corporate ETF	NYSE Arca.
AOA	iShares Core Aggressive Allocation ETF	NYSE Arca.
EES	WisdomTree U.S. SmallCap Fund	NYSE Arca.
PTNQ	Pacer Trendpilot 100 ETF	Cboe BZX.
CMBS	iShares CMBS ETF	NYSE Arca.
ATMP	Barclays ETN+ Select MLP ETN	Cboe BZX.
PHO	Invesco Water Resources ETF	NASDAQ.
LDUR	PIMCO Enhanced Low Duration Active ETF	NYSE Arca.
CFO	VictoryShares US 500 Enhanced Volatility Wtd ETF	NASDAQ.
GIGB	Goldman Sachs Access Investment Grade Corporate Bond ETF	NYSE Arca.
DTD	WisdomTree U.S. Total Dividend Fund	NYSE Arca.
FDLO	Fidelity Low Volatility Factor ETF	NYSE Arca.
JO	iPath Series B Bloomberg Coffee Subindex Total Return ETN	NYSE Arca.
HDGE	AdvisorShares Ranger Equity Bear ETF	NYSE Arca.
JAGG	J.P. Morgan Exchange-Traded Fund Trust	NYSE Arca.
LTPZ	PIMCO 15+ Year US TIPS Index ETF	NYSE Arca.
SNLN	Highland iBoxx Senior Loan ETF	NASDAQ.
SMIN	iShares MSCI India Small Cap ETF	Cboe BZX.
SHE	SPDR SSGA Gender Diversity Index ETF	NYSE Arca.
DWX	SPDR S&P International Dividend ETF	NYSE Arca.
FLTR	VanEck Vectors Investment Grade Floating Rate ETF	NYSE Arca.
FEP	First Trust Europe AlphaDEX Fund	NASDAQ.
GWX	SPDR S&P International Small Cap ETF	NYSE Arca.
VSGX	Vanguard ESG International Stock ETF	Cboe BZX.
ARGT	Global X MSCI Argentina ETF	NYSE Arca.
AMU	ETRACS Alerian MLP Index ETN	NYSE Arca.
ENZL	iShares MSCI New Zealand ETF	NASDAQ.
IVOO	Vanguard S&P Mid-Cap 400 ETF	NYSE Arca.
POCT	Innovator S&P 500 Power Buffer ETF—October	Cboe BZX.
PSCH	Invesco S&P SmallCap Health Care ETF	NASDAQ.
TPYP	Tortoise North American Pipeline Fund	NYSE Arca.
AWTM	Aware Ultra-Short Duration Enhanced Income ETF	NYSE Arca.
XSW	SPDR S&P Software & Services ETF	NYSE Arca.
IVLU	iShares Edge MSCI Intl Value Factor ETF	NYSE Arca.
VRIG	Invesco Variable Rate Investment Grade ETF	NASDAQ.
ZIV	VelocityShares Daily Inverse VIX Medium-Term ETN	NASDAQ.
QAI	IQ Hedge Multi-Strategy Tracker ETF	NYSE Arca.
FGD	First Trust Dow Jones Global Select Dividend Index Fund	NYSE Arca.
XNTK	SPDR NYSE Technology ETF	NYSE Arca.
PNQI	Invesco NASDAQ Internet ETF	NASDAQ.
VTC	Vanguard Total Corporate Bond ETF	NASDAQ.
EXI	iShares Global Industrials ETF	NYSE Arca.
FLTB	Fidelity Limited Term Bond ETF	NYSE Arca.
SRVR	Pacer Benchmark Data & Infrastructure Real Estate SCTR ETF	NYSE Arca.
EPS	WisdomTree U.S. LargeCap Fund	NYSE Arca.
FXC	Invesco CurrencyShares Canadian Dollar Trust	NYSE Arca.
REMX	VanEck Vectors Rare Earth/Strategic Metals ETF	NYSE Arca.
ULST	SPDR SSgA Ultra Short Term Bond ETF	NYSE Arca.
BOCT	Innovator S&P 500 Buffer ETF—October	Cboe BZX.
SUSL	iShares ESG MSCI USA Leaders ETF	NASDAQ.
TILT	FlexShares Morningstar US Market Factor Tilt Index Fund	Cboe BZX.

APPENDIX A—SCHEDULE 1—Continued

[as of January 2, 2020]

Ticker	ETP name	Exchange
EPU	iShares MSCI Peru ETF	NYSE Arca.
PWB	Invesco Dynamic Large Cap Growth ETF	NYSE Arca.
BSCP	Invesco Bulletshares 2025 Corporate Bond ETF	NASDAQ.
PNOV	Innovator S&P 500 Power Buffer ETF—November	Cboe BZX.
WIP	SPDR FTSE International Government Inflation-Protected Bond ETF	NYSE Arca.
BDEC	Innovator S&P 500 Buffer ETF—December	Cboe BZX.
SCHI	Schwab 5–10 Year Corporate Bond ETF	NYSE Arca.
PJP	Invesco Dynamic Pharmaceuticals ETF	NYSE Arca.
HDEF	Xtrackers MSCI EAFE High Dividend Yield Equity ETF	NYSE Arca.
IHDG	WisdomTree International Hedged Quality Dividend Growth Fund	NYSE Arca.
HEWG	iShares Currency Hedged MSCI Germany ETF	NASDAQ.
FIDU	Fidelity MSCI Industrials Index ETF	NYSE Arca
IBDR	iShares iBonds Dec 2026 Term Corporate ETF	NYSE Arca
OUSA	O'Shares FTSE US Quality Dividend ETF	NYSE Arca.
FXF	Invesco CurrencyShares Swiss Franc Trust	NYSE Arca.
HFXI	IQ 50 Percent Hedged FTSE International ETF	NYSE Arca.
FNY	First Trust Mid Cap Growth AlphaDEX Fund	NASDAQ.
AVDE	Avantis International Equity ETF	NYSE Arca.
FIW	First Trust Water ETF	NYSE Arca.
FNX	First Trust Mid Cap Core AlphaDEX Fund	NASDAQ.
CLTL	Invesco Treasury Collateral ETf	NYSE Arca.
AIA	iShares Asia 50 ETF	NASDAQ.
DVOL	First Trust Dorsey Wright Momentum & Low Volatility ETF	NASDAQ.
PAUG	Innovator S&P 500 Power Buffer ETF—August	Cboe BZX.
DIAL	Columbia Diversified Fixed Income Allocation ETF	NYSE Arca.
FXZ	First Trust Materials AlphaDEX Fund	NYSE Arca.

Appendix B—Data and Reporting

I. Data Provision. The Commission may request from the Primary Listing Exchanges the below data that is not otherwise publicly available. The requested data shall be collected and transmitted to the Commission in an agreed-upon format, to be provided 30 calendar days following the date of the request, or such other date as agreed upon by the Commission and Primary Listing Exchange. Data collected in connection with a Commission request shall be transmitted to the Commission with a request for confidential treatment under the Freedom of Information Act, 5 U.S.C. 552, and the Commission's rules and regulations thereunder. This section shall expire at the time the below data becomes available via the National Market System Plan Governing the Consolidated Audit Trail or becomes publicly available.

A. Data set of all orders entered during halts or Trading Pauses.

1. Normal or Auction Only orders, Arrivals, Changes, Cancels, # shares, limit/market, side, Limit State side
2. Pipe delimited with field name as first record

B. Data set of order events received during Limit States.

C. Summary data on order flow of arrivals and cancellations for each 15-second period for discrete time periods and sample stocks to be determined by the SEC in subsequent data requests. Must indicate side(s) of Limit State.

1. Market/marketable sell orders arrivals and executions
   a. Count
   b. Shares
   c. Shares executed
2. Market/marketable buy orders arrivals and executions
   a. Count
   b. Shares
   c. Shares executed
3. Count arriving, volume arriving and shares executing in limit sell orders above NBO mid-point
4. Count arriving, volume arriving and shares executing in limit sell orders at or below NBBO mid-point (non-marketable)
5. Count arriving, volume arriving and shares executing in limit buy orders at or above NBBO mid-point (non-marketable)
6. Count arriving, volume arriving and shares executing in limit buy orders below NBBO mid-point
7. Count and volume arriving of limit sell orders priced at or above NBBO mid-point plus $0.05
8. Count and volume arriving of limit buy orders priced at or below NBBO mid-point minus $0.05
9. Count and volume of (3–8) for cancels
10. Include: Ticker, date, time at start, time of Limit State, all data item fields in 1, last sale prior to 15-second period (null if no trades today), range during 15-second period, last trade during 15-second period

II. Reporting.

A. Annual Report. No later than March 31, 2020 and annually thereafter, the Operating Committee, in consultation with the Advisory committee, will provide the Commission and make publicly available a report containing key information concerning the Plan's performance during the preceding calendar year which shall include the following items: (1) An update on the Plan's operations; (2) an analysis of any amendments to the Plan implemented during the period covered by the report; and (3) an analysis of potential material emerging issues that may directly impact the operation of the Plan.

1. Update on the Plan's Operations. This section of the Annual Report shall analyze the Plan's operations during the covered period, including a discussion of any areas of the Plan's operation that require additional analysis. In particular, this section of the Annual Report shall examine the calibration of the parameters set forth in the Plan (*e.g.,* Price Bands, duration of Limit States, impact of Straddle States, duration of Trading Pauses, and the performance of reopening procedures following a Trading Pause). This section of the Annual Report also shall consider stock characteristics and variations in market conditions over time, and may include tests that differentiate results for different characteristics, both in isolation and in combination.

2. Analysis of Amendments Implemented. This section of the Annual Report shall provide an analysis of any amendments implemented during the covered period. The analysis shall include a discussion of any such amendment's operation and its impact on the overall operation of the Plan.

3. Analysis of Emerging Issues. This section of the Annual Report should vary from year-to-year and will include a discussion and analysis of the Plan's operation during a significant market event that may have occurred during the covered period. This section shall also include any additional analyses performed during the covered period on issues that were raised in previous Annual Reports.

B. Quarterly Data. *Thirty* [30] days following the end of each calendar quarter, the Operating Committee shall provide the

Commission and make publicly available a report *(''Monitoring Report'')* including basic statistics *aggregated across primary listing exchanges* regarding the Plan's operation [(''Monitoring Report'')] during the preceding calendar quarter, as well as *data* aggregated [data] *across primary listing exchanges* from the previous 12 quarters beginning with the calendar quarter covered by the first Monitoring Report. The purpose of the Monitoring Report is to identify trends in the performance and impact of the Plan on market activity.

[1.] The *Monitoring Report* [quarterly production] shall include *data on* the following *events* [data] for each month during the preceding calendar quarter:

a. Event Data.
  i. Number of Limit States, Trading Pauses, and Straddle States per day, including distribution statistics such as the mean, median, minimum and maximum percentiles
  ii. Number of NMS Stocks that experience more than one Limit State Trading Pause, or Straddle State in a single day including the length of each Limit State, Trading Pause, and Straddle State per day
b. The number of Clearly Erroneous Events per day for all NMS Stocks that occurred during the time when Price Bands are disseminated by the Processor
c. Reopening Data
  i. Number of times an automated reopening process is extended for and the length of the Trading Pause
  ii. Whether the reopening process ended in a trade
  iii. The price calculated by an automated reopening process for an NMS Stock exiting a Trading Pause
  iv. For the five minutes following the conclusion of a Trading Pause, the highest price of all last sale eligible trades, the lowest price of all last sale eligible trades, and the average price of all last sale eligible trades
  2. Partition stocks by category.
  a. Tier 1 non-ETP issues > $3.00
  b. Tier 1 non-ETP issues >= $0.75 and <= $3.00
  c. Tier 1 non-ETP issues < $0.75
  d. Tier 1 non-leveraged ETPs in each of the above categories
  e. Tier 1 leveraged ETPs in each of the above categories
  f. Tier 2 non-ETPs in each of the above categories
  g. Tier 2 non-leveraged ETPs in each of the above categories
  h. Tier 2 leveraged ETPs in each of the above categories
3. Partition by time of day
  a. Opening (prior to 9:45 a.m. ET)
  b. Regular (between 9:45 a.m. ET and 3:35 p.m. ET)
  c. Closing (after 3:35 p.m. ET)
  d. Within five minutes of a Trading Pause re-open or IPO open]

1. Limit States, Trading Pauses, Straddle States, and Clearly Erroneous Events

a. Definitions. For the purpose of this Section B.1, the following definitions apply:

i. ''Category'' means the following categories of securities:

(1) Tier 1 non-ETP securities > $3.00
(2) Tier 1 non-ETP securities >= $0.75 and <= $3.00
(3) Tier 1 non-ETP securities < $0.75
(4) Tier 1 non-leveraged ETPs > $3.00
(5) Tier 1 non-leveraged ETPs >= $0.75 and <= $3.00
(6) Tier 1 non-leveraged ETPs < $0.75
(7) Tier 1 leveraged ETPs > $3.00
(8) Tier 1 leveraged ETPs >= $0.75 and <= $3.00
(9) Tier 1 leveraged ETPs < $0.75
(10) Tier 2 non-ETPs > $3.00
(11) Tier 2 non-ETPs >= $0.75 and <= $3.00
(12) Tier 2 non-ETPs < $0.75
(13) Tier 2 non-leveraged ETPs > $3.00
(14) Tier 2 non-leveraged ETPs >= $0.75 and <= $3.00
(15) Tier 2 non-leveraged ETPs < $0.75
(16) Tier 2 leveraged ETPs > $3.00
(17) Tier 2 leveraged ETPs >= $0.75 and <= $3.00
(18) Tier 2 leveraged ETPs < $0.75

ii. ''Time of Day'' means the following time spans:

(1) Opening (prior to 9:45 a.m. ET)
(2) Regular (between 9:45 a.m. ET and 25 minutes prior to the end of core trading hours)
(3) Closing (the last 25 minutes of core trading hours)
(4) Within five minutes of a Trading Pause reopen or IPO open

b. Limit States. The Monitoring Report will include:

i. Monthly distribution statistics (mean, median, 25th percentile, and maximum) on the number of Limit States per day, broken out by Category and Time of Day.

ii. Monthly distribution statistics (mean, median, 25th percentile, and maximum) on the number of NMS Stocks that experienced more than one Limit State on a single day, broken out by Category.

iii. Monthly distribution statistics (mean, median, 90th percentile, and 99th percentile) on the number of Limit States experienced per day by individual NMS Stocks that had more than one Limit State on a single day, broken out by Category.

iv. Monthly distribution statistics (mean, median, 90th percentile, and 99th percentile) on the total length of Limit States experienced per day by individual NMS Stocks that had more than one Limit State on a single day, broken out by Category.

c. Trading Pauses. The Monitoring Report will include:

i. Monthly distribution statistics (mean, median, 25th percentile, and maximum) on the number of Trading Pauses per day, broken out by Category and Time of Day.

ii. Monthly distribution statistics (mean, median, 25th percentile, and maximum) on the number of NMS Stocks that experienced more than one Trading Pause on a single day, broken out by Category.

iii. Monthly distribution statistics (mean, median, 90th percentile, and maximum) on the number of Trading Pauses per day experienced by individual NMS Stocks having more than one Trading Pause on a single day, broken out by Category.

d. Straddle States. The Monitoring Report will include:

i. Monthly distribution statistics (mean, median, 25th percentile, and maximum) on the number of Straddle States per day, broken out by Category and Time of Day.

ii. Monthly distribution statistics (mean, median, 25th percentile, and maximum) on the number of NMS Stocks that experienced more than one Straddle State on a single day, broken out by Category.

iii. Monthly distribution statistics (mean, median, 90th percentile, and 99.9th percentile) on the total time spent in a Straddle State per day for individual NMS Stocks experiencing one or more Straddle States on a single day, broken out by Category.

e. The Monitoring Report will include the number of Clearly Erroneous Events per day for all NMS Stocks that occurred during the time when Price Bands are disseminated by the Processor, broken out by Category and Time of Day.

2. Reopening Data

a. Definitions. For the purpose of this Section B.2, the following definitions apply:

i. ''Type of Reopening'' means either (1) manual or (2) automated.

ii. ''Category'' means the following categories of securities:

(1) Tier 1 non-ETP securities
(2) Tier 1 non-leveraged ETPs
(3) Tier 1 leveraged ETPs
(4) Tier 2 non-ETP securities
(5) Tier 2 non-leveraged ETPs
(6) Tier 2 leveraged ETPs

ii. ''Length of the Trading Pause'' means the following durations:

(1) less than 6 minutes (for manual reopenings) or no extensions of the Trading Pause (for automated reopenings);

(2) 6 to 10 minutes (for manual reopenings) or one extension of the Trading Pause (for automated reopenings);

(3) more than 10 minutes (for manual reopenings) or more than one extension of the Trading Pause (for automated reopenings)

b. The Monitoring Report will include the following monthly data on reopenings:

i. The number of Trading Pauses per month, broken out by (1) Type of Reopening, (2) Category, and (3) Length of the Trading Pause.

ii. Monthly distribution statistics (mean, median, 90th percentile, and 99th percentile) on the duration of each Trading Pause, broken out by (1) Type of Reopening and (2) Category.

iii. The number of Trading Pauses ending in a:

(1) trade;
(2) quote; and
(3) potential closing auction, broken out by (a) Type of Reopening, (b) Category, and (c) Length of Trading Pause.

iv. For Trading Pauses in NMS Stocks preceded by a Limit Up state, monthly distribution statistics (mean, median, 90th percentile, and 99th percentile) on the percentage price change from the Limit Up pricing that triggered the Trading Pause to the reopening price on exiting the Trading Pause (i.e., the reopening trade or midpoint price), broken out by (1) Category and (2) whether the Trading Pause ended in a trade or (3) in a quote (i.e., the reopening price was a midpoint).

v. For Trading Pauses in NMS Stocks preceded by a Limit Down state, monthly distribution statistics (mean, median, 90th percentile, and 99th percentile) on the percentage price change from the Limit Down pricing that triggered the Trading Pause to the reopening price on exiting the Trading Pause (i.e., the reopening trade or midpoint price), broken out by (1) Category and (2) whether the Trading Pause ended in a trade or (3) in a quote (i.e., the reopening price was a midpoint).

vi. For Trading Pauses in NMS Stocks where the reopening process ended in a trade or quote (with resulting reference price equal to the midpoint of that quote), monthly distribution statistics (mean, median, 90th percentile, and 99th percentile) on the percentage price change from the reopening price on exiting the Trading Pause (i.e., the reopening trade or midpoint price) to

(1) the highest price of all last sale eligible trades;

(2) the lowest price of all last sale eligible trades; and

(3) the trade-weighted average price of all last sale eligible trades for the five minutes following the conclusion of the Trading Pause, broken out by (a) Category, (b) whether the Trading Pause was preceded by a Limit Up state or (c) a Limit Down state, and (d) whether the Trading Pause ended in a trade or (e) in a quote (i.e., the reopening price was a midpoint).

C. Reports on Market Events. At the Commission's request, the Operating Committee shall provide the Commission and make publicly available a report analyzing the Plan's operation during a significant market event that (1) materially impacted the trading of more than one security across multiple Trading Centers; and (2) is directly related to or implicating the performance of the Plan. Such report shall be provided to the Commission no later than 30 days following the Commission's request, or at a later date as agreed upon between the Commission and the Operation Committee. The requirement to submit a report under this section may be satisfied by including the required analysis within an Annual Report.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88399; File No. SR–NYSENAT–2020–10]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change of a Temporary Waiver of the Co-Location Hot Hands Fee

March 17, 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 March 16, 2020, NYSE National, Inc. (''NYSE National'' 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 a temporary waiver of the co-location ''Hot Hands'' fee beginning on March 16, 2020 through March 29, 2020. 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 a temporary suspension of the co-location [4] ''Hot Hands'' fee beginning on March 16, 2020 through March 29, 2020, after which the Mahwah, New Jersey data center (''Data Center'') is scheduled to reopen to third parties.

The Exchange is an indirect subsidiary of Intercontinental Exchange, Inc. (''ICE''). Through its ICE Data Services (''IDS'') business, ICE operates the Data Center, from which the Exchange provides co-location services to Users.[5]

Among those services is a ''Hot Hands'' service, which allows Users to use on-site Data Center personnel to maintain User equipment, support network troubleshooting, rack and stack a server in a User's cabinet; power recycling; and install and document the fitting of cable in a User's cabinet(s).[6] The Hot Hands fee is $100 per half hour.

ICE has announced to each User that, starting March 16, 2020, the Data Center will be closed to third parties through March 29, 2020. Pursuant to the ICE contingency plan, the Data Center is being closed to third parties to help avoid the spread of COVID–19, which could negatively impact Data Center functions. The President of the Exchange has taken the actions required under NYSE National Rule 7.1 to close the co-location facility of the Exchange to third parties.[7] While the Rule 7.1 closure is in effect, User representatives will not be allowed access to the Data Center.

If a User's equipment requires work while the Rule 7.1 closure is in effect, the User will have no option but to use the Hot Hands service and, absent the proposed waiver, would incur Hot Hands fees for the work. Given that, the Exchange proposes to waive all Hot Hands fees from the date of the closing through March 29, 2020, and to add text to the Hot Hands Fee in the Price List noting the waiver. The Exchange believes that there will be sufficient Data Center staff on-site to comply with User requests for Hot Hands service.

The proposed waiver would apply equally to all Users. The proposed fee waiver would not apply differently to distinct types or sizes of market participants. Rather, it would apply uniformly to all Users.

The proposed change is not otherwise intended to address any other issues

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in May 2018. *See* Securities Exchange Act Release No. 83351 (May 31, 2018), 83 FR 26314 (June 6, 2018) (SR–NYSENAT–2018–07).

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See id.* at note 9. As specified in the Exchange's Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates the New York Stock Exchange LLC (''NYSE''), NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), and NYSE Chicago, Inc. (''NYSE Chicago'' and together, the ''Affiliate SROs''). *See id.* at note 11. Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2020–18, SR–NYSEAmer–2020–19, SR–NYSEArca–2020–22, and SR–NYSECHX–2020–07.

[6] *See* 83 FR 26314, *supra* note 4.

[7] *See* NYSE National Rule 7.1(c) through (e). *See also* NYSE Rule 7.1, NYSE Arca Rules 7.1–E and 7.1–O, NYSE American Rules 7.1E and 901NY, and NYSE Chicago Rule 7.1.

relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[9] 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. In addition, it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposed Rule Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable for the following reasons.

While the Rule 7.1 closure is in effect, User representatives will not be allowed access to the Data Center. If a User's equipment requires work during such period, the User will have to use the Hot Hands service and, absent a waiver, would incur Hot Hands fees for the work. The Exchange believes that it is reasonable to grant the proposed waiver because Users would have no option other than using the Hot Hands service.

The proposed relief would allow a User to have work carried out on its equipment notwithstanding the closure of the Data Center without incurring Hot Hands fees.

The Proposed Rule Change Is Equitable

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits for the following reasons.

The proposed waiver would apply equally to all Users. The proposed fee waiver would not apply differently to distinct types or sizes of market participants. Rather, it would apply uniformly to all Users.

The Exchange believes that the proposal is equitable because all similarly-situated Users would not be charged a fee to use the Hot Hands service that the User would have to use because of the Data Center closure.

The Proposed Change Is Not Unfairly Discriminatory and Would Protect Investors and the Public Interest

The Exchange believes that the proposed change is not unfairly discriminatory for the following reasons.

The proposed waiver would not apply differently to distinct types or sizes of market participants. Rather, all Users whose equipment requires work during the Data Center closure would have the resulting fees waived, and the waiver would apply uniformly to all Users from March 16, 2020 through March 29, 2020. For the reasons above, the proposed changes do not unfairly discriminate between or among market participants.

In addition, the Exchange believes that the proposed rule change would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest because it would allow a User to have work carried out on its equipment notwithstanding the closure of the Data Center pursuant to Rule 7.1 without incurring Hot Hands fees. Accordingly, the Exchange believes that the requested relief is designed to perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest by facilitating the uninterrupted availability of Users' equipment.

For all of the above 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,[10] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that the proposed change would place any burden on intramarket competition that is not necessary or appropriate.

The proposal it is not designed to affect competition, but rather to provide relief to Users that, while the Rule 7.1 closure is in effect, have no option but to use the Hot Hands service.

The proposed waiver would not apply differently to distinct types or sizes of market participants. All Users who use the Hot Hands service from March 16, 2020 through March 29, 2020 would have the resulting fees waived.

Intermarket Competition

The Exchange does not believe that the proposed change would impose any burden on intermarket competition that is not necessary or appropriate.

The Exchange believes that the proposed change would not affect the competitive landscape among the national securities exchanges, as the Hot Hands service is solely charged within co-location to existing Users, and would be temporary.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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) [11] of the Act and subparagraph (f)(2) of Rule 19b–4 [12] 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) [13] 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:

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

[10] 15 U.S.C. 78f(b)(8).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 15 U.S.C. 78s(b)(2)(B).

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–NYSENAT–2020–10 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–NYSENAT–2020–10. 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–NYSENAT–2020–10 and should be submitted on or before April 13, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06001 Filed 3–20–20; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88401; File No. SR–NYSEAMER–2020–17]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend Its Price List

March 17, 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 March 11, 2020, NYSE American LLC (''NYSE American'' 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) revise the requirements for the current monthly quoting credit for quoting in UTP Securities, and (2) offer an additional monthly quoting credit for quoting in UTP Securities. The Exchange proposes to implement the rule change on March 11, 2020. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to (1) revise the requirements for the current monthly quoting credit for quoting in UTP Securities, and (2) offer an additional monthly quoting credit for quoting in UTP Securities.[4]

The proposed change responds to the current competitive environment where order flow providers have a choice of where to direct orders by offering further incentives for Equity Trading Permit (''ETP'') Holders [5] to quote and trade on the Exchange in UTP Securities.

The Exchange proposes to implement the rule change on March 11, 2020.[6]

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.'' [7]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [8] Indeed, equity trading is currently dispersed across 13 exchanges,[9] 31 alternative trading systems,[10] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on

[4] *See* Rule 1.1E(ii) (definition of UTP Security).

[5] *See id.* at (m) (definition of ETP) & (n) (definition of ETP Holder).

[6] The Exchange originally filed to amend the Price List on March 2, 2020 (SR–NYSEAmer–2020–15). SR–NYSEAmer–2020–15 was subsequently withdrawn and replaced by this filing.

[7] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7–10–04) (Final Rule) (''Regulation NMS'').

[8] *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'').

[9] *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.*

[10] *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.*

publicly-available information, no single exchange has more than 20% market share (whether including or excluding auction volume).[11] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange's market share of trading in Tapes A, B and C securities combined is less than 1%.

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 liquidity on an Exchange, ETP Holders 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.

In response to this competitive environment, the Exchange proposes to revise its incentives in order to encourage ETP Holders to quote on the Exchange in UTP Securities by revising the requirements, including the number of UTP Securities needed to the meet the quoting requirement, for the current Monthly Quoting Credit and introducing a new monthly quoting credit for ETP Holders that meet certain quoting requirements in UTP Securities.

Proposed Rule Change

Revisions to Current Monthly Quoting Credit

Currently, the Exchange offers a credit in addition to the transaction fees and credits specified in Section I.B of the Price List to encourage quoting on the Exchange in UTP Securities. Specifically, each ETP Holder's MPID quoting at the national best bid or offer (''NBBO'')[12] an average of at least 10% of the time in 750 securities or more UTP Securities in the billing month is eligible for a credit of $10,000 per qualifying MPID in the first month that an MPID qualifies for the credit for the first time, up to a maximum of $50,000 per ETP Holder for all of the ETP Holder's MPIDs.

The Exchange proposes to revise the current monthly quoting credit in order to encourage additional quoting and trading on the Exchange in UTP Securities. The Exchange proposes lowering the eligible number of securities to satisfy the quoting requirement at the NBBO from 750 to 500. The Exchange also proposes to clarify that the quoting requirement would be on an average daily basis, calculated monthly. Further, the Exchange proposes that the current credit would be a monthly credit in any month that an MPID qualifies for the credit. Finally, the Exchange proposes that the current maximum of $50,000 per ETP Holder for all of the ETP Holder's MPIDs would be on a per month basis.

Proposed Additional Monthly Quoting Credit

In order to further encourage quoting on the Exchange in UTP Securities, the Exchange proposes to offer a monthly quoting credit in addition to the transaction fees and credits specified in Section I.B of the Price List and in addition to the current monthly quoting credit discussed above. Specifically, the Exchange proposes that ETP Holders that have one or more MPIDs quoting at the NBBO an average of at least 10% of the time in 1,000 or more UTP Securities each in the billing month would be eligible for a monthly credit of $25,000 per qualifying ETP Holder.[13]

Application and Impact of Proposed Rule Change

The following example demonstrates the application and impact of the proposed changes to the current monthly quoting credit and the new proposed monthly quoting credit.

For example, assume that an ETP Holder has 8 MPIDs and that in the billing month 6 of those 8 MPIDs quotes at least 10% at the NBBO in 800 UTP Securities each on an average daily basis, calculated monthly, while the 2 remaining MPIDs quote at least 10% in 1,200 UTP Securities each on an average daily basis, calculated monthly. In this scenario, as a result of the $50,000 cap on MPID credits per ETP Holder, only 5 of the 8 MPIDs would qualify for the monthly credit of $10,000 per MPID, for a total of $50,000, and the ETP Holder would qualify for the monthly credit of $25,000 since it had a least one MPID meeting the 1,000 symbol requirement. The ETP Holder would accordingly receive $50,000 in MPID credits and $25,000 in firm credits, for a total of $75,000 in combined credits for the billing month.

The purpose of the proposed changes is to provide ETP Holders with incentives to increase quoting on the Exchange in UTP Securities, which would support the quality of price discovery on the Exchange and provide additional liquidity for incoming orders. As noted, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. The Exchange believes that incentivizing ETP Holders to quote at the NBBO in UTP Securities more frequently could attract additional orders to the Exchange and contribute to price discovery, especially in less liquid securities that may quote but not trade. In addition, additional liquidity-providing quotes benefit all market participants because they provide greater execution opportunities on the Exchange and improve the public quotation.

The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. Currently, no ETP Holders qualify for the monthly quoting credit in UTP Securities and the Exchange believes that at least 3 additional ETP Holders could qualify for the credit based on the proposed changes. Since the proposed additional monthly credit for quoting on the Exchange in UTP Securities would be new, no ETP Holder currently qualifies for the proposed credit. However, without having a view of ETP Holder'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 ETP Holder increasing quoting on the Exchange in UTP Securities in order to qualify for revised current credit and the proposed new credit.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that ETP Holders would have in complying with the proposed change.

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 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,

[11] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/*.

[12] *See* Rule 1.1E(dd) (definition of NBBO, Best Protected Bid, Best Protected Offer, Protected Best Bid and Offer (PBBO)).

[13] The Exchange also proposes two non-substantive changes. First, the heading of Section I.B. of the Price List would be changed to the plural ''Monthly Quoting Credits.'' Second, the phrase ''ETP Holders are eligible for the following credits:'' would be added to the first sentence of Section I.B. and the two monthly quoting credits broken out separately.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4) & (5).

issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposal 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 order flow that would provide liquidity on an Exchange, ETP Holders 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. 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 increase quoting on the Exchange. As noted, the Exchange's market share of trading in Tapes A, B and C securities combined is under 1%.

Specifically, the Exchange believes that revising the requirements to qualify for the current credit for quoting on the Exchange in UTP Securities and the proposed additional credit for quoting on the Exchange in UTP Securities are reasonable. The revised requirements for the current monthly credit and the proposed additional credit would provide ETP Holders with added incentives to increase quoting on the Exchange in UTP Securities, which would support the quality of price discovery on the Exchange and provide additional liquidity for incoming orders. The Exchange believes that incentivizing ETP Holders on the Exchange to quote at the NBBO more frequently could attract additional orders to the Exchange and contribute to price discovery. In addition, additional liquidity-providing quotes benefit all market participants because they provide greater execution opportunities on the Exchange and improve the public quotation. Similarly, the Exchange believes that revising the current credit to be a monthly credit in any month that an MPID qualifies for the credit is reasonable. The Exchange believes that a recurring monthly credit for meeting specified quoting requirements would encourage member organizations to increase their quoting on the Exchange in UTP Securities and would provide member organizations with an ongoing incentive to maintain that increased quoting from month to month in order to continue qualifying for the credit, up to the monthly maximum. The Exchange thus believes that a recurring monthly credit for meeting specified quoting requirements is a fair and reasonable way to increase and maintain quoting levels in UTP Securities on the Exchange. The Exchange notes that other exchanges offer similar recurring monthly credits to members based on quoting. For instance, the Exchange's affiliate New York Stock Exchange LLC offers recurring monthly credits to its Designated Market Makers for meeting specified quoting percentage and other requirements in NYSE listed securities.[17]

Finally, the Exchange also believes the proposed non-substantive changes are reasonable and would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity and transparency on the Price List, thereby reducing potential confusion.

Given the competitive environment in which the Exchange currently operates, the proposed rule change accordingly constitutes a reasonable attempt to increase liquidity on the Exchange and improve the Exchange's market share relative to its competitors.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes the proposal equitably allocates its fees among its market participants by fostering liquidity provision and stability in the marketplace. Moreover, the proposal is an equitable allocation of fees because it would reward ETP Holders for increasing their quoting on the Exchange in UTP Securities. As such, it is equitable to offer ETP Holders an additional, higher credit for quoting in UTP Securities.

Currently, no ETP Holders qualify for the current monthly quoting credit for quoting on the Exchange in UTP Securities. As previously noted, there are a number of other ETP Holders that could qualify for the current credit based on the proposed changes but without a view of ETP Holder activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether the proposed rule change would result in any ETP Holder qualifying for either the proposed revised current credit or the proposed additional credit. The Exchange believes the proposed credits are reasonable as they would provide an incentive for ETP Holders to direct order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the credits, thereby contributing to depth and market quality on the Exchange.

The proposal neither targets nor will it have a disparate impact on any particular category of market participant. All ETP Holders would be eligible to qualify for the proposed credits by quoting on the Exchange in UTP Securities. ETP Holders must have an assigned MPID to quote and trade on the Exchange, and are thus all ETP Holders would be equally eligible to receive the current and proposed credit. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. The Exchange believes that revising the requirements to qualify for the current credit for quoting in UTP Securities and offering an additional, higher credit for quoting on the Exchange in UTP Securities would provide an added incentive to increase quoting on the Exchange in UTP Securities, which would support the quality of price discovery on the Exchange and provide additional liquidity for incoming orders.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, ETP Holders are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

The Exchange believes it is not unfairly discriminatory to lower the requirements to qualify for the current quoting credit and to provide a higher credit based on enhanced quoting at the

[16] *See* Regulation NMS, 70 FR at 37499.

[17] *See* New York Stock Exchange Price List 2020 at pp. 11–12, available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf.*

NBBO in UTP Securities insofar as the proposed lower requirements and new credit would be provided on an equal basis to all similarly situated ETP Holders that add liquidity to the Exchange, who would all be eligible for the same credits if they meet the quoting and other requirements on an equal basis. Moreover, providing the current quoting credit in any month that an MPID qualifies and providing the cap per ETP Holder of $50,000 for the current credit on a per month basis would also be provided on equal basis to all ETP Holders. ETP Holders must have an assigned MPID to quote and trade on the Exchange, and are thus all ETP Holders would be equally eligible to receive the same proposed credit.

The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volume. The Exchange believes the proposed credits would incentivize ETP Holders to send more orders to the Exchange and to increase quoting on the Exchange in order to qualify for the proposed credits, which would support the quality of price discovery on the Exchange and provide additional liquidity for incoming orders. Further, quoting and submitting orders to the Exchange is optional for ETP Holders in that they could choose whether to quote or submit orders to the Exchange and, if they do, the extent of their activity in this regard.

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,[18] 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 additional quoting in UTP Securities and the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for ETP Holders. 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.'' [19]

Intramarket Competition. The proposed changes are designed to increase quoting on the Exchange in UTP Securities and attract additional order flow to the Exchange. The Exchange believes that the proposed changes would continue to incentivize market participants to quote in UTP Securities and direct order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages ETP Holders to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants on the Exchange. The proposed revised requirements for the current credit and the proposed new credit 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 trading in Tapes A, B and C securities combined is less than 1%. 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.

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) [20] of the Act and subparagraph (f)(2) of Rule 19b–4 [21] 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) [22] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2020–17 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–NYSEAMER–2020–17. 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

[18] 15 U.S.C. 78f(b)(8).

[19] Regulation NMS, 70 FR at 37498–99.

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(2).

[22] 15 U.S.C. 78s(b)(2)(B).

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–NYSEAMER–2020–17 and should be submitted on or before April 13, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06003 Filed 3–20–20; 8:45 am]

BILLING CODE 8011–01–P

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88400; File No. SR–NYSECHX–2020–07]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change of a Temporary Waiver of the Co-Location Hot Hands Fee

March 17, 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 March 16, 2020 the NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a temporary waiver of the co-location ''Hot Hands'' fee beginning on March 16, 2020 through March 29, 2020. 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 a temporary suspension of the co-location[4] ''Hot Hands'' fee beginning on March 16, 2020 through March 29, 2020, after which the Mahwah, New Jersey data center (''Data Center'') is scheduled to reopen to third parties.

The Exchange is an indirect subsidiary of Intercontinental Exchange, Inc. (''ICE''). Through its ICE Data Services (''IDS'') business, ICE operates the Data Center, from which the Exchange provides co-location services to Users.[5]

Among those services is a ''Hot Hands'' service, which allows Users to use on-site Data Center personnel to maintain User equipment, support network troubleshooting, rack and stack a server in a User's cabinet; power recycling; and install and document the fitting of cable in a User's cabinet(s).[6] The Hot Hands fee is $100 per half hour.

ICE has announced to each User that, starting March 16, 2020, the Data Center will be closed to third parties through March 29, 2020. Pursuant to the ICE contingency plan, the Data Center is being closed to third parties to help avoid the spread of COVID–19, which could negatively impact Data Center functions. The Chief Executive Officer of the Exchange has taken the actions required under NYSE Chicago Rule 7.1 to close the co-location facility of the Exchange to third parties.[7] While the Rule 7.1 closure is in effect, User representatives will not be allowed access to the Data Center.

If a User's equipment requires work while the Rule 7.1 closure is in effect, the User will have no option but to use the Hot Hands service and, absent the proposed waiver, would incur Hot Hands fees for the work. Given that, the Exchange proposes to waive all Hot Hands fees from the date of the closing through March 29, 2020, and to add text to the Hot Hands Fee in the Fee Schedule noting the waiver. The Exchange believes that there will be sufficient Data Center staff on-site to comply with User requests for Hot Hands service.

The proposed waiver would apply equally to all Users. The proposed fee waiver would not apply differently to distinct types or sizes of market participants. Rather, it would apply uniformly to all Users.

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[9] 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,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in October 2019. *See* Securities Exchange Act Release No. 87408 (October 28, 2019), 84 FR 58778 (November 1, 2019) (SR–NYSECHX–2019–27).

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See id.* at note 6. As specified in the Fee Schedule of NYSE Chicago, Inc. (''Fee Schedule''), a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates the New York Stock Exchange LLC (''NYSE''), NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), and NYSE National, Inc. (''NYSE National'' and together, the ''Affiliate SROs''). *See id.* at 58779. Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2020–18, SR–NYSEAmer–2020–19, SR–NYSEArca–2020–22, and SR–NYSENAT–2020–10.

[6] *See* 84 FR 58778, *supra* note 4.

[7] *See* NYSE Chicago Rule 7.1 (c) through (e). *See also* NYSE Rule 7.1, NYSE Arca Rules 7.1–E and 7.1–O, NYSE American Rules 7.1E and 901NY, and NYSE National Rule 7.1.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

issuers, brokers or dealers. In addition, it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposed Rule Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable for the following reasons.

While the Rule 7.1 closure is in effect, User representatives will not be allowed access to the Data Center. If a User's equipment requires work during such period, the User will have to use the Hot Hands service and, absent a waiver, would incur Hot Hands fees for the work. The Exchange believes that it is reasonable to grant the proposed waiver because Users would have no option other than using the Hot Hands service.

The proposed relief would allow a User to have work carried out on its equipment notwithstanding the closure of the Data Center without incurring Hot Hands fees.

The Proposed Rule Change Is Equitable

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits for the following reasons.

The proposed waiver would apply equally to all Users. The proposed fee waiver would not apply differently to distinct types or sizes of market participants. Rather, it would apply uniformly to all Users.

The Exchange believes that the proposal is equitable because all similarly-situated Users would not be charged a fee to use the Hot Hands service that the User would have to use because of the Data Center closure.

The Proposed Change Is Not Unfairly Discriminatory and Would Protect Investors and the Public Interest

The Exchange believes that the proposed change is not unfairly discriminatory for the following reasons.

The proposed waiver would not apply differently to distinct types or sizes of market participants. Rather, all Users whose equipment requires work during the Data Center closure would have the resulting fees waived, and the waiver would apply uniformly to all Users from March 16, 2020 through March 29, 2020. For the reasons above, the proposed changes do not unfairly discriminate between or among market participants.

In addition, the Exchange believes that the proposed rule change would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest because it would allow a User to have work carried out on its equipment notwithstanding the closure of the Data Center pursuant to Rule 7.1 without incurring Hot Hands fees. Accordingly, the Exchange believes that the requested relief is designed to perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest by facilitating the uninterrupted availability of Users' equipment.

For all of the above 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,[10] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that the proposed change would place any burden on intramarket competition that is not necessary or appropriate.

The proposal it is not designed to affect competition, but rather to provide relief to Users that, while the Rule 7.1 closure is in effect, have no option but to use the Hot Hands service.

The proposed waiver would not apply differently to distinct types or sizes of market participants. All Users who use the Hot Hands service from March 16, 2020 through March 29, 2020 would have the resulting fees waived.

Intermarket Competition

The Exchange does not believe that the proposed change would impose any burden on intermarket competition that is not necessary or appropriate.

The Exchange believes that the proposed change would not affect the competitive landscape among the national securities exchanges, as the Hot Hands service is solely charged within co-location to existing Users, and would be temporary.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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)[11] of the Act and subparagraph (f)(2) of Rule 19b–4[12] 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)[13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSECHX–2020–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSECHX–2020–07. 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

[10] 15 U.S.C. 78f(b)(8).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 15 U.S.C. 78s(b)(2)(B).

only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSECHX–2020–07 and should be submitted on or before April 13, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06002 Filed 3–20–20; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88402; File No. SR–NYSE–2020–20]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 7.12 Concerning the Resumption of Trading Following a Level 3 Market-Wide Circuit Breaker Halt

March 17, 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 March 16, 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 and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.12 concerning the resumption of trading following a Level 3 market-wide circuit breaker halt. 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 Rule 7.12[4] concerning the resumption of trading following a Level 3 market-wide circuit breaker halt. The Exchange is proposing this rule change in conjunction with other national securities exchanges and the Financial Industry Regulatory Authority (''FINRA'').

Rule 7.12 provides a methodology for determining when to halt trading in all stocks due to extraordinary market volatility (*i.e.,* market-wide circuit breakers). The market-wide circuit breaker mechanism (''MWCB'') under Rule 7.12 was approved by the Commission to operate on a pilot basis,[5] the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[6] including any extensions to the pilot period for the LULD Plan.[7] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[8] In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 7.12 to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[9] The Exchange then filed to extend the pilot for an additional year to the close of business on October 18, 2020.[10]

The market-wide circuit breaker under Rule 7.12 provides an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. All U.S. equity exchanges and FINRA adopted uniform rules on a pilot basis relating to market-wide circuit breakers in 2012 (''MWCB Rules''), which are designed to slow the effects of extreme price movement through coordinated trading halts across securities markets when severe price declines reach levels that may exhaust

[4] Rule 80B is no longer operative. To reduce potential confusion regarding which rule governs market-wide circuit breakers, the Exchange proposes to delete the text associated with Rule 80B and to direct market participants to Rule 7.12.

[5] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–NYSE–2011–48).

[6] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

[7] *See* Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–NYSE–2011–48) (Approval Order); and 68784 (January 31, 2013), 78 FR 8662 (February 6, 2013) (SR–NYSE–2013–10) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delay the Operative Date of a Rule Change to NYSE Rule 80B).

[8] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

[9] *See* Securities Exchange Act Release No. 85560 (April 9, 2019), 84 FR 15247 (April 15, 2019) (SR–NYSE–2019–19) (''Rule 80B pilot extension filing''). At the time of the Rule 80B pilot extension filing, Rule 7.12 existed but was not operative with respect to Exchange-listed securities and was not amended to extend its effectiveness through October 18, 2019. Now that all Exchange-listed securities have transitioned to the Pillar trading platform, Rule 7.12 is operative with respect to all securities trading on the Exchange. *See* Securities Exchange Act Release No. 85962 (May 29, 2019), 84 FR 26188 (June 5, 2019) (SR–NYSE–2019–05). Although Rule 80B is not applicable to trading of any securities on the Exchange, the Exchange believes that amending Rule 80B in this filing would reduce the potential for confusion.

[10] *See* Securities Exchange Act Release No. 87016 (September 19, 2019), 84 FR 50502 (September 25, 2019) (SR–NYSE–2019–51).

market liquidity.[11] Market-wide circuit breakers provide for trading halts in all equities and options markets during a severe market decline as measured by a single-day decline in the S&P 500 Index.

Pursuant to Rule 7.12, a market-wide trading halt will be triggered if the S&P 500 Index declines in price by specified percentages from the prior day's closing price of that index. Currently, the triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. ET and before 3:25 p.m. ET would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. ET would not halt market-wide trading. A market decline that triggers a Level 3 halt at any time during the trading day would halt market-wide trading until the primary listing market opens the next trading day.

Today, in the event that a Level 3 market decline occurs, the Exchange would halt trading for the remainder of the trading day, and would not resume until the primary listing market opens the next trading day. On the next trading day, all NYSE Group exchanges (*i.e.,* the Exchange, NYSE American, Inc. (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), NYSE National, Inc., and NYSE Chicago, Inc.) would remain closed for all symbols until 9:30 a.m. ET, at which time the Exchange, NYSE American, and NYSE Arca would begin their Core Open Auction processes for their primary-listed securities.

Upon feedback from industry participants, the Exchange has been working with other national securities exchanges and FINRA to establish a standardized approach for resuming trading in all NMS Stocks following a Level 3 halt. The proposed approach would allow for the opening of all securities the next trading day after a Level 3 halt as a regular trading day, and is designed to ensure that Level 3 MWCB events are handled in a more consistent manner that is transparent for market participants.[12]

As proposed, a Level 3 halt would end at the end of the trading day on which it is declared. This proposed change would allow for next-day trading to resume in all NMS Stocks no differently from any other trading day. In other words, an exchange could resume trading in any security when it first begins trading under its rules and would not need to wait for the primary listing market to re-open trading in a security before it could start trading such security.[13] Accordingly, under the proposal, the Exchange could begin trading all UTP Securities at the beginning of the Exchange's Early Trading Session at 7:00 a.m. ET, regardless of whether the primary listing markets for those securities have actually opened.[14]

To effect this change, the Exchange proposes to delete the language in Rule 7.12(b)(ii) requiring the Exchange to wait until the primary listing exchange opens the next trading day following a Level 3 market decline, and specify that the Exchange will halt trading for the remainder of the trading day. The proposed rule change would therefore allow each exchange to resume trading in all securities the next trading day following a Level 3 halt at whatever time such exchange normally begins trading under its rules, which for the Exchange would be the beginning of the Early Trading Session at 7:00 a.m. ET for UTP Securities and the beginning of the Core Trading Session at 9:30 a.m. for Tape A securities. The Exchange also expects that the primary listing exchanges will facilitate this change by sending resume messages to the applicable securities information processor (''SIP'') to lift the Level 3 trading halt message in all securities. The resumption messages will be disseminated after the SIP has started on the next trading day and before the start of the earliest pre-market trading session of all exchanges. If a security is separately subject to a regulatory halt that has not ended, the primary listing exchange would replace the Level 3 halt message with the applicable regulatory halt message.

Having a consistent approach for all securities will make the opening process the day after a Level 3 halt more uniform and reduce complexity, which the Exchange believes is important after a significant market event. Based on industry feedback, the Exchange believes that resuming trading in the normal course in all equity securities will be more beneficial to the marketplace. By allowing trading to resume after a Level 3 halt in all securities no differently from any normal trading day under the respective rules of each exchange, the proposed rule change would provide greater certainty to the marketplace by ensuring a familiar experience for all market participants that trade NMS Stocks and balances out potential concerns around volatility. While the Exchange recognizes that the impact of this proposal is to permit all securities to be traded in the various exchanges' early trading sessions,[15] which do not have certain price protections for volatility such as LULD Bands or MWCB protections, the Exchange nonetheless believes that this outcome is outweighed by the benefits provided by resuming trading in the early trading sessions in a manner that is more familiar to the marketplace. Moreover, allowing the resumption of trading to occur on the various exchanges at the beginning of their early trading sessions in all NMS Stocks will allow for price formation to occur earlier in the trading day, which in turn allows market participants to react to news that has developed. As such, trading at the beginning of regular hours may be more orderly.

The Exchange will announce the implementation date of the amendment to Rule 7.12(b)(ii) by Trader Update.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Section 6(b)(5) of the Act,[17] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market

[11] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129) (''MWCB Approval Order'').

[12] Of note, the U.S. futures markets, which have similar rules for coordinated MWCB halts, normally begin their ''next day'' trading session at 6:00 p.m. ET (for CFE and CME) or at 8:00 p.m. ET (for ICE). If the U.S. futures markets amend their MWCB rules, as needed, to allow for normal course trading following a Level 3 halt, the futures markets would resume trading in their normal course at 6:00 p.m. ET (CFE and CME) or 8:00 p.m. ET (ICE) the same day as the Level 3 halt.

[13] The Exchange anticipates that the other national securities exchanges and FINRA will also file similar proposals to amend their MWCB rules on the resumption of trading following Level 3 halts, and amend their rules, where required, to have their Level 3 next-day openings happen normally.

[14] Only UTP Securities are eligible to trade in the Exchange's Early Trading Session, which begins at 7:00 a.m. and continues until 9:30 a.m. *See* Rule 7.34(a)(1). The Exchange would not resume trading Tape A securities until the Core Trading Session begins at 9:30 a.m. ET. *See* Rule 7.34(a).

[15] Note that because Tape A securities are not eligible to be traded in the Exchange's Early Trading Session, the Exchange will not resume trading Tape A securities until the Core Trading Session begins at 9:30 a.m. ET, but any other exchange with an early trading session could resume trading in Tape A securities at the beginning of its early trading session.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

system, and, in general to protect investors and the public interest. The market-wide circuit breaker mechanism under Rule 7.12 is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility, and how the markets will resume trading following a Level 3 market decline. As described above, the Exchange, together with other national securities exchanges and FINRA, is seeking to adopt a standardized approach related to resuming trading in NMS Stocks after a Level 3 MWCB halt. In this regard, the Exchange believes that the proposal to resume trading in all securities following a Level 3 halt in the same manner that securities would open trading on a regular trading day will benefit investors, the national market system, Exchange members, and the Exchange market by promoting a fair and orderly market and reducing confusion during a significant cross-market event. By allowing trading to resume after a Level 3 halt in all securities no differently from any normal trading day under the respective rules of each exchange, the proposed rule change would provide greater certainty to the marketplace by ensuring a familiar experience for all market participants that trade NMS Stocks.

Based on the foregoing, the Exchange believes the benefits to market participants from the MWCB under Rule 7.12 with the proposed standardized process for resuming trading in all securities following a Level 3 halt will promote fair and orderly markets, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the proposed Level 3 rule change described above would standardize the opening process for all securities on the Exchange, which would make the opening process the day after a Level 3 halt more uniform and reduce complexity. Further, the Exchange understands that FINRA and other national securities exchanges will file similar proposals to adopt the proposed Level 3 rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [18] and Rule 19b–4(f)(6) thereunder.[19] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[20]

A proposed rule change filed under Rule 19b–4(f)(6) [21] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[22] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that it approved a substantively similarly proposed rule change submitted by The Nasdaq Stock Market LLC.[23] Waiver of the operative delay will ensure consistency across the market centers and the timely implementation of the proposed rule change. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[24]

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) [25] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2020–20 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–2020–20. 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

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the pre-filing requirement.

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6)(iii).

[23] *See* Securities Exchange Act Release No. 88360 (March 11, 2020) (SR–NASDAQ–2020–03).

[24] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78s(b)(2)(B).

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–2020–20 and should be submitted on or before April 13, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06004 Filed 3–20–20; 8:45 am]

BILLING CODE 8011–01–P

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88404; File No. SR–NYSEArca–2020–20]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Listing and Trading of Shares of the First Trust TCW Securitized Plus ETF Under NYSE Arca Rule 8.600–E

March 17, 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 March 3, 2020, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') 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 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 list and trade shares of the First Trust TCW Securitized Plus ETF under NYSE Arca Rule 8.600–E (''Managed Fund Shares''). 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 list and trade shares (''Shares'') of the First Trust TCW Securitized Plus ETF (the ''Fund'') under NYSE Arca Rule 8.600–E, which governs the listing and trading of Managed Fund Shares[4] on the Exchange.

The Shares are offered by First Trust Exchange-Traded Fund VIII (the ''Trust''), which is registered with the Commission as an open-end management investment company.[5] The Fund is a series of the Trust.

First Trust Advisors L.P. is the investment adviser (''First Trust'' or ''Adviser'') to the Fund. TCW Investment Management Company LLC (''TCW'' or the ''Sub-Adviser''), serves as the Fund's investment sub-adviser. First Trust Portfolios L.P. is the distributor (''Distributor'') for the Fund's Shares. The Bank of New York Mellon acts as the administrator, custodian and transfer agent (''Custodian'' or ''Transfer Agent'') for the Fund.

Commentary .06 to Rule 8.600–E provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[6] In addition, Commentary .06 further requires that personnel who make decisions on the 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 and Sub-Adviser are not registered as broker-dealers. The Adviser is affiliated with First Trust Portfolios L.P., a broker-dealer, and has implemented and will maintain a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. The Sub-Adviser is affiliated with multiple broker-dealers and has implemented and will maintain a fire wall with respect to its broker-dealer affiliates regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Adviser or the Sub-Adviser becomes registered as a broker-dealer or newly

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Rule 5.2–E(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Trust is registered under the 1940 Act. On January 21, 2020, the Trust filed with the Commission its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333–210186 and 811–23147) (''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 upon which the Trust may rely, granting certain exemptive relief under the 1940 Act. *See* Investment Company Act Release No. 30029 (April 10, 2012) (File No. 812–13795).

[6] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to relevant personnel and any 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.

First Trust TCW Securitized Plus ETF

Principal Investments

According to the Registration Statement, the investment objective of the Fund is to seek to maximize long-term total return. Under normal market conditions,[7] the Fund intends to invest at least 80% of its net assets (including investment borrowings) in a portfolio of ''Fixed Income Securities'' (described below).

In managing the Fund's portfolio, TCW intends to employ a flexible approach that allocates the Fund's investments across a range of global investment opportunities and actively manage exposure to interest rates, credit sectors and currencies. TCW seeks to utilize independent, bottom-up research to identify securities that are undervalued and that offer a superior risk/return profile. Pursuant to this investment strategy, the Fund may invest in the following Fixed Income Securities, which may be represented by derivatives relating to such securities, as discussed below:

- securities issued or guaranteed by the U.S. government or its agencies, instrumentalities or U.S. government-sponsored entities (''U.S. government securities'');
- Treasury Inflation Protected Securities (''TIPS'');
- the following non-agency, non-government-sponsored entity (''GSE'') and privately-issued mortgage-related and other asset-backed securities: Residential mortgage-backed securities (''RMBS''), commercial mortgage-backed securities (''CMBS''), asset-backed securities (''ABS''), and collateralized loan obligations (''CLOs'' and, together with such RMBS, CMBS and ABS, ''Private ABS/MBS'');[8]
- Agency RMBS, agency CMBS, and agency ABS;
- domestic corporate bonds; and
- Fixed Income Securities issued by non-U.S. corporations and non-U.S. governments.

The Fund may invest in agency RMBS and CMBS by investing in to-be-announced transactions (''TBA Transactions'').

The Fund may hold cash and cash equivalents.[9] In addition, the Fund may hold the following short-term instruments with maturities of three months or more: Certificates of deposit; bankers' acceptances; repurchase agreements and reverse repurchase agreements; bank time deposits; and commercial paper.

The Fund may enter into short sales of any securities in which the Fund may invest.

The Fund may utilize exchange-listed and over-the-counter (''OTC'') traded derivatives instruments for duration/yield curve management and/or hedging purposes, for risk management purposes or as part of its investment strategies. The Fund will use derivative instruments primarily to hedge interest rate risk, actively manage interest rate exposure, hedge foreign currency risk and actively manage foreign currency exposure. The Fund may also use derivative instruments to enhance returns, as a substitute for, or to gain exposure to, a position in an underlying asset, to reduce transaction costs, to maintain full market exposure, to manage cash flows or to preserve capital. Derivatives may also be used to hedge risks associated with the Fund's other portfolio investments. The Fund will not use derivative instruments to gain exposure to Private ABS/MBS, and derivative instruments linked to such securities will be used for hedging purposes only. Derivatives that the Fund may enter into are the following: Futures on interest rates, currencies, Fixed Income Securities and fixed income indices; exchange-traded and OTC options on interest rates, currencies, Fixed Income Securities and fixed income indices; swap agreements on interest rates, currencies, Fixed Income Securities and fixed income indices; credit default swaps (''CDX''); and currency forward contracts.

Other Investments

While the Fund, under normal market conditions, invests at least 80% of its net assets in the Principal Investments described above, the Fund may invest its remaining assets in the following ''Non-Principal Investments.''

The Fund may invest in exchange-traded common stock, exchange-traded preferred stock, and exchange-traded real estate investment trusts (''REITs'').

The Fund may invest in the securities of other investment companies registered under the 1940 Act, including money market funds, exchange-traded funds (''ETFs''), open-end funds (other than money market funds and other ETFs), and U.S. exchange-traded closed-end funds.[10]

The Fund may hold exchange-traded notes (''ETNs'').[11]

Investment Restrictions

The Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per CUSIP basis. The Fund's holdings in derivative instruments for hedging purposes would be excluded from the determination of compliance with this 2% limitation. The total gross notional value of the Fund's holdings in derivative instruments used to gain exposure to a specific asset is limited to 2% of the Fund's total assets.

The Fund may invest up to 50% of its total assets in the aggregate in Private ABS/MBS, provided that the Fund (1) may not invest more than 30% of its total assets in non-agency RMBS; (2) may not invest more than 25% of its total assets in non-agency CMBS and CLOs; and (3) may not invest more than 25% of its total assets in non-agency ABS.

[7] The term ''normal market conditions'' is defined in NYSE Arca Rule 8.600–E(c)(5). On a temporary basis, including for defensive purposes, during the initial invest-up period (*i.e.,* the six-week period following the commencement of trading of Shares on the Exchange) and during periods of high cash inflows or outflows (*i.e.,* rolling periods of seven calendar days during which inflows or outflows of cash, in the aggregate, exceed 10% of the Fund's net assets as of the opening of business on the first day of such periods), the Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, the Fund may not be able to achieve its investment objective. The Fund may adopt a defensive strategy when the Adviser and/or the Sub-Adviser believes securities in which the Fund normally invests have elevated risks due to market, political or economic factors and in other extraordinary circumstances.

[8] For avoidance of doubt, ''Private ABS/MBS'' as referenced herein are non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities as stated in Commentary .01(b)(5) to NYSE Arca Rule 8.600–E.

[9] For purposes of this filing, cash equivalents are the short-term instruments with maturities of less than 3 months enumerated in Commentary .01(c) to Rule 8.600–E.

[10] For purposes of this filing, the term ''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. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (*e.g.,* 2X, -2X, 3X or -3X) ETFs.

[11] ETNs are Index-Linked Securities (as described in NYSE Arca Rule 5.2–E(j)(6)). While the Fund may invest in inverse ETNs, the Fund will not invest in leveraged or inverse leveraged ETNs (*e.g.,* 2X or -3X).

With respect to the Fund's investments in up to 30% of its total assets in Private ABS/MBS that exceed the 20% of the weight of the Fund's portfolio [12] that may be invested in Private ABS/MBS under Commentary .01(b)(5) to NYSE Arca Rule 8.600–E,[13] the following restrictions will apply:

- Non-agency RMBS shall have a weighted average loan age of 84 months or more;
- Non-agency CMBS and CLOs shall have a weighted average loan age of 60 months or more; and
- Non-agency ABS shall have a weighted average loan age of 12 months or more.[14]

The Exchange proposes that up to 25% of the Fund's assets may be invested in OTC derivatives that are used to reduce currency, interest rate or credit risk arising from the Fund's investments (that is, ''hedge''). The Fund's investments in OTC derivatives other than OTC derivatives used to hedge the Fund's portfolio against currency, interest rate or credit risk will be limited to 20% of the assets in the Fund's portfolio. For purposes of these percentage limitations on OTC derivatives, the weight of such OTC derivatives will be calculated as the aggregate gross notional value of such OTC derivatives.

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, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2X or -3X) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).[15]

Use of Derivatives by the Fund

The Fund may invest in the types of derivatives described in the ''Principal Investments'' section above for the purposes described in that section. 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. Because the markets for certain assets, or the assets themselves, may be unavailable or cost prohibitive as compared to derivative instruments, suitable derivative transactions may be an efficient alternative for the Fund to obtain the desired asset exposure.

Impact on Arbitrage Mechanism

The Adviser and the Sub-Adviser believe there will be minimal, if any, impact to the arbitrage mechanism as a result of the Fund's use of derivatives and Private ABS/MBS. The Adviser and the Sub-Adviser understand that market makers and participants should be able to value derivatives and Private ABS/MBS as long as the positions are disclosed with relevant information. The Adviser and the Sub-Adviser believe that the price at which Shares of the Fund trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem Shares of the Fund at their net asset value (''NAV''), which should ensure that Shares of the Fund will not trade at a material discount or premium in relation to their NAV.

The Adviser and Sub-Adviser do 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 and Private ABS/MBS.

Creation and Redemption of Shares

The Fund will issue and redeem Shares on a continuous basis at NAV [16] only in large blocks of Shares (''Creation Units'') in transactions with authorized participants, generally including broker-dealers and large institutional investors (''Authorized Participants''). Creation Units generally will consist of 50,000 Shares. The size of a Creation Unit is subject to change. As described in the Registration Statement, the Fund will issue and redeem Creation Units in exchange for an in-kind portfolio of instruments and/or cash in lieu of such instruments (the ''Creation Basket'').[17] In addition, if there is a difference between the NAV attributable to a Creation Unit and the market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments (which may include cash-in-lieu amounts) with the lower value will pay to the other an amount in cash equal to the difference (referred to as the ''Cash Component'').

Creations and redemptions must be made by or through an Authorized Participant that has executed an agreement that has been agreed to by the Distributor and the Transfer Agent with respect to creations and redemptions of Creation Units. All standard orders to create Creation Units must be received by the Transfer Agent no later than the closing time of the regular trading session on the NYSE (ordinarily 4:00 p.m., E.T.) (the ''Closing Time'') in each case on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of Shares as next determined on such date after receipt of the order in proper form. Shares may be redeemed only in Creation Units at their NAV next determined after receipt not later than the Closing Time of a redemption request in proper form by the Fund through the Transfer Agent and only on a business day. The Custodian, through the National Securities Clearing Corporation (''NSCC''), will make available on each business day, prior to the opening of business of the Exchange, the list of the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash

[12] *See* Securities Exchange Act Release No. 86017 (June 3, 2019), 84 FR 26711 (June 7, 2019) (SR–NYSEArca–2019–06) (order approving an amendment to Commentary .01(b)(5) to Rule 8.600–E to delete the reference to the ''fixed income portion of the'' portfolio, such that non-agency, non-GSE, and privately-issued mortgage-related and other asset-backed securities components of a portfolio may not account, in the aggregate, for more than 20% of the weight of the whole portfolio).

[13] Commentary .01(b)(5) to NYSE Arca Rule 8.600–E provides that non-agency, non-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.

[14] Information relating to weighted average loan age for non-agency RMBS, non-agency CMBS, CLOs and non-agency ABS is widely available from major market data vendors such as Bloomberg.

[15] 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.

[16] The NAV of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange (''NYSE''), generally 4:00 p.m., Eastern Time (''E.T.''). NAV per Share will be calculated by dividing the Fund's net assets by the number of Fund Shares outstanding.

[17] It is expected that the Fund will typically issue and redeem Creation Units on a cash basis; however, at times, the Fund may issue and redeem Creation Units on an in-kind (or partially in-kind) (or partially cash) basis.

Component (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following business day prior to commencement of trading in the Shares.

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 will meet all such requirements except for those set forth in Commentary .01(a)(1), (a)(2), (b)(1), (b)(4), (b)(5), and (e), as described below.

The Fund will not comply with the requirements set forth in Commentary .01(a)(1) [18] and (a)(2) [19] to NYSE Arca Rule 8.600–E with respect to the Fund's investments in equity securities.[20] Instead, the Exchange proposes that (i) the Fund's investments in equity securities will meet the requirements of Commentary .01(a) with the exception of Commentary .01(a)(1)(C) and .01(a)(1)(D) (with respect to U.S. Component Stocks) and Commentary .01(a)(2)(C) and .01(a)(2)(D) (with respect to Non-U.S. Component Stocks). Any Fund investment in exchange-traded common stocks, preferred stocks, REITS, ETFs, ETNs, and U.S. exchange-traded closed-end funds would provide for enhanced diversification of the Fund's portfolio and, in any case, would be Non-Principal Investments and would not exceed 20% of the Fund's net assets in the aggregate. The Adviser and Sub-Adviser represent that, under these circumstances, application of the weighting requirements of Commentary .01(a)(1)(C) and Commentary .01(a)(2)(C) and the minimum number of components requirements of Commentary .01(a)(1)(D) and Commentary .01(a)(2)(D) would impose an unnecessary burden on the Fund's ability to hold such equity securities.

The Fund will not comply with the requirement in Commentary .01(b)(1) to Rule 8.600–E that components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of $100 million or more. Instead, the Exchange proposes that components that in the aggregate account for at least 50% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of $50 million or more. As noted above, the Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per CUSIP basis. In addition, at least 50% of the weight of the Fund's portfolio would continue to be subject to a substantial minimum (*i.e.,* $50 million) original principal amount outstanding. The Exchange believes this limitation would provide significant additional diversification to the Fund's investments in Fixed Income Securities, and reduce concerns that the Fund's investments in such securities would be readily susceptible to market manipulation.[21]

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 cannot satisfy the criteria in Commentary .01(b)(4).[22] Instead, the Exchange proposes that the Fund's investments in Fixed Income Securities other than Private ABS/MBS will be required to comply with the requirements of Commentary .01(b)(4). As noted above, the Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per CUSIP basis. The Exchange believes this limitation would provide additional diversification to the

[18] Commentary .01(a)(1) to NYSE Arca Rule 8.600–E 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;

(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; and

(F) American Depositary Receipts (''ADRs'') in a portfolio may be exchange-traded or non- exchange-traded. However, no more than 10% of the equity weight of a portfolio shall consist of non-exchange-traded ADRs.

[19] Commentary .01(a)(2) to NYSE Arca Rule 8.600–E provides that the component stocks of the equity portion of a portfolio that are Non-U.S. Component Stocks shall meet the following criteria initially and on a continuing basis:

(A) Non-U.S. Component Stocks each shall have a minimum market value of at least $100 million;

(B) Non-U.S. Component Stocks each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of $25,000,000, averaged over the last six months;

(C) The most heavily weighted Non-U.S. Component stock shall not exceed 25% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted Non-U.S. Component Stocks shall not exceed 60% of the equity weight of the portfolio;

(D) Where the equity portion of the portfolio includes Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 20 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) Each Non-U.S. Component Stock shall be listed and traded on an exchange that has last-sale reporting.

[20] For purposes of these exceptions, investments in equity securities that are non-exchange-traded securities of other open-end investment companies (*e.g.,* mutual funds) are excluded and are discussed further below.

[21] The Commission has approved an exception from Commentary .01(b)(1) to Rule 8.600–E substantially identical to that requested for the Fund herein in Securities Exchange Act 87410 (October 28, 2019), 84 FR 58750 (November 1, 2019) (SR–NYSEArca–2019–33) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, Regarding Changes to Investments of the First Trust TCW Unconstrained Plus Bond ETF) (''First Trust TCW Unconstrained Release'').

[22] 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.

Fund's investments in Private ABS/MBS, and reduce concerns that the Fund's investment in such securities would be readily susceptible to market manipulation.

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).[23]

The Fund will not comply with the requirement in Commentary .01(b)(5) to Rule 8.600–E that Private ABS/MBS in the Fund's portfolio account, in the aggregate, for no more than 20% of the weight of the Fund's portfolio.[24] Instead, the Exchange proposes that, in order to enable the portfolio to be more diversified and provide the Fund with an opportunity to earn higher returns, the Fund may invest up to 50% of its total assets in the aggregate in Private ABS/MBS, provided that the Fund (1) may not invest more than 30% of its total assets in non-agency RMBS; (2) may not invest more than 25% of its total assets in non-agency CMBS and CLOs; and (3) may not invest more than 25% of its total assets in non-agency ABS.

With respect to the Fund's investments in up to 30% of its total assets in Private ABS/MBS that exceed the 20% of the weight of the Fund's portfolio that may be invested in Private ABS/MBS under Commentary .01(b)(5) to NYSE Arca Rule 8.600–E, the following restrictions will apply:

- Non-agency RMBS shall have a weighted average loan age of 84 months or more;
- Non-agency CMBS and CLOs shall have a weighted average loan age of 60 months or more; and
- Non-agency ABS shall have a weighted average loan age of 12 months or more.

In addition, as noted above, the Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per CUSIP basis.[25] The Exchange believes these limitations would provide additional diversification to the Fund's Private ABS/MBS investments and reduce concerns that the Fund's investment in such securities would be readily susceptible to market manipulation.

The Adviser and Sub-Adviser represent that the RMBS sector can be an important component of the Fund's investment strategy because of the potential for attractive risk-adjusted returns relative to other fixed income sectors and the potential to add significantly to the diversification in the Fund's portfolio. Similarly, the Private ABS/MBS sectors also have the potential for attractive risk-adjusted returns and added portfolio diversification.

The Fund's portfolio will not comply with the requirements set forth in Commentary .01(e) to NYSE Arca Rule 8.600–E.[26] Specifically, the Fund's investments in OTC derivatives may exceed 20% of Fund assets, calculated as the aggregate gross notional value of such OTC derivatives. The Exchange proposes that up to 25% of the Fund's assets (calculated as the aggregate gross notional value) may be invested in OTC derivatives that are used to reduce currency, interest rate or credit risk arising from the Fund's investments (that is, ''hedge''). The Fund's investments in OTC derivatives other than OTC derivatives used to hedge the Fund's portfolio against currency, interest rate or credit risk will be limited to 20% of the assets in the Fund's portfolio, calculated as the aggregate gross notional value of such OTC derivatives.

The Adviser and Sub-Adviser believe that it is important to provide the Fund with additional flexibility to manage risk associated with its investments. Depending on market conditions, it may be critical that the Fund be able to utilize available OTC derivatives for this purpose to attempt to reduce impact of currency, interest rate or credit fluctuations on Fund assets. Therefore, the Exchange believes it is appropriate to apply a limit of up to 25% of the Fund's assets to the Fund's investments in OTC derivatives (calculated as the aggregate gross notional value of such OTC derivatives), including forwards, options and swaps, that are used for hedging purposes, as described above.[27]

As noted above, the Fund may hold equity securities that are non-exchange-traded securities of other open-end investment company securities (*e.g.,* mutual funds). The Exchange 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 (E) to Rule 8.600–E with respect to the Fund's investments in non-exchange-traded securities of open-end investment company securities.[28] Investments in non-exchange-traded securities of open-end investment company securities will not be principal investments of the Fund.[29] 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.

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).[30]

[23] *See* First Trust TCW Unconstrained Release. *See also,* 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–NYSEArca–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).

[24] *See* note 13, *supra.*

[25] As noted above, the Fund's holdings in derivative instruments for hedging purposes would be excluded from the determination of compliance with this 2% limitation. The total gross notional value of the Fund's holdings in derivative instruments used to gain exposure to a specific asset is limited to 2% of the Fund's total assets.

[26] Commentary .01(e) to NYSE Arca Rule 8.600–E provides that the portfolio may hold OTC derivatives, including forwards, options and swaps on commodities, currencies and financial instruments (*e.g.,* stocks, fixed income, interest rates, and volatility) or a basket or index of any of the foregoing; however, on both an initial and continuing basis, no more than 20% of the assets in the portfolio may be invested in OTC derivatives. For purposes of calculating this limitation, a portfolio's investment in OTC derivatives will be calculated as the aggregate gross notional value of the OTC derivatives.

[27] In the First Trust TCW Unconstrained Release, the Commission previously approved an exception from requirements set forth in Commentary .01(e) relating to investments in OTC derivatives similar to those proposed with respect to the Fund. *See also,* Securities Exchange Act Release No. 80657 (May 11, 2017), 82 FR 22702 (May 17, 2017) (SR–NYSEArca–2017–09) (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 Short Duration Income ETF Listed Under NYSE Arca Equities Rule 8.600).

[28] 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)); Non-U.S. Component Stocks (as described in Rule 5.2–E(j)(3)); Derivative Securities Products (*i.e.,* Investment Company Units and securities described in Section 2 of Rule 8–E); and Index-Linked Securities that qualify for Exchange listing and trading under Rule 5.2–E(j)(6).

[29] For purposes of this section of the filing, non-exchange-traded securities of other registered investment companies do not include money market funds, which are cash equivalents under Commentary .01(c) to Rule 8.600–E and for which there is no limitation in the percentage of the portfolio invested in such securities.

[30] The Commission has previously approved proposed rule changes under Section 19(b) of the Act for series of Managed Fund Shares that may

Continued

The Exchange notes that Commentary .01(a) through (d) to Rule 8.600–E exclude application of those provisions to certain ''Derivative Securities Products'' that are exchange-traded investment company securities, including 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).[31] In its 2008 Approval Order approving amendments to Commentary .01(a) to Rule 5.2(j)(3) that exclude Derivative Securities Products from certain provisions of Commentary .01(a) (which exclusions are similar to those in Commentary .01(a)(1) to Rule 8.600–E), the Commission stated that ''based on the trading characteristics of Derivative Securities Products, it may be difficult for component Derivative Securities Products to satisfy certain quantitative index criteria, such as the minimum market value and trading volume limitations.'' The Exchange notes that it would be difficult or impossible to apply to non-exchange-traded investment company securities the generic quantitative criteria (*e.g.,* market capitalization, trading volume, or portfolio criteria) in Commentary .01 (a) through (d) applicable to U.S. Component Stocks. For example, the requirement 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 is tailored to exchange-traded securities (*e.g.,* U.S. Component Stocks) and not to mutual fund shares, which do not trade in the secondary market. Moreover, application of such criteria would not serve the purpose 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 notes that the Commission has previously approved listing and trading of an issue of Managed Fund Shares that may invest in equity securities that are non-exchange-traded securities of other open-end investment company securities notwithstanding that the fund would not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600–E with respect to such fund's investments in such securities.[32] Thus, the Exchange believes that it is appropriate to permit the Fund to invest in non-exchange-traded open-end management investment company securities, as described above.

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), (a)(2), (b)(1), (b)(4), (b)(5), and (e) to Rule 8.600–E, 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.ftportfolios.com*) will include the prospectus for the Fund that may be downloaded. The Fund's website will include 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 midpoint of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[33] 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 Fund will disclose on its website the Disclosed Portfolio as defined in NYSE Arca Rule 8.600–E(c)(2) that forms the basis for the Fund's calculation of NAV at the end of the business day.[34]

On a daily basis, the Fund will disclose the information required under NYSE Arca Rule 8.600–E(c)(2) to the extent applicable. The website information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities, if applicable, required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the Exchange via the NSCC. The basket represents one Creation Unit of the Fund. Authorized Participants may refer to the basket composition file for information regarding Fixed Income Securities, and any other instrument that may comprise the Fund's basket on a given day.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and the Fund's Forms N–CSR, filed twice a year and Form N–CEN, filed once a year. The Fund's SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N–CSR, Form N–PX and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov*.

invest in non-exchange traded investment company securities. *See, e.g.,* Securities Exchange Act Release No. 78414 (July 26, 2016), 81 FR 50576 (August 1, 2016) (SR–NYSEArca–2016–79) (order approving listing and trading of shares of the Virtus Japan Alpha ETF under NYSE Arca Equities Rule 8.600).

[31] The Commission initially approved the Exchange's proposed rule change to exclude ''Derivative Securities Products'' (*i.e.,* Investment Company Units and securities described in Section 2 of Rule 8) and ''Index-Linked Securities (as described in Rule 5.2–E (j)(6)) from Commentary .01(a)(A) (1) through (4) to Rule 5.2–E(j)(3 in Securities Exchange Act Release No. 57751 (May 1, 2008), 73 FR 25818 (May 7, 2008) (SR–NYSEArca–2008–29) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Amend the Eligibility Criteria for Components of an Index Underlying Investment Company Units) (''2008 Approval Order''). *See also,* Securities Exchange Act Release No. 57561 (March 26, 2008), 73 FR 17390 (April 1, 2008) (Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Amend the Eligibility Criteria for Components of an Index Underlying Investment Company Units). The Commission subsequently approved generic criteria applicable to listing and trading of Managed Fund Shares, including exclusions for Derivative Securities Products and Index-Linked Securities in Commentary .01(a)(1)(A) through (D), in Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 7 Thereto, Amending NYSE Arca Equities Rule 8.600 To Adopt Generic Listing Standards for Managed Fund Shares). *See also,* Amendment No. 7 to SR–NYSEArca–2015–110, available at *https://www.sec.gov/comments/sr-nysearca-2015-110/nysearca2015110-9.pdf.*

[32] *See* the First Trust TCW Unconstrained Release. *See also* Securities Exchange Act Release No. 83319 (May 24, 2018) (SR–NYSEArca–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).

[33] The Bid/Ask Price of the Fund's Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[34] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be 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.

Intra-day and closing price information regarding exchange-traded options will be available from the exchange on which such instruments are traded. Intra-day and closing price information regarding Fixed Income Securities will be available from major market data vendors. Price information relating to OTC options, forwards and swaps will be available from major market data vendors. Intra-day price information for exchange-traded derivative instruments will be available from the applicable exchange and from major market data vendors. Intraday and other price information for the Fixed Income Securities in which the Fund will invest will be available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by Authorized Participants and other market participants. Additionally, the Trade Reporting and Compliance Engine (''TRACE'') of the Financial Industry Regulatory Authority (''FINRA'') will be a source of price information for corporate bonds, and Private ABS/MBS, to the extent transactions in such securities are reported to TRACE.[35] Non-exchange-traded open-end investment company securities are typically priced once each business day and their prices will be available through the applicable fund's website or from major market data vendors. Price information regarding U.S. government securities, Private ABS/MBS, cash equivalents and short-term instruments with maturities of three months or more generally may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements. Information relating to weighted average loan age for Private ABS/MBS is widely available from major market data vendors such as Bloomberg.

Information regarding market price and trading volume of the Shares, ETFs, ETNs, common stocks, preferred stocks, REITs and closed-end funds will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares, ETFs, ETNs, closed-end funds, REITs, certain common stocks, certain preferred stocks will be available via the Consolidated Tape Association (''CTA'') high-speed line. Exchange-traded options quotation and last sale information for options cleared via the Options Clearing Corporation (''OCC'') are available via the Options Price Reporting Authority (''OPRA''). In addition, the Portfolio Indicative Value (''PIV''), as defined in NYSE Arca Rule 8.600–E(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.

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.[36] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Fund's Shares also will be subject to Rule 8.600–E(d)(2)(D) (''Trading Halts'').

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m., E.T. in accordance with NYSE Arca Rule 7.34–E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

With the exception of the requirements of Commentary .01(a)(1), (a)(2), (b)(1), (b)(4), (b)(5), and (e) to Rule 8.600–E as described above in ''Application of Generic Listing Requirements,'' the Shares of the Fund will conform to the initial and continued listing criteria under NYSE Arca Rule 8.600–E. Consistent with NYSE Arca Rule 8.600–E(d)(2)(B)(ii), the Adviser and Sub-Adviser will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the Fund's portfolio.

The Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A–3[37] under the Act, as provided by NYSE Arca Rule 5.3–E. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. The Fund's investments will be consistent with its investment goal and will not be used to provide multiple returns of a benchmark or to produce leveraged returns.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, or by regulatory staff of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.[38]

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, certain exchange-traded options and certain exchange-traded futures, ETFs, ETNs, closed-end funds, certain common stocks, certain preferred stocks, and certain REITs with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''), and the

[35] Broker-dealers that are FINRA member firms have an obligation to report transactions in specified debt securities to TRACE to the extent required under applicable FINRA rules. Generally, such debt securities will have at issuance a maturity that exceeds one calendar year. For Fixed Income Securities that are not reported to TRACE, (i) intraday price quotations will generally be available from broker-dealers and trading platforms (as applicable) and (ii) price information will be available from feeds from market data vendors, published or other public sources, or online information services, as described above.

[36] *See* NYSE Arca Rule 7.12–E.

[37] 17 CFR 240.10A–3.

[38] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in such securities and financial instruments from such markets and other entities.[39] 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 CSSA. In addition, 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.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares of the Fund on the Exchange.

The issuer must notify the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E (m).

Information Bulletin

The Exchange will inform its Equity Trading Permit Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Early and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (4) how information regarding the PIV and the Disclosed Portfolio is disseminated; (5) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund 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 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)[40] 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 are listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.600–E. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in 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, certain exchange-traded options and certain exchange-traded futures, ETFs, ETNs, closed-end funds, certain common stocks, certain preferred stocks, and certain REITs with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in such securities and financial instruments from such markets and other entities. The Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. In addition, 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 TRACE. The Adviser and Sub-Adviser are not registered as broker-dealers. The Adviser is affiliated with First Trust Portfolios L.P., a broker-dealer and has implemented and will maintain a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolios. The Sub-Adviser is affiliated with multiple broker-dealers and has implemented and will maintain a fire wall with respect to its broker-dealer affiliates regarding access to information concerning the composition and/or changes to the portfolio.

The Exchange notes that, other than Commentary .01(a)(1), (a)(2), (b)(1), (b)(4), (b)(5), and (e) to Rule 8.600–E, as described above, the Fund's portfolio will meet all other requirements of Rule 8.600–E.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares, ETFs, ETNs, closed-end funds, certain REITs, certain common stocks, and certain preferred stocks will be available via the CTA high-speed line. Exchange-traded options quotation and last sale information for options cleared via the OCC are available via OPRA. The Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. 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. 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 will have ready access to information regarding the Fund's holdings, NAV, the PIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect

[39] For a list of the current members of ISG, *see www.isgportal.org*. The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement (''CSSA'').

[40] 15 U.S.C. 78f(b)(5).

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 generally will principally hold fixed income securities 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 and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a CSSA. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, NAV, Disclosed Portfolio, and quotation and last sale information for the Shares.

Deviations from the generic requirements, as described above, 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 a 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.

As noted above, the Fund will not comply with the requirements set forth in Commentary .01(a)(1) and (a)(2) to NYSE Arca Rule 8.600–E with respect to the Fund's investments in equity securities. Instead, the Exchange proposes that (i) the Fund's investments in equity securities will meet the requirements of Commentary .01(a) with the exception of Commentary .01(a)(1)(C) and .01(a)(1)(D) (with respect to U.S. Component Stocks) and Commentary .01(a)(2)(C) and .01(a)(2)(D) (with respect to Non-U.S. Component Stocks).[41] The Exchange believes 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 equity securities do not comply with the requirements set forth in Commentary .01(a)(1) and (a)(2) to NYSE Arca Rule 8.600–E in that any Fund investment in exchange-traded common stocks, preferred stocks, REITS, ETFs, ETNs and U.S. exchange-traded closed-end funds would provide for enhanced diversification of the Fund's portfolio. Such securities would be Non-Principal Investments, not exceeding 20% of the Fund's net assets in the aggregate.

The Fund will not comply with the requirement in Commentary .01(b)(1) to Rule 8.600–E that components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of $100 million or more. Instead, the Exchange proposes that components that in the aggregate account for at least 50% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of $50 million or more. As noted above, the Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per CUSIP basis. In addition, at least 50% of the weight of the Fund's portfolio would continue to be subject to a substantial minimum (*i.e.,* $50 million) original principal amount outstanding. The Exchange believes this limitation would provide significant additional diversification to the Fund's investments in Fixed Income Securities, and reduce concerns that the Fund's investments in such securities would be readily susceptible to market manipulation.

The Exchange proposes that Private ABS/MBS will not be required to comply with the requirements of Commentary .01(b)(4) because certain Private ABS/MBS cannot satisfy the criteria in Commentary .01(b)(4). Instead, the Exchange proposes that the Fund's investments in Fixed Income Securities other than Private ABS/MBS will be required to comply with the requirements of Commentary .01(b)(4). The Exchange believes that this is appropriate because Commentary .01(b)(4) does not appear to be designed for structured finance vehicles such as Private ABS/MBS. As noted above, the Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per CUSIP basis. The Exchange believes this limitation would provide additional diversification to the Fund's investments in Private ABS/MBS, and reduce concerns that the Fund's investment in such securities would be readily susceptible to market manipulation.

As noted above, the Fund will not comply with the requirement in Commentary .01(b)(5) to Rule 8.600–E that Private ABS/MBS in the Fund's portfolio account, in the aggregate, for no more than 20% of the weight of the Fund's portfolio. Instead, the Exchange proposes that, in order to enable the portfolio to be more diversified and provide the Fund with an opportunity to earn higher returns, the Fund may invest up to 50% of its total assets in the aggregate in Private ABS/MBS, provided that the Fund (1) may not invest more than 25% of its total assets in non-agency ABS; (2) may not invest more than 30% of its total assets in non-agency RMBS; and (3) may not invest more than 25% of its total assets in non-agency CMBS and CLOs. With respect to the Fund's investments in up to 30% of its total assets in Private ABS/MBS that exceed the 20% of the weight of the Fund's portfolio that may be invested in Private ABS/MBS under Commentary .01(b)(5) to NYSE Arca Rule 8.600–E, the Fund's holdings in Private ABS/MBS will be subject to minimum weighted average loan age restrictions described above.[42] In addition, as noted above, the Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per CUSIP basis.[43] The Exchange believes these limitations would provide additional diversification to the Fund's Private ABS/MBS investments and reduce concerns that the Fund's investment in such securities would be readily susceptible to market manipulation.

The Exchange believes 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 Private ABS/MBS do not comply with the requirements set forth in Commentary .01(b)(5) to NYSE Arca Rule 8.600–E in that the Fund's investment in Private ABS/MBS is expected to provide the Fund with benefits associated with increased diversification, as Private ABS/MBS investments tend to be less correlated to interest rates than many other fixed income securities. The Fund's investment in Private ABS/MBS will be subject to the Fund's liquidity procedures as adopted by the Board, and the Adviser and Sub-Adviser do not expect that investments in Private ABS/MBS of up to 50% of the total assets of the Fund will have any material impact on the liquidity of the Fund's investments.

The Adviser and Sub-Adviser represent that the RMBS sector can be an important component of the Fund's investment strategy because of the potential for attractive risk-adjusted returns relative to other fixed income sectors and the potential to add significantly to the diversification in the

[41] *See* notes 18 and 19, *supra.*

[42] *See* note 13 and accompanying text, *supra.*

[43] *See* note 25, *supra.*

Fund's portfolio. Similarly, the Private ABS/MBS sectors also have the potential for attractive risk-adjusted returns and added portfolio diversification.

The Exchange believes the loan age parameters described above are appropriate for the corresponding Private ABS/MBS; the 84, 60 and 12 month time frames take into account that the longer Private ABS/MBS continue to trade, the more price discovery has occurred in the market and the more opportunity there has been for market participants to perform due diligence in understanding and evaluating the underlying loans for such securities.

With respect to non-agency RMBS, a weighted average loan age of 84 months accommodates investment in well-seasoned securities that are continuing to trade with resilient pricing notwithstanding events during the market crisis of 2008–2010, during which loan defaults drastically impacted pricing in non-agency RMBS. Pricing in such securities is generally more reliable than RMBS with a lower loan age in that pricing is no longer reliant on market expectations but on actual post-crisis loan performance.

With respect to non-agency CMBS, a weighted average loan age of 60 months would include securities for which there is a known track record regarding cash flows and default rates for loans underlying real estate and other assets underlying CMBS. A five year loan age facilitates pricing based on actual loan performance rather than default projections. Similarly, for non-agency CLOs, a weighted average loan age of 60 months provides the opportunity for market participants to evaluate data regarding the bank loans underlying the CLOs and to assess how the loans are actually being used—for example, to implement corporate strategy or for capital usage—rather than relying on pro forma statements regarding the loans.

With respect to non-agency ABS, a weighted average loan age of 12 months provides an appropriately limited time frame for market participants to assess the likely trajectory of expected defaults (for example, for sub-prime auto loans). The loans underlying non-agency ABS are typically of much shorter duration than other Private ABS/MBS. Because such loans are more likely to default within a short time after issuance, a one-year minimum loan age can be expected to provide a sufficient time frame for market participants to assess the reliability of loan pricing for loans underlying non-agency ABS.

As noted above, the Fund's portfolio will not comply with the requirements set forth in Commentary .01(e) to NYSE Arca Rule 8.600–E. The Exchange proposes that up to 25% of the Fund's assets (calculated as the aggregate gross notional value) may be invested in OTC derivatives that are used to reduce currency, interest rate or credit risk arising from the Fund's investments (that is, ''hedge''), and that the Fund's investments in OTC derivatives other than OTC derivatives used to hedge the Fund's portfolio against currency, interest rate or credit risk will be limited to 20% of the assets in the Fund's portfolio, calculated as the aggregate gross notional value of such OTC derivatives. As noted above, the Fund will not use derivative instruments to gain exposure to Private ABS/MBS, and derivative instruments linked to such securities will be used for hedging purposes only.

The Exchange believes 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 OTC derivatives do not comply with the requirements set forth in Commentary .01(e) to NYSE Arca Rule 8.600–E in that, depending on market conditions, it may be critical that the Fund be able to utilize available OTC derivatives to attempt to reduce impact of currency, interest rate or credit fluctuations on Fund assets. Therefore, the Exchange believes it is appropriate to apply a limit of up to 25% of the Fund's assets to the Fund's investments in OTC derivatives (calculated as the aggregate gross notional value of such OTC derivatives), including forwards, options and swaps, that are used for hedging purposes, as described above.

The Adviser and Sub-Adviser represent that OTC derivatives can be tailored to hedge the specific risk arising from the Fund's investments and frequently may be a more efficient hedging vehicle than listed derivatives. For example, the Fund could obtain an OTC foreign currency derivative in a notional amount that exactly matches the notional amount of the Fund's investments. If the Fund were limited to investing up to 20% of assets in OTC derivatives, the Fund might have to ''over hedge'' or ''under hedge'' if round lot sizes in listed derivatives were not available. In addition, for example, an OTC CDX option can be structured to provide protection tailored to the Fund's credit exposure and can be a more efficient way to hedge credit risk with respect to specific exposures than listed derivatives. Similarly, OTC interest rate derivatives can be more effective hedges of interest rate exposure because they can be customized to match the basis risk arising from the term of the investments held by the Fund.

Because the Fund, in furtherance of its investment objective, may invest a substantial percentage of its investments in foreign currency denominated Fixed Income Securities, the 20% limit in Commentary .01(e) to Rule 8.600–E could result in the Fund being unable to fully pursue its investment objective while attempting to sufficiently mitigate investment risks. The inability of the Fund to adequately hedge its holdings would effectively limit the Fund's ability to invest in certain instruments, or could expose the Fund to additional investment risk. For example, if the Fund's assets (on a gross notional value basis) were $100 million and no listed derivative were suitable to hedge the Fund's risk, under the generic standards the Fund would be limited to holding up to $20 million gross notional value in OTC derivatives ($100 million * 20%). Accordingly, the maximum amount the Fund would be able to invest in foreign currency denominated Fixed Income Securities while remaining adequately hedged would be $20 million. The Fund then would hold $60 million in assets that could not be hedged, other than with listed derivatives, which, as noted above, might not be sufficiently tailored to the specific instruments to be hedged.

In addition, by applying the 20% limitation in Commentary .01(e) to Rule 8.600–E, the Fund would be less able to protect its holdings from more than one risk simultaneously. For example, if the Fund's assets (on a gross notional basis) were $100 million and the Fund held $20 million in foreign currency denominated Fixed Income Instruments with two types of risks (*e.g.,* currency and credit risk) which could not be hedged using listed derivatives, the Fund would be faced with the choice of either holding $20 million aggregate gross notional value in OTC derivatives to mitigate one of the risks while passing the other risk to its shareholders, or, for example, holding $10 million aggregate gross notional value in OTC derivatives on each of the risks while passing the remaining portion of each risk to the Fund's shareholders.

The Adviser and Sub-Adviser believe that it is in the best interests of the Fund's shareholders for the Fund to be allowed to reduce the currency, interest rate or credit risk arising from the Fund's investments using the most efficient financial instrument. While certain risks can be hedged via listed

derivatives, OTC derivatives (such as forwards, options and swaps) can be customized to hedge against precise risks. Accordingly, the Adviser and Sub-Adviser believe that OTC derivatives may frequently be a more efficient hedging vehicle than listed derivatives. Therefore, the Exchange believes that increasing the percentage limit in Commentary .01(e), as described above, to the Fund's investments in OTC derivatives, including forwards, options and swaps, that are used specifically for hedging purposes would help protect investors and the public interest.

As noted above, the Fund's portfolio will not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600–E with respect to the Fund's investments in non-exchange-traded securities of open-end investment company securities would not meet the requirements of Commentary .01(a)(1)(A) through (E) and Commentary .01(a)(2) (A) through (E) to Rule 8.600–E. The Exchange 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 (E) to Rule 8.600–E with respect to the Fund's investments in non-exchange-traded securities of open-end investment company securities would not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600–E. Investments in non-exchange-traded securities of open-end investment company securities will not be principal investments of the Fund.[44] 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 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 shares of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

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 generally will principally hold fixed income securities and that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[45] and Rule 19b–4(f)(6) thereunder.[46] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[47]

A proposed rule change filed under Rule 19b–4(f)(6)[48] does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[49] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. According to the Exchange, the proposed rule change does not significant affect the protection of investors or the public and does not impose any significant burden on competition. Specifically, the Exchange believes that because the Fixed Income Securities and derivative instruments to be held by the Fund are substantially the same as the securities and derivative instruments in the previously approved First Trust TCW Unconstrained Release, the proposal does not raise any novel regulatory issues. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[50]

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)[51] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2020–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2020–20. 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

[44] *See* note 29, *supra.*

[45] 15 U.S.C. 78s(b)(3)(A)(iii).

[46] 17 CFR 240.19b–4(f)(6).

[47] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[48] 17 CFR 240.19b–4(f)(6).

[49] 17 CFR 240.19b–4(f)(6)(iii).

[50] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[51] 15 U.S.C. 78s(b)(2)(B).

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2020–20 and should be submitted on or before April 13, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[52]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06006 Filed 3–20–20; 8:45 am]

BILLING CODE 8011–01–P

[52] 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: The Small Business Administration (''SBA'') intends to request approval from the Office of Management and Budget (''OMB'') for the collection of information described below. The Paperwork Reduction Act (''PRA'') of 1995, requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before May 22, 2020.

ADDRESSES: Send all comments to Mary Frias, Loan Specialist, Office of Financial Assistance, Small Business Administration, 409 3rd Street, 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Mary Frias, Loan Specialist, Office of Financial Assistance, (202) 401–8234, *mary.frias@sba.gov,* or Curtis B. Rich, Management Analyst, (202) 205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 7(a) of the Small Business Act authorizes the Small Business Administration to guaranty loans in each of the 7(a) Programs. The Regulations covering these and other loan programs at 13 CFR 120 require certain information from loan applicants and lenders that is used to determine program eligibility and compliance.

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.

Summary of Proposed Information Collection

Title: SBA 7(a) Borrower Information Form, Lender's Application for Loan Guaranty, Religious Eligibility Worksheet, 7(a) Loan Post Approval Action Checklist, and Community Advantage Addendum.

SBA Forms: 1919, 1920, 1971, 2237, 2449.

Description of Respondents: 7(a) Program Participants.

Total Estimated Annual Reponses: 205,080.

Total Estimated Annual Hour Burden: 43,155.

Curtis Rich,

Management Analyst.

[FR Doc. 2020–05958 Filed 3–20–20; 8:45 am]

BILLING CODE 8026–03–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 670 (Sub-No. 1)]

Notice of Rail Energy Transportation Advisory Committee Meeting

On March 11, 2020, the Board provided notice of a meeting of the Rail Energy Transportation Advisory Committee (RETAC), to be held on April 21, 2020. This meeting will be postponed. Notice of the rescheduled meeting will be announced at a later date. For further information, please contact Kristen Nunnally at (202) 245–0312 or *Kristen.Nunnally@stb.gov.*

Authority: 49 U.S.C. 1321, 49 U.S.C. 11101; 49 U.S.C. 11121.

Decided: March 17, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2020–05973 Filed 3–20–20; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 290 (Sub-No. 5) (2020–2)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the second quarter 2020 Rail Cost Adjustment Factor (RCAF) and cost index filed by the Association of American Railroads. The second quarter 2020 RCAF (Unadjusted) is 1.051. The second quarter 2020 RCAF (Adjusted) is 0.442. The second quarter 2020 RCAF–5 is 0.417.

DATES: *Applicability Date:* April 1, 2020.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez, (202) 245–0333. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our website at *www.stb.gov.*

Decided: March 17, 2020.

By the Board, Board Members Begeman, Fuchs, and Oberman.

Regena Smith-Bernard,

Clearance Clerk.

[FR Doc. 2020–06042 Filed 3–20–20; 8:45 am]

BILLING CODE 4915–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2020–0011]

Request for Comments on Negotiating Objectives for a United States-Republic of Kenya Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments and notice of public hearing.

SUMMARY: On March 17, 2020, the U.S Trade Representative notified Congress of the Administration's intent to enter

into negotiations with the Republic of Kenya (Kenya) for a U.S.-Kenya trade agreement. The Office of the United States Trade Representative (USTR) is seeking public comments on a proposed U.S.-Kenya trade agreement, including U.S. interests and priorities, in order to develop U.S. negotiating positions. You can provide comments in writing and orally at a public hearing. The Administration's aim in negotiations with Kenya is to address both tariff and non-tariff barriers and to achieve free, fair, and reciprocal trade.

DATES:

April 15, 2020: Deadline for the submission of written comments and for written notification of your intent to testify, as well as a summary of your testimony at the public hearing.

April 28, 2020: The Trade Policy Staff Committee (TPSC) will hold a public hearing beginning at 9:30 a.m., in Rooms 1 and 2, 1724 F Street NW, Washington, DC 20508.

ADDRESSES: You should submit notifications of intent to testify and written comment through the Federal eRulemaking Portal: *https://www.regulations.gov* (*Regulations.gov*). Follow the instructions for submissions in parts II and III below. For alternatives to on-line submissions, please contact Yvonne Jamison at (202) 395–3475 in advance of the deadline and before transmitting a comment.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments, please contact Yvonne Jamison at (202) 395–3475. Direct all other questions to Alan Treat, Deputy Assistant U.S. Trade Representative for Africa, at (202) 395–9514.

SUPPLEMENTARY INFORMATION:

I. Background

The decision to launch negotiations for a U.S.-Kenya trade agreement is an important step to strengthen the U.S.-Kenya economic relationship and to achieve free, fair, and reciprocal trade. President Trump and President Kenyatta established the U.S.-Kenya Trade and Investment Working Group in August 2018 to explore ways to deepen economic ties between the United States and Kenya and lay the groundwork for a stronger future trade relationship.

On March 17, 2020, following consultations with relevant Congressional committees, the U.S. Trade Representative informed Congress that the President intends to commence negotiations with Kenya for a U.S.-Kenya trade agreement

II. Public Comment and Hearing

The TPSC invites interested parties to submit comments and/or oral testimony to assist USTR as it develops negotiating objectives and positions for the agreement, including with regard to objectives identified in section 102 of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (19 U.S.C. 4201). In particular, the TPSC invites interested parties to comment on issues that USTR should address in the negotiations including, but not limited to, the following:

a. General and product-specific negotiating objectives for the proposed agreement.

b. Relevant barriers to trade in goods and services between the United States and Kenya.

c. Economic costs and benefits to U.S. producers and consumers of removal or reduction of tariffs and non-tariff barriers on articles traded with Kenya.

d. Treatment of specific goods (classified under the Harmonized Tariff Schedule of the United States or HTSUS) under the proposed agreement, including comments on the following:

i. Product-specific import or export interests or barriers.

ii. Experience with particular measures that USTR should address in the negotiations.

iii. Ways to address export priorities and import sensitivities in the context of the proposed agreement.

e. Fees, charges, and taxes affecting trade in goods and services between the United States and Kenya.

f. Customs and trade facilitation issues, including those related to pre-shipment inspection.

g. Sanitary and phytosanitary measures and technical barriers to trade.

h. Transparency issues.

i. Other measures or practices, including those of third-country entities, which undermine fair market opportunities for U.S. businesses, workers, farmers, and ranchers.

USTR must receive written comments no later than April 15, 2020. USTR requests that small businesses (generally defined by the Small Business Administration as firms with fewer than 500 employees) or organizations representing small business members, which submit comments to self-identify as such, so that we may be aware of issues of particular interest to small businesses.

The TPSC will hold a hearing on Tuesday, April 28, 2020 in Rooms 1 and 2, 1724 F Street NW, Washington, DC 20508. If necessary, the hearing will continue on the next business day. Persons wishing to testify at the hearing must provide written notification of their intention by April 15, 2020. You must make the intent to testify notification in the 'type comment' field under docket number USTR–2020–0011 on *Regulations.gov* and should include the name, address, telephone number, and email address of the person presenting the testimony. You should attach a summary of the testimony by using the 'upload file' field. The file name should include who will be presenting the testimony. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the TPSC.

III. Requirements for Submissions

In order to ensure the timely receipt and consideration of comments, USTR strongly encourages commenters to make on-line submissions, using *Regulations.gov*. Persons submitting a notification of intent to testify and/or written comments must do so in English and must identify (on the first page of the submission) the ''U.S.-Kenya Trade Agreement.''

To submit comments via *Regulations.gov*, enter docket number USTR–2020–0011 on the home page and click 'search.' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice and click on the link entitled 'comment now!' For further information on using *Regulations.gov*, please consult the resources provided on the website by clicking on 'How to Use This Site' on the left side of the home page.

Regulations.gov allows users to provide comments by filling in a 'type comment' field, or by attaching a document using an 'upload file' field. USTR prefers that you provide comments in an attached document. If you attach a document, it is sufficient to type 'see attached' in the 'type comment' field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the 'type comment' field.

For any comments submitted electronically that contain business confidential information (BCI), the file name of the business confidential version should begin with the characters 'BCI.' Clearly mark any page containing BCI 'BUSINESS CONFIDENTIAL' on the top of that page. Filers of submissions containing BCI also must submit a public version of their comments. The file name of the public version should begin with the character 'P.' Follow the 'BCI' and 'P' with the name of the person or entity submitting the

comments. Filers submitting comments containing no BCI should name their file using the name of the person or entity submitting the comments.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files.

As noted, USTR strongly urges submitters to file comments through *Regulations.gov*. If alternative arrangements are essential, you must make them before transmitting a comment and in advance of the applicable deadline, with Yvonne Jamison at (202) 395–3475.

USTR will place comments in the docket for public inspection, except BCI. General information concerning USTR is available at *www.ustr.gov.*

Edward Gresser,

Chair of the Trade Policy Staff Committee, Office of the United States Trade Representative.

[FR Doc. 2020–06041 Filed 3–20–20; 8:45 am]

BILLING CODE 3290–F0–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2020–0046]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Aircraft Registration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew a previously approved information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 15, 2020. The FAA uses the information collected to register aircraft or hold an aircraft in trust. The information to register and prove ownership of an aircraft is required from any person wishing to register an aircraft.

DATES: Written comments should be submitted by April 22, 2020.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Bonnie Lefko by email at: *bonnie.lefko@faa.gov;* phone: 405–954–7461.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0042.

Title: Aircraft Registration.

Form Numbers: AC Forms 8050–1, 8050–1B, 8050–2, 8050–4, 8050–88, 8050–88A, 8050–98 and 8050–117.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 15, 2020 (85 FR 2481). Public Law 103–272 states that all aircraft must be registered before they may be flown. It sets forth registration eligibility requirements and provides for application for registration as well as suspension and/or revocation of registration. The FAA uses the information collected to register an aircraft or hold an aircraft in trust. The information requested is required to register and prove ownership.

Respondents: Approximately 162,176 registrants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 32 minutes.

Estimated Total Annual Burden: 135,457 hours.

Issued in Oklahoma City, OK, on March 18, 2020.

Bonnie Lefko,

Program Analyst, Civil Aviation Registry, Aircraft Registration Branch, AFB–710.

[FR Doc. 2020–06039 Filed 3–20–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2017 0084; Notice No. 2018–14]

Hazardous Materials: Termination of M-Number and R-Number Approvals Issued Without an Expiration Date

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: All R-number holders and holders of M-number approvals issued without an expiration date that did not show cause why their approvals should not be terminated, or did not apply for a modification of that approval to get a 5-year expiration time frame in response to the **Federal Register** Notice issued Friday, November 17, 2017, [Docket No. PHMSA–2017–0084; Notice No. 2017–03], are hereby notified that these approvals shall be terminated, 30 days from the publication of this **Federal Register** Notice.

FOR FURTHER INFORMATION CONTACT: Duane Cassidy, Acting Director, Approvals and Permits Division, Office of Hazardous Materials Safety, (202) 366–5794 PHMSA, 1200 New Jersey Avenue SE, Washington, DC 20590 or at *approvals@dot.gov.*

Correspondence regarding the proposed M-number and R-number terminations should be sent to *approvals@dot.gov* with the subject line ''Termination of M-numbers/Termination of R-numbers.''

SUPPLEMENTARY INFORMATION:

I. Introduction

PHMSA is terminating M-number and R-number approvals discussed in the **Federal Register** Notice issued Friday, November 17, 2017 (82 FR 54465) to streamline all approvals issued by the Approvals and Permits Division. R-number and M-number approvals that were issued without an expiration date, whose holders have not shown cause why their approval should not be terminated or applied for a modification to get a 5-year expiration date, are terminated effective January 1, 2020.

PHMSA originally proposed that termination of these approvals would take effect one year from the publication date of the Notice. The Notice, and the comments received by PHMSA, are available on regulations.gov in Docket No. PHMSA–2017–0084.

II. Background

M-number approvals are issued to companies that manufacture or recondition packaging related to hazardous materials to show that the manufacturer holds a registered M Number symbol. This number is used for identification purposes in place of the manufacturer or reconditioner's name and address, as authorized in 49 CFR 178.503. In previous years, PHMSA issued reconditioner approvals, known as an ''R-number,'' to companies that reconditioned packages related to hazardous materials. PHMSA no longer issues R-number approvals and now issues M-number approvals in their place. Prior to 2010, M-number and R-number approvals were issued without expiration dates.

On November 17, 2017, PHMSA issued a **Federal Register** Notice proposing to terminate R-number and M-number approvals without expiration dates, if approval holders did not modify their approvals or show cause why their approvals should not be terminated as provided for in 49 Code of Federal Regulations (CFR) § 107.713(c)(1). See 82 FR 54465.

Taking this action will allow PHMSA to regularly review approval documents and track changes. It will ensure that all applicants are subject to the same renewal timelines and requirements to contact PHMSA when pertinent information pertaining to the approval holder, such as operating status and facility locations, has changed.

PHMSA has communicated the details of Notice No. 2017–03 with the regulated community, utilizing various methods (webinars, brochures/pamphlets, YouTube presentations). National Tank Truck Carriers (NTTC) commented, requesting that PHMSA immediately suspend, modify or remove the posting and the opportunity to comment on the policy be given to industry prior to its implementation. PHMSA communicated with NTTC via teleconference meeting. NTTC mistakenly assumed that the **Federal Register** Notice would affect the Repair/Rebuild R-Stamp certification issued by ASME for cargo tank repair. PHMSA explained that this program would be unaffected by the **Federal Register** Notice and NTTC officially submitted a withdrawal of their comments from the docket.

PHMSA also interacted with The Sporting Arms and Ammunition Manufacturers' Institute (SAAMI) and the Industrial Packaging Alliance of North America (IPANA). SAAMI opposed the addition of an expiration date, as this would come with the added responsibility of renewal by the applicants. They also questioned PHMSA's action, believing it would affect the M-number marking, as this would cause economic hardship to its members. IPANA contacted PHMSA by phone and questioned whether the announcement covered registration symbols previously grandfathered into the database.

After review of the correspondence received, PHMSA responded with verbal and/or written communications to each of the commenters. PHMSA made SAAMI aware that PHMSA was not changing the marking requirements and that the addition of expiration dates to approvals and permits was initiated as part of PHMSA's 2010 action plan following an audit of Approvals and Permits. As a result, PHMSA implemented expiration dates on all approvals and permits, except for classification approvals. PHMSA also hosted representatives from SAAMI at its headquarters on two separate occasions, once in December of 2017 and again in August of 2018. SAAMI is opposed to the addition of expiration dates on M Number approvals, as they believe that it will impose an administrative burden on their members. On both occasions, PHMSA answered questions in relation to the reasoning for the addition of expiration dates and SAAMI's concern that it would cause hardship to its members due to the responsibility of renewal and maintenance of approval documents. PHMSA expressed that the administrative burden would be minimal, due to a simple application process consisting of a short email submission including information pursuant to 49 CFR 107.705. Additionally, as this is a registration process, no onsite inspection or fitness action would be required prior to issuance. PHMSA also noted that this effort was to increase the reliability of its data, track out of business companies to limit resource drain on its investigators, and ensure changes to ownership, addresses, and name changes of approval holders are kept up to date as required. PHMSA also explained that expiration dates on approvals allow PHMSA to re-evaluate the need for the approval and the continued fitness of approval holders at regular intervals.

IPANA contacted PHMSA by phone in 2017, and inquired as to whether this cancellation applied to all M Numbers, even those with an expiration date. PHMSA responded to IPANA that the notice applied to all R Number approvals and existing M Number approvals without an expiration date. PHMSA also noted that it was PHMSA's intent to cover registered symbols further under a separate **Federal Register** Notice as there are other issues that need to be addressed concerning the use of one approval for several locations. This action is being reviewed by PHMSA and will be initiated at a future date under a separate **Federal Register** Notice. However, PHMSA also made clear that if an original approval authorizing a grandfathered symbol does not have an expiration date, it will require one.

Subsequently, PHMSA indicated that it would provide increased outreach efforts on the **Federal Register** Notice regarding M-number and R-number approvals and would host a question and answer webinar on the proposed changes prior to Summer 2018. PHMSA hosted a webinar on May 21, 2018 to provide additional information on the M-Number and R-Number Program **Federal Register** Notice. PHMSA had 20 entities participate including stakeholders from several companies and associations in the hazmat community. A recording of the material covered was posted on PHMSA's web page on June 30, 2018.

III. Action

PHMSA is granting an extension of the November 17, 2018 show cause deadline and termination date proposed in the Notice. Holders of R-number and M-number approvals issued without an expiration date that have not shown cause why their approvals should not be terminated as provided in 49 CFR 107.713(c)(1), or have not applied for a modification of their approval in accordance with 49 CFR § 107.705 30 days after the posting of this notice are hereby informed that effective 30 days from the issuance of this notice, these approvals are terminated. The extension of the termination date was to allow for sufficient time to respond to comments from the public and provide outreach on the proposed action.

A holder of an M-number or R-number approval that is terminated according to this Notice may request that the Associate Administrator for the Office of Hazardous Materials Safety reconsider the termination. Pursuant to 49 CFR 107.715, such a request must: (1) Be in writing and filed within 20 days of the date of termination; (2) state in

detail any alleged errors of fact and law; (3) enclose any additional information needed to support the request to reconsider; and (4) state in detail the modification of the final decision sought. This notice serves as service of process pursuant to 49 CFR § 105.35(a)(3).

Issued in Washington, DC, on March 18, 2020, under the authority of 49 U.S.C. 5101–5128, as delegated in 49 CFR part 107.

William S. Schoonover,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2020–06040 Filed 3–20–20; 8:45 am]

BILLING CODE 4909–60–P

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group, Notice of Meeting—Cancellation

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that a meeting of the Special Medical Advisory Group (the Committee) that was scheduled for March 20, 2020 has been postponed. Details on a future meeting will be posted at a later date.

Dated: March 17, 2020.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2020–05990 Filed 3–20–20; 8:45 am]

BILLING CODE P

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Part II

Department of Homeland Security

Transportation Security Administration

49 CFR Parts 1500, 1520, et al.

Security Training for Surface Transportation Employees; Final Rule

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Parts 1500, 1520, 1570, 1580, 1582, and 1584

[Docket No. TSA–2015–0001]

RIN 1652–AA55

Security Training for Surface Transportation Employees

AGENCY: Transportation Security Administration, DHS.

ACTION: Final rule.

SUMMARY: The Transportation Security Administration (TSA) is requiring owner/operators of higher-risk freight railroad carriers, public transportation agencies (including rail mass transit and bus systems), passenger railroad carriers, and over-the-road bus companies, to provide TSA-approved security training to employees performing security-sensitive functions. The training curriculum must teach employees how to observe, assess, and respond to terrorist-related threats and/or incidents. Additionally, TSA is expanding its requirements for security coordinators and reporting of significant security concerns (currently limited to rail operations) to include bus operations within the scope of the regulation's applicability. TSA is amending other provisions of its regulations, as necessary, to implement these requirements.

DATES:

Effective date: This rule is effective June 22, 2020.

Compliance date: In general, compliance schedules are indicated in this rule. The requirements in 49 CFR 1570.201 must be met no later than July 29, 2020.

FOR FURTHER INFORMATION CONTACT: Harry Schultz (TSA, Security Policy and Industry Engagement, Surface Division) or David Kasminoff (TSA, Senior Counsel, Regulations and Security Standards) at telephone (571) 227–5563, or email to *SecurityTrainingPolicy@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Document

An electronic copy can be obtained using the internet by—

(1) Searching the electronic Federal Docket Management System (FDMS) web page at *http://www.regulations.gov;*

(2) Accessing the Government Printing Office's web page at *http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR* to view the daily published **Federal Register** edition; or accessing the ''Search the Federal Register by Citation'' in the ''Related Resources'' column on the left, if you need to do a Simple or Advanced search for information, such as a type of document that crosses multiple agencies or dates.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires TSA to comply with small entity requests for information and advice about compliance with statutes and regulations within TSA's jurisdiction.[1] Any small entity that has a question regarding this document may contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Persons can obtain further information regarding SBREFA on the Small Business Administration's web page at *https://www.sba.gov/category/advocacy-navigation-structure/regulatory-policy/regulatory-flexibility-act/sbrefa.*

Abbreviations and Terms Used in This Document

Amtrak—National Railroad Passenger Corporation
APTA—American Public Transportation Association
CDL—Commercial Driver's License
DHS—Department of Homeland Security
DOT—Department of Transportation
FRA—Federal Railroad Administration
FTA—Federal Transit Administration
GAO—U.S. Government Accountability Office
HSA—Homeland Security Act of 2002
HTUA—High Threat Urban Area
IED—Improvised Explosive Device
MOU—Memorandum of Understanding
NSI—Nationwide Suspicious Activity Reporting (SAR) Initiative
OMB—Office of Management and Budget
OSHA—Occupational Health and Safety Administration
OTRB—Over-the-Road Bus
PHMSA—Pipeline and Hazardous Materials Safety Administration
PRA—Paperwork Reduction Act of 1995
PTPR—Public Transportation and Passenger Railroads
RFA—Regulatory Flexibility Act of 1980
RIA—Regulatory Impact Analysis
RSC—Rail Security Coordinator
RSSM—Rail Security-Sensitive Material
SBA—Small Business Administration
SBREFA—Small Business Regulatory Enforcement Fairness Act of 1996
SSI—Sensitive Security Information
TSA—Transportation Security Administration
TSSM—Transportation Security-Sensitive Material
UASI—Urban Area Security Initiative
UMRA—Unfunded Mandates Reform Act of 1995
VBIED—Vehicle-Borne Improvised Explosive Device

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[1] Public Law 104–121, 110 Stat. 857 (Mar. 29, 1996).

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I. Executive Summary and Background

A. Statutory Mandate

Following the attacks of September 11, 2001, Congress created TSA under the Aviation and Transportation Security Act (ATSA) and established the agency's primary Federal role to enhance security for all modes of transportation.[2] The scope of TSA's authority includes assessing security risks, developing security measures to address identified risks, and enforcing compliance with these measures.[3] TSA also has broad regulatory authority to issue, rescind, and revise regulations as necessary to carry out its transportation security functions.[4]

As part of the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act),[5] Congress mandated regulations to enhance surface transportation security through security training of frontline employees. The mandate includes prescriptive requirements for who must be trained, what the training must encompass, and how to submit and obtain approval for a training program.[6] The 9/11 Act also mandates regulations requiring higher-risk railroads and over-the-road buses (OTRBs) to appoint security coordinators.[7] In addition to implementing these provisions, this final rule also addresses a mandate to define Transportation Security-Sensitive Materials.[8]

B. Benefits of Requiring Security Training

TSA is issuing this rule pursuant to its authority and responsibility over the security of the nation's transportation systems. TSA fulfills its transportation security mission in partnership with its industry and government stakeholders. As noted in the 2018 *National Strategy for Counterterrorism in the United States:*

> The critical infrastructure of the United States—much of which is privately owned—provides the essential goods and services that drive American prosperity. Coordinated efforts are, therefore, necessary to strengthen and maintain secure and resilient critical infrastructure and to prepare Americans to respond appropriately should an attack occur. By integrating and improving preparedness across all levels of government as well as the private and public sectors, we will stop terrorists from undermining our security and prosperity.[9]

Consistent with this strategy, the purpose of this rule is to solidify the baseline of security for higher-risk surface transportation operations by improving and sustaining the preparedness of surface transportation employees in higher-risk operations, including their critical capability to observe, assess, and respond to security risks and potential security breaches within their unique working environment. In developing this rulemaking, TSA recognizes private sector capabilities, voluntary initiatives, and other Federal requirements to raise security within distinct surface transportation operations. By integrating these efforts, setting a national standard for surface transportation employee security training, and ensuring this training is sustained across higher-risk operations, this rule promotes national security in alignment with the intent of the 9/11 Act and the *National Strategy.*

The rule accomplishes this purpose by requiring higher-risk public transportation systems, railroad carriers (passenger and freight), and OTRB owner/operators to prepare and train their employees performing security-sensitive job functions. Through security training, employees will have the capability to identify, report, and appropriately react to suspicious activity, suspicious items, dangerous substances, and security incidents that may be associated with terrorist reconnaissance, preparation, or action. TSA believes this training may be the critical point for preventing a terrorist act and mitigating the consequences.

In order to ensure effective communication regarding threats (both to regulated parties and from regulated parties), TSA is also expanding applicability of current requirements for rail operations to have security coordinators and report security incidents to TSA. With this rulemaking,

[2] Public Law 107–71, 115 Stat. 597 (Nov. 19, 2001). ATSA created TSA as a component of the Department of Transportation (DOT). Section 403(2) of the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135 (Nov. 25, 2002), transferred all functions related to transportation security, including those of the Secretary of Transportation and the Under Secretary of Transportation for Security, to the Secretary of Homeland Security. Pursuant to DHS Delegation Number 7060.2, the Secretary delegated to the Administrator, subject to the Secretary's guidance and control, the authority vested in the Secretary with respect to TSA, including the authority in sec. 403(2) of the HSA.

[3] *See* 49 U.S.C. 114, which codified section 101 of ATSA.

[4] 49 U.S.C. 114(l)(1).

[5] Public Law 110–53, 121 Stat. 266 (Aug. 3, 2007).

[6] *See* secs. 1408, 1517, and 1534 of the 9/11 Act, codified at 6 U.S.C. 1137, 1167, and 1184, respectively.

[7] *See* secs. 1512 and 1531 of the 9/11 Act, codified at 6 U.S.C. 1162 and 1181, respectively. TSA addresses 1512(e)(1)(A) and 1531(e)(1)(A) in this rulemaking. TSA intends to address the other regulatory requirements of these provisions in separate rulemakings.

[8] *See* sec. 1501 of the 9/11 Act, codified at 6 U.S.C. 1151.

[9] *See* The White House, *National Strategy for Counterterrorism in the United States,* at 19 (Oct. 2018), available at *https://www.dni.gov/files/NCTC/documents/news_documents/NSCT.pdf* (last accessed Nov. 26, 2018) (*National Strategy*).

the applicability for this requirement is expanded to include any owner/operator required to provide security training. Requiring higher-risk owner/operators to have security coordinators and report significant security concerns to TSA will enhance TSA's ability to recognize trends and communicate directly with individuals within higher-risk operations that have direct responsibility for security.

C. Costs of This Final Rule

Table 1 identifies TSA's estimates for the overall cost of this rule.

TABLE 1—COST OF FINAL RULE

	Estimated costs (over 10 years, discounted at 7 percent)
Freight Railroads	$25.09 million.
Public Transportation and Passenger Railroads (PTPRs).	17.12 million.
OTRBs	8.06 million.
TSA	2.03 million.
Total	52.30 million.

D. Organization of This Final Rule

Subchapter D of chapter XII of title 49, ''Maritime and Surface Transportation Security'' [10] (Subchapter D), includes security program requirements for surface transportation, including the requirements in this final rule. Before this final rule, Subchapter D included requirements relevant to two vetting programs (the Transportation Worker Identification Credential (TWIC) and Hazmat Material Endorsement (HME), as well as certain rail security requirements, including chain of custody for Rail Security-Sensitive Materials (RSSM), appointment of security coordinators, and reporting security issues.

This final rule (1) adds requirements for security training for certain surface transportation owner/operators; (2) expands applicability of the security coordinator and reporting security issue requirements to include higher-risk bus operations; and (3) adds other miscellaneous provisions necessary for implementation of a new regulatory program.

To incorporate these new elements, TSA is organizing Subchapter D as follows.

- Part 1570 is divided into four subparts: (1) Subpart A includes requirements generally applicable to all aspects of subchapter D; (2) subpart B includes security program requirements consistently relevant to multiple modes; (3) subpart C includes operational requirements consistently applicable to multiple modes; and (4) subpart D moves and consolidates general provisions related to security threat assessments (STAs) which are more specifically addressed in part 1572. As noted below, mode-specific requirements are contained in subsequent parts.
- Part 1580 is modified to limit requirements applicable to rail security. This part includes operational requirements unique to freight railroads and rail hazardous materials shippers/receivers (such as chain of custody) [11] and modal-specific security training requirements for freight railroads. The requirements for appointment of security coordinators and reporting security issues are moved to part 1570 and several definitions are moved to part 1500.
- Part 1582, a new part entitled ''Public Transportation and Passenger Railroad Security,'' includes modal-specific security training requirements for public transportation system and passenger railroads (PTPR). The requirements for appointment of security coordinators and reporting security issues applicable to PTPR rail operations are moved to part 1570 and several definitions are moved to part 1500.
- Part 1584, a new part entitled, ''Highway and Motor Carrier Security,'' includes modal-specific security training requirements for OTRB owner/operators.

Owner/operators subject to the requirements of this final rule will need to address the requirements in part 1570 as well as the requirements applicable to their respective mode in parts 1582 through 1584. Sections II through IV, which follow, provide a comprehensive discussion of these requirements as they will be implemented, rather than a sequential section-by-section analysis. Section II addresses general programmatic requirements, including: Applicability determinations, which employees must be trained, content of training, and the required training schedule. Section III discusses operational requirements, such as the requirement for security coordinators and reporting of security incidents. Section IV provides the procedural requirements for submission and approval of a security training program, amendments to the program, and recordkeeping requirements. This section also includes a table that summarizes the compliance deadlines owner/operators must meet. Section V discusses other revisions to TSA's regulations that result from adding these new requirements to Subchapter D.[12]

This final rule includes TSA's responses to comments received on the NPRM. Section VI includes a chart summarizing the minimal changes between the NPRM and final rule. Section VII provides TSA's responses to comments on the NPRM.

Section VIII includes the rulemaking analysis and notices. This analysis includes any changes in the impact estimates between the NPRM and the final rule and the basis for those changes.

II. Security Program Requirements

A. Who must provide security training?

Consistent with TSA's commitment to a risk-based approach to transportation security, the requirements of this rule only apply to higher-risk operations. A higher-risk operation is one that meets the criteria in §§ 1580.101 (freight railroads), 1582.101 (PTPR), and 1584.101 (OTRB). These criteria are used to identify operations with a relatively higher-risk of being targeted or used by terrorists. While there are approximately 10,000 surface transportation operations, approximately 300 of them currently meet the criteria.[13]

While the requirements of this rule are limited to higher-risk operations, TSA encourages all owner/operators to consider implementing the security training program required by this rule, modified and adapted to their operations, as appropriate. TSA will ensure resources developed for regulated owner/operators, such as TSA-created training materials, are available to owner/operators of non-higher-risk operations who are committed to enhancing security through improving the security awareness of employees.

TSA's applicability criteria for freight railroads, PTPR, OTRB, and certain business operations are as follows.

1. Freight Railroads (§ 1580.101)

A freight railroad owner/operator must provide security training if it is: (a)

[10] TSA is modifying the title of this subchapter, changing it from ''Maritime and Land Transportation Security'' to ''Maritime and Surface Transportation Security.''

[11] *See* Rail Transportation Security Final Rule (Rail Security Rule), 73 FR 72130, (Nov. 26, 2008).

[12] The discussion does not address provisions that are moved, as discussed above, but not modified.

[13] A full discussion of TSA's analysis and considerations in making its determination and developing the applicability criteria can be found in the NPRM. *See* 81 FR at 91355 *et seq.* (section III.F. of the NPRM).

Designated as Class I; [14] (b) transports RSSM in one or more of the areas listed in current Appendix A to 49 CFR part 1580; [15] and/or (c) hosts a higher-risk rail operation (including freight railroads and the intercity or commuter systems identified in § 1582.101). The flowchart in Figure 1 summarizes when a freight railroad owner/operator must provide security training and when this training is recommended by TSA. TSA estimates the requirements of this rule currently apply to 33 freight railroads.

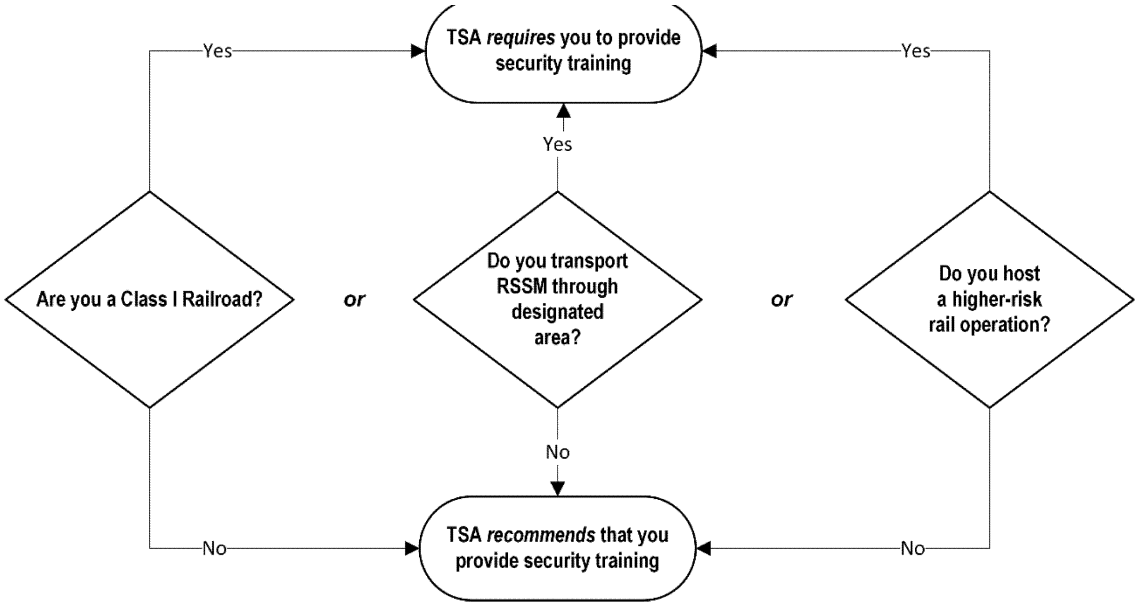

Figure 1. Freight Railroad Applicability Flow Chart

2. Public Transportation and Passenger Railroads (§ 1582.101)

A public transportation agency or passenger railroad must provide security training if it is (a) one of the 46 identified PTPR systems listed in 49 CFR part 1582, Appendix A; (b) Amtrak; or (c) hosts a higher-risk freight railroad. DHS consistently identifies the eight regions where the 46 systems operate as having the highest transit-specific risk. Applying the rule's requirements to these systems corresponds to providing enhanced security for more than 80 percent of all PTPR passengers.

3. Over-the-Road Buses (§ 1584.101)

An OTRB owner/operator must provide security training if it provides fixed-route service to, through, or from any of ten areas identified in 49 CFR part 1584, Appendix A. These ten areas receive the highest funding allocation under the FY 2018 Urban Area Security Initiative (UASI) grant program (87 percent of the total available funding).[16] TSA estimates that this rule will apply to approximately 205 OTRB owner/operators.

The determining factor for whether a fixed-route OTRB owner/operator is within the scope of the rule is not where they are headquartered, but where they provide service. In deciding to rely on where the owner/operator provides service, rather than corporate headquarters locations, TSA considered factors that could make an OTRB a potential target for a terrorist attack, including (1) its visibility (the size of its operations); (2) the extent to which its schedule is publicly available; (3) whether or not it is relatively easy for unknown individuals to board the bus; (4) and whether the bus will have ease of access to high-consequence locations.

TSA is aware that some private companies provide commuter services that may trigger applicability of the rule. Figure 2 provides a flowchart to assist companies with determining if the security training requirements apply.

[14] The Surface Transportation Board defines a Class I railroad as one with annual operating revenue in excess of $447,621,226 (adjusted for inflation).

[15] *See* § 1580.3 for definition of RSSM.

[16] UASI funds are allocated based on a risk methodology employed by DHS and the Federal Emergency Management Agency (FEMA). For the list of UASI allocations for the FY 2018 UASI grant program, which is administered by FEMA as part of the larger Homeland Security Grant Program, see the FY 2018 Homeland Security Grant Program Notice of Funding Opportunity, Appendix A at *https://www.fema.gov/media-library-data/1526578809767-7f08f471f36d22b2c0d8afb848048c96/FY_2018_HSGP_NOFO_FINAL_508.pdf.*

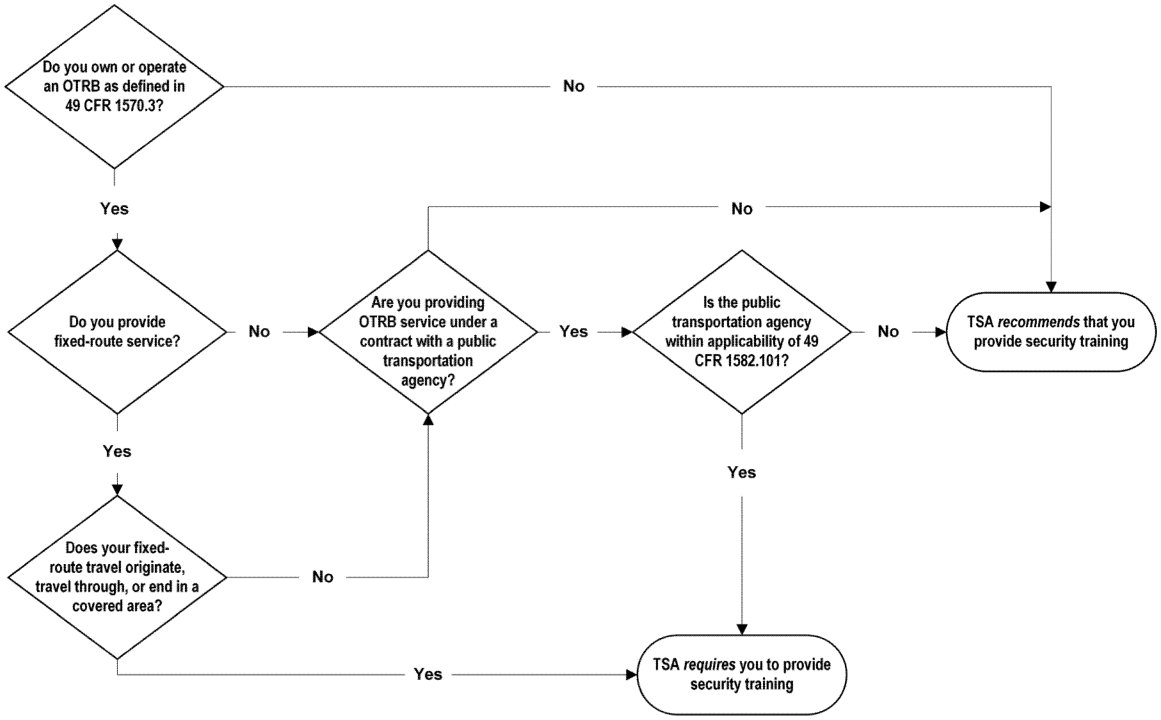

Figure 2. Commuter Bus Service Applicability Flowchart

4. Impact on Certain Business Operations

Parent corporations and subsidiaries. While the criteria for higher-risk determinations presumes similarities for operations within each mode,[17] TSA recognizes there are other considerations that could affect applicability, particularly related to subsidiaries. As discussed in section III.F of the NPRM,[18] TSA is limiting the requirements to the level of the subsidiary whose operations fit the applicability criteria identified in the rule.

During the review and approval process of the security training program, TSA will work with owner/operators to address any compliance issues based on corporate structure. For example, owner/operator A may be organized to make each regional area a separate subsidiary. As such, only the subsidiary that meets the applicability requirements must develop a security training program. Owner/operator B may be a single entity for purposes of corporate-legal structure with branches, rather than subsidiaries, providing service on specific routes. Under this rule, the entire corporation is subject to the requirements based on the operations of one route. In this situation, owner/operator B could choose to submit a proposed alternative to limit application of the requirements to branches and a handful of headquarters or other regional employees that provide operational support. The submission requirements and procedures for requesting alternative measures are discussed in section IV.

Foreign owner/operators. While the applicability provisions for security training do not specifically reference foreign owner/operators, the requirements apply to employees performing a security-sensitive function ''. . . in the United States or in direct support of the common carriage of persons or property between a place in the United States and any place outside the United States.'' Therefore, the training requirements of this rule apply to both domestic owner/operators and foreign owner/operators with employees performing covered functions within the United States or in support of operations within the United States. For example, the rule may apply to a Canadian OTRB owner/operator offering fixed-route service that begins at a point in Canada and transits through an area identified in part 1584, Appendix A before concluding at a point in Mexico. Even if only one employee (for example, the driver), performs a security-sensitive function while physically in the United States, applicability is triggered by the route. The Canadian OTRB owner/operator would be required to have a security training program and provide the required training to the driver and any other employee performing a security-sensitive function that supports the operations transiting through higher-risk regions in the United States (such as individuals providing maintenance or inspection services and dispatch information applicable to the covered route). Once applicability is triggered, it is irrelevant where the OTRB owner/operator's company is located or where the function is being performed (whether the employee is performing the security-sensitive function at a location in Canada or along the route in the United States).

In addition, while foreign owner/operators providing service in the United States are required to have a security coordinator and alternate, foreign owner/operators are only required to report potential threats and significant security concerns for operations in the United States or transportation to, from, or within the United States. A similar requirement currently applies to foreign freight railroad owner/operators under 49 CFR part 1580. This approach is also consistent with that taken by the Federal Railroad Administration (FRA).

Hosting relationships. TSA recognizes that joint operations are common within the rail industry and include agreements

[17] *See* discussion on applicability at 81 FR 91355 *et seq.* (sec. III.F. of NPRM).

[18] 81 FR at 91355.

such as hosting. In a hosting relationship, the ''host railroad'' owns the track and exercises operational control of the movement of trains of other railroads (the ''tenant'' railroads) while they are using that track.

Under this rule, both the host and tenant railroads are required to have a training program that appropriately addresses the ramifications of the hosting relationship. For example, the host railroad's training program will need to address the operational considerations of the hosting relationship, such as training dispatchers on their role and responsibilities in halting the tenant railroad's operations over a segment of track where there is a potential threat (such as a suspected improvised explosive device (IED) or tampering with infrastructure). Similarly, a tenant railroad subject to the security training requirements of 49 CFR part 1582 (PTPR), will need to address the operational considerations of the hosting relationship, such as instructing its train and engine employees on the proper communication procedures to follow when a potential threat is identified. Under either example, the host and tenant railroad owner/operators are only responsible for training their own employees.

Contracted services. Contracted services may involve joint operation pursuant to specific terms, but are different from hosting relationships. For example, some commuter passenger train services are owned by public transportation agencies, but the agency has a contract with a private company (such as a freight railroad) to operate the train. This is not a hosting relationship.

When inspecting compliance by participants in this type of a contracted services agreement, TSA will consider the freight railroad carrier (the private company/contractor) to be an authorized representative of the PTPR owner/operator (the owner/operator of the passenger train service). TSA will hold the PTPR owner/operator primarily responsible for compliance and for ensuring that all security-sensitive employees receive the required training, whether they are employed directly by the PTPR owner/operator or contractor. The PTPR owner/operator must train the freight railroad carrier's employees performing security-sensitive functions related to the passenger train service.

To the extent the contract between the PTPR owner/operator and the freight railroad includes a provision for the freight railroad to train its own employees, the passenger operation is responsible for documenting satisfaction of the training requirements within its TSA-approved-security training program. TSA will expect the passenger operation to clearly state in its security training program, as part of the submission process under 49 CFR 1570.109, that the freight railroad carrier will conduct the training and provide the required information on that training.

Regardless of how the parties define who will do what, TSA has authority to inspect both parties' operations for compliance. The regulated party is primarily responsible, but TSA has authority to initiate enforcement actions for non-compliance against either party based upon a fact-specific determination. While TSA historically initiates enforcement actions against the regulated entity, we have begun to look more closely at authorized representative/contractual relationships in our effort to address the root cause of noncompliance.

B. Who is responsible for determining whether a specific owner/operator is subject to the requirements of the rule (applicability determinations)? (§ 1570.105)

Owner/operators are required to use the criteria in 49 CFR parts 1580, 1582, and 1584 (contained in a subpart B to each part) to determine whether their operations are higher-risk. If the operations meet the criteria, the requirements of this rule apply. Under § 1570.105(a), owner/operators must notify TSA within 30 days of the effective date of this final rule if they meet the criteria for applicability. This obligation also applies to new and modified operations (commencing after publication of the final rule). Under § 1570.105(b), owner/operators must notify TSA no later than 90 calendar days before commencing operations or implementing modifications triggering applicability of the requirements.

While the rule requires owner/operators to determine whether the criteria apply, TSA is aware of the operations that are likely to be within the scope of applicability. TSA may initiate a compliance investigation if an owner/operator fails to self-identify within the required period.

To mitigate the likelihood of an owner/operator failing to comply based upon lack of recognition of the applicability for these requirements, TSA will use a variety of communication strategies to notify regulated parties that are likely to meet the applicability criteria. For example, TSA will use email to immediately notify its key stakeholder points of contact regarding publication of this final rule. In addition to these established information sharing mechanisms, TSA also conducts regular calls, workshops, and meetings with major industry partners and trade associations. TSA's surface representatives also work closely with surface-system owner/operators during industry-led security work groups, conferences, roundtables, and other sector-specific government coordination meetings. TSA plans to use all of these mechanisms to notify relevant industry partners of the new requirements.

C. Which employees must receive security training? (§§ 1580.115(a), 1582.115(a) and 1584.115(a))

Any owner/operator required to have a security training program under §§ 1580.101, 1582.101, or 1584.101, must provide security training to all security-sensitive employees. Security-sensitive employees include any direct employee, contractor, employee of a contractor, or other authorized person who is compensated for performing a security-sensitive function on behalf of or for the benefit of the owner/operator.[19] For example, if an OTRB owner/operator does not employ any drivers directly, but uses drivers under contract, these drivers will need to be trained. Similarly, if an owner/operator has chosen to combine dispatch services with any affiliates of its parent corporation, the owner/operator required to provide security training to its direct employees will also be required to provide security training to any dispatchers providing services for its fleet.

D. How does an owner/operator determine if someone is a security-sensitive employee? (§§ 1580.3, 1582.3, and 1584.3)

Definitions of mode-specific ''security-sensitive employees'' are included in §§ 1580.3 (freight rail), 1582.3 (PTPR), and 1584.3 (OTRB), with additional detail regarding job functions provided in mode-specific tables published as appendices to parts 1580,[20] 1582, and 1584. As discussed in section III.E. of the NPRM, ''security-sensitive employees'' are individuals who perform functions with a direct nexus to, or impact on, transportation

[19] *See* § 1570.3 for the definition of an ''employee.''

[20] The table in part 1580 Appendix B is unique in that it includes examples of the job titles related to these functions based on historic use of these terms for railroads. The job titles, however, are provided solely as a resource to help understand the functions described; whether an employee must be trained is based upon the function, not the job title.

security.[21] These functions fall into the following categories: (1) Operating a vehicle; inspecting and maintaining vehicles; (2) inspecting or maintaining building or transportation infrastructure; (3) controlling dispatch or movement of vehicles; (4) providing security of the owner/operator's equipment and property; (5) loading or unloading cargo or baggage; (6) interacting with travelling public (on board a vehicle or within a transportation facility); and (7) complying with security programs or measures, including those required by Federal law (a catch-all category that includes a small number of employees such as security coordinators and any other individuals who may have responsibility for carrying out aspects of the owner/operator's security program or other security measures who are not otherwise identified in the previous categories).

The requirements also apply to managers, supervisors, or others who perform a security-sensitive function or who so directly supervise the performance of such a function that their nexus is equivalent to the security-sensitive employee.[22] For example, a yardmaster in freight railroad operations is considered a security-sensitive employee because he or she directs security-sensitive functions, even if not in the direct management chain of all individuals performing these functions. At the same time, individuals within a corporate structure who neither perform a security-sensitive function nor have direct management responsibilities over individuals who do are unlikely to have a position within the corporation with a significant nexus to the transportation operations of the business (such as accounting functions). To the extent there are such individuals in the management structure, they will not be considered ''security-sensitive'' employees.

In some circumstances, security-sensitive functions may be performed by individuals not within the definition of ''employee.'' For example, police officers employed by a local law enforcement agency may be routinely patrolling the owner/operator's premises and/or operations, but do not work directly for, or under contract to, the owner/operator. Owner/operators are not required to provide training to these individuals. To the extent, however, these individuals work in the same environment as security-sensitive employees, TSA encourages owner/operators to make their training materials and sessions available. Providing awareness of training content to local law enforcement personnel regularly assigned to patrols at locations where security-sensitive employees work can enhance communication and cooperation in response to potential threats or actual terrorist-related incidents.

The law enforcement agency or personnel may be considered security-sensitive employees of the owner/operator if, for example, there is a contractual relationship for the law enforcement agency to provide services to the owner/operator and the law enforcement officer is assigned to that location by the owner/operator. Similarly, where the owner/operator has a dedicated police or security force who are employees of the owner/operator, these individuals are security-sensitive employees who must be trained under this rule.

TSA encourages owner/operators to consider other employees within their corporate structure or business operations who may not be performing a security-sensitive function as identified in the rule, but who could provide an additional layer of security if they received security training. Furthermore, if an owner/operator identifies positions or functions not listed by TSA as security-sensitive, but which have the nexus to transportation security that is intended to be covered by the rule, TSA encourages the owner/operator to identify and include these employees within its security training program.

E. Can untrained security-sensitive employees perform security-sensitive functions? (§§ 1580.115(b), 1582.115(b), and 1584.115(b))

If a security-sensitive employee does not receive the required security training, this employee is prohibited from performing a security-sensitive function without the direct supervision of an employee who has met the training requirements applicable to that security-sensitive function. While TSA is not defining ''direct,'' TSA expects the supervisor to be located in reasonable proximity to the employee to supervise actions and provide the necessary level of security awareness and response capabilities.

Furthermore, even if an employee is directly supervised, TSA imposes a 60-day limit for the amount of time that an employee may perform a security-sensitive function without completing the required training. After 60 days, the rule requires the owner/operator to remove the employee from a security-sensitive function. This requirement does not affect the owner/operators' discretion to reassign the individual to other non-security-sensitive job functions.

F. What topics must be included in the security training? (§§ 1580.115(c)–(f), 1582.115(c)–(f), and 1584.115(c)–(f))

TSA is requiring a training program that focuses on the specific knowledge provided to security-sensitive employees related to preparedness, observation, assessment and response. As a key aspect of security awareness is the ability to detect anomalies in the operating environment, the rule affords flexibility for owner/operators to develop and implement a program that addresses the above-required components in the context of their unique operational environments.

The ''prepare'' category addresses training on discharging any security responsibilities that security-sensitive employees may have under an owner/operator's existing security plan or security measure. This rule does not require any owner/operator to adopt or implement a security plan or measures, but TSA is aware that many owner/operators have security plans or measures implemented to comply with Federal requirements, to qualify for Federal grants, or as the result of voluntary initiatives. To the extent these plans or procedures exist, employees must be trained in order to ensure they are effective. Similar to the threat and incident prevention and response training, this portion of the training program will need to be tailored to the specific operation.

The ''prepare'' element provides multiple benefits to transportation security and to owner/operators. First, the requirement recognizes that the time when a crisis is occurring is not the time to provide training on how to implement crisis-response measures. Employees need to be prepared in advance, especially if they have responsibilities related to responding to a terrorist incident in order to mitigate the consequences. Second, this training element ensures that training conducted under this rule meets all of the requirements for security training required for ''hazmat employees'' under 49 CFR 172.704(a)(5).[23] Third, this

[21] *See* 81 FR at 91353 *et seq.* for more information on how TSA identifies these employees and how the chosen functions align with requirements in the 9/11 Act.

[22] The definition of ''employee,'' which is in § 1570.3, includes immediate supervisors.

[23] An analysis of the relationship between the Pipeline and Hazardous Materials Safety Administration (PHMSA) required training and the training provided by this final rule can be found in Diagram B of the NPRM. *See* 81 FR at 91364. The relation with other training is also discussed in section II.H. and I. of this preamble.

element also captures specific training for freight railroads related to the requirements in § 1580.115(c) for chain of custody and control requirements, ensuring appropriate procedures are followed to comply with the security requirements in subpart C to part 1580 (which contains the requirements moved from §§ 1580.103 and 1580.107 as a result of this rulemaking).

Finally, the ''prepare'' category captures training that may vary based on the specific nature of an employee's responsibilities. For example, appropriate methods of self-defense may vary based upon an employee's job and extent to which he or she interacts with the public. Similarly, an employee's need to be trained in how to operate and maintain security equipment may be dictated by the employee's responsibilities. Within this category, owner/operators have some flexibility to shape the training to be appropriate for their specific employees and operations. This flexibility allows owner/operators to avoid situations where employees are required to sit through training completely irrelevant to their roles and responsibilities.

TSA intends for the training required in the Observe, Assess, and Respond categories to be relevant to all employees, regardless of their job functions. Training in security awareness and behavior recognition is appropriate for all employees and TSA believes there should be a common level of proficiency on these issues among security-sensitive employees of the owner/operators.

The ''observe'' category is intended to provide knowledge to increase a security-sensitive employee's observational skills. In general, this training focuses on recognizing the difference between what is normal for the operational environment and abnormalities that could indicate terrorist planning or imminent attack. Training delivered should teach the employees that suspicious activity is a combination of actions and individual behaviors that appear strange, inconsistent, or out of the ordinary for the employee's work environment. In most instances, it will not be a single factor, but a combination of factors taking place at a particular time and place, that will accurately identify a suspicious individual or act.

The ''assess'' category requires providing knowledge of how to determine the most appropriate response to what is observed. For example, does the incident require a response and, if so, what is the appropriate response?

The ''respond'' category includes training on security incident responses—including how to appropriately report a security threat, interact with the public and first responders at the scene of a threat or incident, applicable uses of self-defense devices or protective equipment, and communication with passengers. In addition to meeting training requirements enumerated in the 9/11 Act,[24] this category is intended to provide elements of security awareness training required by 49 CFR 172.704(a)(4). To the extent owner/operators need to provide training on specific self-defense devices or protective equipment, TSA has not calculated these costs. Such training is not a cost of this rule based on an assumption that training on the use of self-defense devices and equipment is a standard part of any operation before providing such devices or equipment to individuals.

TSA recognizes that owner/operators may choose, or have chosen, to integrate varying levels of training into their security training programs, such as for particular categories of employees or job functions, to meet the objectives of their overall security program or plan. As noted in section I, TSA intends for this rule to establish and solidify the baseline of security for higher-risk surface transportation operations. To the extent an owner/operator has a program that goes beyond the required baseline, TSA encourages continuation of these efforts as long as the owner/operator can meet the minimum training required by this rule for all security-sensitive employees.

G. Who will provide the security training curriculum? (§§ 1580.113, 1582.113, and 1584.113)?

Owner/operators are required to train security-sensitive employees using curriculum approved by TSA. TSA assumes that many of the owner/operators required to provide security training under this rule already have training programs in place that may substantially comply with the rule's requirements. This assumption is based on TSA's involvement in allocations of grant funding to owner/operators for the development of security training materials, funded through various DHS-grant program appropriations, as well as a comprehensive review of available training materials to determine whether they meet the standards and criteria required by the 9/11 Act. This assumption is also bolstered by certain industry responses to TSA's Notice published in 2013 in which TSA sought public comment and data on current security training practices.[25]

TSA is committed to mitigating the costs of training for all owner/operators through several initiatives. For example, TSA has, and will continue, to identify existing training materials that address the curriculum content requirements identified in the rule and will make this information available to regulated parties.[26] TSA is also developing training materials that meet specific training requirements in this rule. TSA will notify regulated parties as the relevant training materials are completed.

H. Can owner/operators use pre-existing material or other third-party material? (§ 1570.103)

This rule does not require the owner/operator to create their own material or impose limits on the use of third-party material. If, however, owner/operators choose to rely on previously prepared training material, including material developed to satisfy other regulatory requirements, or third-party material, they must incorporate that material into an appendix to their security training program and reference that appendix in the corresponding portions of their security program, as discussed below.

I. How do these requirements relate to other security training required by other Federal or State agencies? (§§ 1580.115(c), 1582.115(c), and 1584.115(c))

TSA recognizes that many owner/operators covered by this rule are subject to training requirements under regulations of the Department of Transportation (DOT) that overlap with the training content required in the 9/11 Act.[27] TSA does not expect owner/operators to duplicate training. To the extent that an owner/operator intends to use existing training programs

[24] Diagram B in the NPRM, *Development Considerations for Requirements in §§ 1580.113, 1582.113, and 1584.11,* provides an analysis of the 9/11 Act's requirements and other considerations incorporated into the four categories of training required by this rule. *See* 81 FR at 91364.

[25] *See Request for Comments on Security Training Programs for Surface Mode Employees,* 78 FR 35945, 35948 (June 14, 2013) (discussion on grant-funded training programs under ''Relation to Other Training Programs''). TSA summarizes the response to the 2013 Notice in this final rule's RIA, Section 1.5. TSA explains in Sections 1.8.2. and 1.8.3. of the RIA how it used information from the responses to the 2013 Notice to assess the level of training in the baseline for PTPR and OTRB owner/operators, respectively.

[26] *See, e.g.,* Example of Security Training Matrix (TSA–2013–0005–0084) available in the docket to this rulemaking at *www.regulations.gov.*

[27] *See* sections III.G.5 and I of NPRM for a discussion of other related training. 81 FR at 91361–91362 and 91364 *et seq.*

implemented to comply with other Federal requirements or other standards in order to satisfy some or all of the requirements of this rule, the program submitted to TSA for approval must identify how the owner/operators intends to use the other training to satisfy TSA's requirements, such as the curriculum or lesson plan for that program. TSA intends to maintain an iterative list available to regulated owner/operators of training programs that have been approved by TSA for use in meeting this rule's requirements.

Paragraph (c)(2) requires an index to be provided if the owner/operator chooses to submit all or part of an existing security training program to TSA for approval. The index must be organized in the same sequence as the content requirements in §§ 1580.115, 1582.115, and 1584.115. Indexing is a necessary requirement if TSA is to provide flexibility for owner/operators to use existing training programs to satisfy this rule. TSA may request additional information on the program through the review and approval process.

J. What is the required schedule for providing training? (§ 1570.111)

1. Initial Training (§ 1570.111(a))

Current employees must be trained within one year of TSA's approval of the security training program. Initial training for new employees or those transitioning to a covered job function (as identified in Appendix B to parts 1580 (freight rail), 1582 (PTPR), and 1584 (OTRB)), must occur within the first 60 days of the date an employee begins to perform a security-sensitive function. In general, this means that an employee must be trained within 60 days of starting in a permanent-employment position that may require performance of a security-sensitive function, whether full or part-time.[28]

Section 1570.111(a)(3) addresses non-permanent employees. Non-permanent employees must receive training within 60 calendar days after employment that meets the definition of a security-sensitive employee. If an individual is employed on an intermittent or non-permanent basis, such as a contractor hired to perform a security-sensitive function for short durations, then the training must take place before the individual's aggregated length of employment by the owner/operator equals 60 calendar days within a consecutive twelve-month period. Training is *not* required if an individual is employed to perform a security-sensitive function one time for less than 60 days. Training *is* required if an individual performs a security-sensitive function for short but repeated durations and the aggregated period of time equals 60 days. TSA recognizes that some owner/operators may choose to train all regular contractors or other individuals employed for short but regular durations rather than having to monitor aggregated days of employment.

In meeting the initial training schedule, TSA expects that many owner/operators will rely on the provisions in § 1570.107, which provide standards for accepting previous training. TSA may allow ''training credit'' to be given for employees who received equivalent security training within one year before the rule's effective date. This training credit may include the following:

- Training on emergency preparedness plans that railroads connected with the operation of passenger trains must implement to address subjects such as communication, employee training and qualification, joint operations, tunnel safety, liaison with emergency responders, on-board emergency equipment, and passenger safety information.
- Training on policies that public transportation agencies implement to ensure safety promotion to support the execution of the Public Transportation Agency Safety Plan required under 49 CFR part 673 for all employees, agents, and contractors of any State, local government authority, or other operator of a public transportation system that receives Federal financial assistance under 49 U.S.C. Chapter 53.
- Training provided through funds granted under the Transit Security Grant Program or other grant programs.

The recordkeeping provisions, discussed below, require an owner/operator to provide current and former employees with documentation upon request of any training completed to meet the requirements of this rule. Options for compliance with this requirement could include providing employees with certificates to validate completed training. Providing employees with documentation of training is particularly relevant for operations such as those in the OTRB industry, where employees (for example, commercial drivers) may work for multiple owner/operators. If an owner/operator can validate an employee has received the required training within the specified timeframe, the training does not need to be repeated. Because of its obligation to ensure all training requirements are met, the current owner/operator is responsible for ensuring that any previous training courses satisfy the rule's requirements and documenting that the training was received within the required timeframe.

Finally, there may be situations where ''dual-hatted'' or other specific-function employees are required to receive security training from other sources as part of their jobs, such as railroad police officers employed by the owner/operator. As indicated above, it is the obligation of the owner/operator to ensure and document the training, including training received under these circumstances.

2. Recurrent Training (§ 1570.111(b))

TSA believes regular recurrent training is essential for transportation employees to maintain a high level of awareness and competency. To ensure this need is met, this rule requires owner/operators to provide the TSA-approved security training curriculum to their security-sensitive employees at least once every three years. This frequency is consistent with the requirements for security training imposed by the Pipeline and Hazardous Material Safety Administration (PHMSA) for hazardous materials employees under 49 CFR part 172.

In addition, consistent with 49 CFR 172.704, if the owner/operator modifies a security program or security plan for which training is required under this rule, the owner/operator must ensure that each security-sensitive employee with position- or function-specific responsibilities related to the revised plan or program changes receives training on the revisions within 90 days of implementation of the revised plan or program changes. This requirement ensures employees responsible for implementing the security program or plan will be trained in a timely manner concerning any changes or revisions to the security plan or program as necessary to reflect changes in security affecting their specific operating environment or the surface transportation system.

3. Previous Training (§ 1570.107)

While there is no specific requirement in the 9/11 Act for TSA to allow use of existing training programs to satisfy the security training regulatory requirements, this rule provides an opportunity for owner/operators to seek recognition of previously provided training. Under § 1570.107, an owner/operator may rely on previous training that occurred within the identified periods for initial or recurrent training.

[28] These deadlines are set by secs. 1408(d)(3), 1517(d)(3), 1534(d)3 of the 9/11 Act, codified at 6 U.S.C. 1137, 1167, and 1184.

In order to use previous training, the owner/operator must validate that the previous training satisfies the requirements of this rule (for example, reviewing records of training and curriculum), is relevant to the employee's job function, and appropriate for owner/operator's operations. As part of its inspection and compliance authority, TSA may require the owner/operator to provide the documentation used to determine the previous training met the requirements of this rule.

K. Do employees have to pass a test? ((§§ 1580.113(b)(9), 1582.113(b)(9), and 1584.113(b)(9))

TSA is not requiring security training programs to include employee testing, with prescribed pass/fail rates. The security training programs submitted to TSA, however, must include how the owner/operator will measure the effectiveness of the training program. TSA will afford flexibility to each individual owner/operator to identify measures for determining the effectiveness of their security training program using methods and criteria appropriate for their operations. For example, TSA expects that some owner/operators will choose to administer a written test or evaluation to gauge their employees' level of knowledge in order to assess the overall effectiveness of training, while others may rely upon operational tests conducted by supervisors to determine whether employees are being trained effectively. Some may use the results of drills and exercises to measure effectiveness and identify areas where modifications are needed.

Similarly, TSA is not prescribing conditions for a pass/fail policy that may be associated with post-training testing. While individual companies may elect to enforce pass/fail criteria with associated personnel actions, TSA is neither requiring nor recommending a specified maximum number of times that an individual may take a test or evaluation to demonstrate knowledge and competency. As previously noted, however, the methods submitted by an owner/operator for determining training efficacy may affect TSA's approval of any alternative measures for compliance. In reviewing security training programs, TSA's focus is on whether the program includes measures for the effectiveness of the training *program,* not an individual employee's performance.

III. Operational Requirements (Subpart D)

TSA requires freight and passenger railroad carriers, rail transit systems, rail hazardous materials shippers, and certain rail hazardous materials receivers, to appoint ''rail security coordinators'' [29] (RSCs) and report significant security concerns to TSA.[30] The RSCs are security liaisons to TSA, providing a single point of contact for receiving communications and inquiries from TSA concerning threat information or security procedures, and coordinating responses with appropriate law enforcement and emergency response agencies. This information, reported to TSA from the frontline of rail operations, is consolidated and analyzed by TSA to identify developing threats and trend analysis.

TSA is expanding applicability of these requirements to the owner/operators subject to the security training requirements. As a result, the scope of the requirement applies to:

- All rail operations subject to the security coordinator and reporting requirements under previous 1580.101, 1580.105, 1580.201, and 1580.203 (now located in sections 1570.201 and 1570.203);
- Any bus operations of a public transportation owner/operator required to provide security training under this rule; and
- Any OTRB owner/operator required to provide security training under this rule.[31]

As proposed in the NPRM, the rule text for applicability of the security coordinator requirements erroneously included all bus-only public transportation systems, TSA intended, however, to limit applicability to the bus-only public transportation systems within the scope of the security training requirements, that is, the higher-risk bus-only systems.[32] To be consistent with TSA's intent as explained above and in the preamble of the NPRM, TSA is clarifying the requirement in the final rule text.

Table 2 compares applicability scope of the previous requirement with the expanded applicability. The cost estimate for this requirement in the NPRM is consistent with TSA's intent and the corrected rule text.

TABLE 2—COMPARISON OF APPLICABILITY FOR SECURITY COORDINATOR AND REPORTING REQUIREMENTS

	Previous §§ 1580.101/103 and 1580.201/203	New §§ 1570.201/203
Freight railroad carriers	X	X
Rail hazardous materials shippers	X	X
Rail hazardous materials receivers in High Threat Urban Areas (HTUAs)	X	X
Owner/operators of private rail cars*	X	X
Railroads hosting freight or PTPR rail operations	X	X

[29] These requirements were promulgated in 2008, *see supra* n. 8, codified at 49 CFR 1580.101 and 1580.201 (before changes made by this rule).

[30] *See id.* at 49 CFR 1580.105 and 1580.203 (before changes made by this rule).

[31] As previously noted, TSA currently requires security coordinators for rail operations, including freight railroads, passenger railroads, and public transportation rail operations. In addition to mandating security coordinators for railroads, the 9/11 Act also requires security coordinators for bus operations. *See* 9/11 Act sec. 1531, codified at 6 U.S.C. 1181(e)(1)(A) (''Identification of a security coordinator having authority—(i) to implement security actions under the plan; (ii) to coordinate security improvements; (iii) to receive immediate communications from appropriate Federal officials regarding over-the-road bus security''). *See* 9/11 Act sec. 1512, codified at 6 U.S.C. 1162(e)(1)(A). For a similar provision applicable to railroads. Consistent with this mandate, TSA is extending the requirement to appoint a primary and at least one alternate security coordinator for OTRB companies and bus operations of PTPR owner/operators identified as higher-risk through this rulemaking. This will have a limited impact on the PTPR mode as most public transportation bus agencies covered by this rule are part of a larger system that is already required to have a security coordinator under current 49 CFR part 1580. *See* sec. III.D.4 of the NPRM for more discussion regarding the security coordinator and reporting requirements (81 FR at 91350 *et seq.*).

[32] *See* 81 FR at 91350: ''Because of the benefits of [the security coordinator and reporting requirements] to transportation security, TSA is proposing to extend these requirements to the modes of transportation covered by this proposed rule that are not currently subject to the requirements of 49 CFR part 1580. . . . TSA proposes to extend the requirement to appoint a primary and at least one alternate security coordinator for OTRB companies and the bus operations of PTPR owner/operators (with a limited impact as most public transportation bus agencies are part of a larger system that is required to have a security coordinator under current 49 CFR part 1580).''

TABLE 2—COMPARISON OF APPLICABILITY FOR SECURITY COORDINATOR AND REPORTING REQUIREMENTS—Continued

	Previous §§ 1580.101/103 and 1580.201/203	New §§ 1570.201/203
PTPR operating rail transit systems on general railroad system, intercity passenger train service, and commuter train services	X	X
PTPR operating rail transit systems not part of general railroad system	X	X
PTPR operating bus transit or commuter bus systems in designated areas		X
Tourist, scenic, historic, and excursion rail owner/operators*	X	X
OTRB owner/operators providing fixed-route service in designated areas		X

* Security Coordinator only required if notified by TSA in writing that a threat exists. Requirement to report significant security concerns always applies.

A. Security Coordinator Requirements (§ 1570.201)

Security coordinators are a vital part of transportation security, providing TSA and other government agencies with an identified point of contact with access to company leadership and knowledge of the owner/operators' operations, in the event it is necessary to convey extremely time-sensitive information about threats or security procedures to an owner/operator, particularly in situations requiring frequent information updates. The security coordinator and alternate provide TSA with a contact in a position to understand security problems; immediately raise issues with, or transmit information to, corporate or system leadership; and help recognize when emergency response action is appropriate. The individuals must be accessible to TSA 24 hours per day, 7 days per week.

The rule does not change the expectation that the security coordinator and alternate be appointed at the headquarters level. Nor does the rule require the security coordinator or alternate to be a dedicated position who has no other primary or additional duties. As with the previous part 1580 requirements, TSA's primary concern is having a designated point of contact available to TSA at all times.

The rule also requires the owner/operator to submit contact information for both the security coordinator and alternate and to update this information within 7 days if it changes. As previously noted, this is not a new requirement for owner/operators of railroads, including the rail transit operations of PTPR owner/operators. If an owner/operator subject to this rule has provided current information for primary and alternate RSCs to TSA, it will not have to take further action to meet the requirement.[33] TSA assumes this is true for passenger rail carriers, freight railroad carriers, and rail transit systems operated by public transportation agencies. Owner/operators required to appoint security coordinators for the first time under this rule must provide this information to TSA by July 29, 2020. TSA will also use this contact for communications related to requirements in this rule.

B. Requirement To Report Security Concerns (§ 1570.203)

As with the security coordinator requirement, TSA is moving and consolidating the requirement to report security concerns from part 1580 into § 1570.203 and extending it to higher-risk bus operations.[34] The list of reportable incidents can be found in Appendix A to part 1570 and includes not only a list of incidents, but descriptions and examples to assist regulated parties in making a determination of whether an incident must be reported based on its similarity to one of the examples.

This list of reportable significant security concerns is consistent with the Nationwide Suspicious Activity Reporting (SAR) Initiative (NSI). The NSI is a partnership between Federal, State, local, tribal, and territorial law enforcement that ''establishes a national capacity for gathering, documenting, processing, analyzing and sharing SAR information . . . in a manner that rigorously protects the privacy and civil liberties of Americans.'' [35] The NSI defines ''suspicious activity'' as ''observed behavior reasonably indicative of pre-operational planning associated with terrorism or other criminal activity.'' [36] The standardized approach among law enforcement officers and security officials with surface transportation entities produces more informative reports that can, more effectively, focus investigative efforts and intelligence analysis for potential trends and indicators of terrorism-related activity.

Finally, consistent with TSA's purpose in requiring submission of the information, the rule requires notification within 24-hours of the initial discovery of the incident by the owner/operator (*see* 49 CFR 1570.203(a)).[37] This schedule will enable TSA to obtain timely information, without undermining the ability of the owner/operator to appropriately handle a situation. If there is an immediate threat, owner/operators and/or their employees should prioritize notifying and working with first responders. The notification to TSA should occur after the immediate crisis is addressed, but within a timeframe that allows TSA to assess and share timely information.

For purposes of this requirement, the clock ''starts running'' when the owner/operator becomes aware of the incident. Awareness of the owner/operator includes awareness of (or discovery by) employees of the owner/operator.[38] TSA recognizes that local law enforcement do not always immediately notify owner/operators when there is a security-related incident on the owner/operator's property or affecting their operations.

C. Methods for Reporting Information and Substance of Information Provided (§ 1570.203 (a) and (c))

As previously noted, TSA has almost a decade of experience with incidents reported by railroads. Based on this experience, TSA recognizes that its ability to analyze the data and improve

[33] Any changes to the information must, as previously required, be reported within seven calendar days of the change taking effect.

[34] This extension is within TSA's discretion to require other actions or procedures determined to be appropriate to address the security of public transportation and OTRB operations. *See* 9/11 Act sections. 1405(c)(2)(I) and 1531(e)(1)(H), as codified at 6 U.S.C. 1134 and 1181, respectively.

[35] *See* Nationwide SAR Initiative (NSI), ''About the NSI'' (accessed Nov. 3, 2016), available at *http://nsi.ncirc.gov/about_nsi.aspx*.

[36] *Id.*

[37] This change to reporting is a modification from the requirement as promulgated in the Rail Security Rule, which required immediate reporting.

[38] One of the required training elements includes how to appropriately report security issues.

the quality of information disseminated back to its stakeholders is proportional to the quality of information it receives. Section 1570.203(b) is consistent with the reporting requirements as promulgated in 2008, which reflected the need for detailed and verified information from individual owner/operators to enhance TSA's ability to provide timely and useful information products to all of the relevant stakeholders.

TSA is working on two initiatives that should assist owner/operators with reporting information. The first is to pilot an electronic reporting option for significant security concerns.[39] If made a permanent capability, TSA intends to develop an online form that owner/operators, or their designated employees, may use to submit information to TSA to meet the requirements of this rule. If the pilot succeeds, TSA may pursue a second initiative to provide an electronic reporting form on a secure website. TSA will provide updates on development of these capabilities to owner/operators through the designated security coordinators as well as appropriate notices in the **Federal Register**. Pending completion of these capabilities owner/operators and their designated employees are generally required to meet the requirements of this section by contacting the Transportation Security Operations Center at 1–866–615–5150. There is an exception for owner/operators participating in the pilot to report electronically.

IV. Security Program Procedures

A. Deadlines Related to Submission and Approval of Security Training Program

Section 1570.109 identifies the required deadlines for submitting security training programs and the process for TSA approval. In general, not later than 90 days from the effective date of this final rule, owner/operators are required to submit programs to TSA in a form and manner prescribed by TSA. Owner/operators commencing new businesses or operations triggering applicability are required to submit their security training programs to TSA no less than 60 days before commencing operations.

TSA will provide details for submission of security programs directly to security coordinators identified under section 1570.201, within 10 business days from the effective date of this final rule. Consistent with comments received on the NPRM, this information will include the designated email address and any related information regarding submission of Sensitive Security Information (SSI).

As required by the 9/11 Act, TSA will review the programs within 60 days of receipt and either approve them or specify changes that are needed for approval.[40] If TSA requires changes, the owner/operator must submit a modified training program that meets TSA's specifications within 30 days of notification by TSA. TSA provides an analysis of burden and estimated costs associated with this information collection in section VIII.A. of this preamble and the Office of Management and Budget (OMB) 83–I Supporting Statement for its information collection request, which is available in the docket for this rulemaking.

B. Amendments

Procedures related to revision and/or amendment of security training programs, as described in §§ 1570.113, 1570.115, and 1570.117, are necessary as part of developing a regulatory program and are consistent with the 9/11 Act's requirements for implementation and submission of programs. These procedures are also consistent with TSA's statutory authority to allow exemptions from regulatory requirements.[41] The rule provides for two types of amendments: (1) Amendments initiated by owner/operators and (2) amendments initiated by TSA.

1. Amendments Initiated by Owner/Operator (§ 1570.113)

Under section 1570.113, there are three situations which require owner/operators to submit a request to amend their security training programs: (1) Changes affecting ownership or control of the operations; (2) changes to conditions affecting security; and (3) changes to content in the security training program. Owner/operators must seek an amendment if any of these changes are expected to have a duration of more than 60 days.

Amendments related to changes in ownership/control are necessary for TSA to maintain current information about relevant contacts as well as for purposes related to enforcement and liability. Amendments related to the second and third categories are necessary to ensure the training programs are providing relevant and timely information to security-sensitive employees.

This final rule revises the NPRM's proposed requirement for seeking an amendment for any changes relating to ''measures, training, or staffing described in the security program.'' Since publication of the NPRM, TSA determined that the scope of this requirement is too broad as it could capture measures relevant to security in general, such as theft. As proposed, the requirement could impose an unnecessary burden on owner/operators and create conflict between the programmatic requirements. For example, the overly broad requirement for amendments could result in the need to revise a security training program to address issues not related to reducing the risk of terrorism-related incidents.

To narrow the scope of the amendment requirement, the final rule incorporates a specific list of the types of changes to security that require an amendment. For purposes of identifying what types of changes should be included in the list, TSA determined the most appropriate source is the 9/11 Act's requirements for TSA to issue a vulnerability assessment and security planning regulation for surface owner/operators.[42] The 9/11 Act's provisions are tailored to security issues related to reducing the risk of terrorism-related incidents.

If an owner/operator makes any changes to the security measures identified in § 1570.113, the owner/operator must request an amendment to modify the TSA-approved security training program to align with these changes. In general, the program must be amended if there are changes to procedures intended to prevent and detect unauthorized access to restricted areas; measures to be implemented in response to periods of heightened security risk; and changes to emergency response plans.

The security program requirements established by this rulemaking will also be applicable to a future rulemaking to address the 9/11 Act's requirements for

[39] *See* OMB Control No. 1652–0051, 30-Day Notice: *Revision of Agency Information Collection Activity Under OMB Review: Rail Transportation Security,* 83 FR 40542 (Aug. 15, 2018), and related supporting statement available at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201809-1652-002.*

[40] *See* 9/11 Act secs. 1137(d)(2), 1167(d)(2), and 1184(d)(2), codified at 6 U.S.C. 1137, 1167, and 1184.

[41] *See* 49 U.S.C. 114(q).

[42] As previously discussed, the 9/11 Act includes a mandate for TSA to issue regulations requiring vulnerability assessments and security plans in addition to the requirements for security training. *See* 9/11 Act sections 1405, 1612, and 1531, codified at 6 U.S.C. 1134, 1162, and 1181, respectively. The security planning requirements include a detailed list of security measures that must be incorporated into an owner/operator's TSA-approved security plan. TSA intends to address the vulnerability assessment and security training requirements through a separate rulemaking.

vulnerability assessments and security planning. As a result, incorporating the 9/11 Act's list of security measures to be incorporated in security planning as the basis for determining when an amendment is necessary to a security training program establishes a framework that can be consistently applied in the future as the scope of requirements for higher-risk owner/operators of surface transportation systems is expanded.[43]

Finally, owner/operators must request an amendment if their security training program is modified, including modifications related to addressing the effectiveness of the program or development of recurrent training materials that differ from the initial training. This provision is intended to ensure an owner/operator is appropriately addressing the results of its TSA-approved method for determining effectiveness of security training.[44] It is TSA's intent that this specificity will reduce the burden for owner/operators by providing clarity on the types of changes that may trigger the need for an amendment. If there are any changes in these areas, it is reasonable to expect that some aspects of the security training program must be revised.

In addition to the preceding issues that require owner/operators to request an amendment, the same procedures can be used when the owner/operator seeks to amend its program to address other operation issues. For example, an owner/operator may choose to seek an amendment to modify the required training schedule. The same procedural requirements for seeking an amendment apply.

TSA may approve an amendment if it is in the interest of public and transportation security and meets the required security standards. As part of its standard practice for security program administration, TSA works with owner/operators on amendment requests to develop options acceptable to both TSA and the requesting owner/operator. TSA may ask for additional information from the owner/operator or require more time in order to makes its determination.

If TSA is unable to come to agreement with the owner/operator on the content or scope of the amendment, TSA may deny the amendment request. The denial will include a statement of why the request is denied. The owner/operator can petition for reconsideration under section 1570.119.

While the rule only requires amendments if the change is to be permanent (defined as 60 or more calendar days), TSA recognizes that there are times when a change of short duration could have a significant impact on training. For example, if a city is hosting a National Special Security Event (NSSE), the public transportation system serving that city may implement additional security measures. It is likely that additional training will be necessary to raise appropriate awareness of these additional measures. The rule does not require the owner/operator to request an amendment to provide this additional training.

TSA is also modifying the schedule for submitting an amendment from the requirement as proposed in the NPRM. Under the NPRM, an amendment had to be submitted no later than 45 days before the change takes effect. This schedule does not work with the provision that allows changes to security measures to be in effect for 60 days before they are considered permanent, and only permanent changes require notification and amendment. To address this inconsistency, TSA is requiring amendments to be submitted within 65 days of the change. As the owner/operator controls changes to the security measures identified in the rule and whether these changes will be permanent, it is presumed the owner/operator will have sufficient advance notice that an amendment is needed and can prepare and submit the request within this timeframe. This specificity is added to provide clarity for compliance.

2. Amendments Initiated by TSA (§ 1570.115)

TSA may require amendments in the interest of the public and transportation security. As indicated in § 1570.115, TSA may require owner/operators to revise their training based on emerging threats or methods for addressing emerging threats. This is consistent with TSA's authorities under 49 U.S.C. 114 and the 9/11 Act, which specifically provide that TSA must update the requirements, as appropriate, ''to reflect new or changing security threats.'' [45] For example, the curriculum requirements identified in the 9/11 Act do not address training to respond to active shooter incidents. Following several active shooter incidents, including one that resulted in the death of a Transportation Security Officer in Los Angeles, Congress prioritized the need for this type of training.[46] TSA could also require an amendment to provide additional training to address risks like the NSSE discussed above, in section C. As with other requirements imposed by TSA, the owner/operator may request a petition for reconsideration of TSA-required amendments.

C. Alternative Measures (§ 1570.117)

Section 1570.117 includes the procedures for requesting a waiver, procedures for requesting the use of alternative measures, and identification of the types of information TSA will need in order to make a decision to grant such requests. TSA may grant such a request under the authority 49 U.S.C. 114(q), based on a determination that the alternative measure or exemption is in the public interest. In general, TSA will consider factors such as risk associated with the type of operation, current threat information, and any other factors relevant to potential risk to the public and transportation security if the request is granted.

These procedures can be used by an owner/operator to request alternative measures to satisfy all of some or all of the requirements of subchapter D. For example, the owner/operator could request to extend the time period for submitting its training program or for training all of its security-sensitive employees. An owner/operator could also request a waiver from some or all of the regulatory requirements. For example, a freight railroad may meet the criteria for applicability, but the operations that trigger applicability may be a *de minimis* part of its overall business operations. In such a situation, the owner/operator might consider requesting either a complete waiver or an alternative that limits the requirements to a more discrete part of its business.

D. Petitions for Reconsideration (§ 1570.119)

Section 1570.119 describes the review and petition process for TSA's reconsideration when it denies a request for amendment, waiver, or alternative measures, as well as a TSA requirement

[43] *See* discussion *supra* in n. 42

[44] *See* requirements in subpart B to parts 1580, 1582, and 1584.

[45] *See* 9/11 Act at 1408(d)(4), 1517(d)(4), and 1534(d)(4), codified at 6 U.S.C. 1137, 1167, and 1184, respectively. This provision also requires owner/operators change their programs to address TSA's requires updates and retrain employees as necessary, within a reasonable time.

[46] Section 7 of the *Gerardo Hernandez Airport Security Act of 2015* (Pub. L. 114–50), which directed TSA, in consultation with the Department of Transportation and other relevant agencies, to conduct outreach to all passenger transportation agencies and providers of high-risk facilities to verify such agencies and providers have in place plans to respond to active shooters, acts of terrorism, or other security-related incidents that target passengers.

to modify or amend a program. If an owner/operator seeks to challenge the decision, the owner/operator is required to submit a written petition for reconsideration within the time frame identified in the applicable section. The petition must include a statement, with supporting documentation, explaining why the owner/operator believes the reason for the denial or for the amendment, as applicable, is incorrect. If the owner/operator requested the amendment, the results of the reconsideration could be confirmation of TSA's previous denial or approval of the proposed amendment. If the issue involves a TSA-required amendment, the results of the reconsideration could be withdrawal, affirmation, or modification of the amendment. A disposition pursuant to 49 CFR 1570.119 occurs when the Administrator or designee has disposed of the petition by affirming, modifying, or rescinding the previous decision. Such disposition constitutes a final agency action for purposes of review under 49 U.S.C. 46110.

E. Recordkeeping Requirements (§ 1570.121)

The final rule requires owner/operators to create and maintain lists of their security-sensitive employees and specify when these employees received the required training. Training records must include each trained employee's name, job title or function, date of hiring, and date and course information on the most recent security training that each employee received. Records for individual employees must reflect the training courses completed and date of completion. Records of an employee's initial and recurrent training must be maintained by owner/operators for no less than five years from the date of the training and available at the location(s) specified in the security training program approved by TSA.

The final rule provides flexibility to owner/operators to decide whether to maintain the records in electronic format provided that (1) any electronic records system used is designed to prevent tampering, loss of data, or corruption of records, and (2) paper copies of records, and any amendments to these records, must be made available to TSA upon request for inspection or copying. Whether the records are kept in electronic or other form, the employee must be provided with proof of training upon request, at any time during the three-year recordkeeping period, without regard to the requestor's current status as an employee of that entity. As discussed above in II.J. (Initial Training), owner/operators may meet the proof-of-training requirement by providing a certificate, letter, or other similar documentation to the employee upon completion of training. In order for TSA to allow any owner/operator to rely upon previous security training to satisfy the requirements of this rule, it is critical that employees be able to validate whether they received previous training.

TSA assumes training records are unlikely to include SSI, but nonetheless provides a reminder in this provision that any SSI maintained as a result of these recordkeeping requirements must be maintained consistent with the requirements in 49 CFR part 1520. For example, an owner/operator may decide to keep a copy of the content of the training program with the employee files (which is not required by the rule). If the curriculum contains SSI information, any file it is in must be stored as required by the SSI regulations. Owner/operators needing additional information about appropriately maintaining SSI may contact TSA for assistance and/or find information on TSA's website.[47]

F. Summary of Deadlines

The following table summarizes the deadlines for the preceding programmatic requirements. The information is provided for operations that exist on the effective date of this rule and those that may commence or trigger applicability based on future modifications.

TABLE 3—SUMMARY OF DEADLINES FOR COMPLIANCE

Requirement	Dates		
	Existing operations	New or modified operations	New employees (hired after TSA approves the security program)
Effective date of rule	June 22, 2020.		
Deadline for notifying TSA of applicability determination (1570.105).	July 22, 2020	90 calendar days before commencing new or modified operations.	
Deadline for providing security coordinator information to TSA (1570.201).	July 29, 2020	7 calendar days after commencement of operations.	
Deadline for submission of security training program to TSA for approval (1570.109(b)).	90 calendar days from effective date.	90 calendar days after commencing new or modified operations.	
TSA approval or notification of required modification (1570.109(c)).	60 calendar days from receipt of security training program.	60 calendar days from receipt of security training program.	
Initial training of security-sensitive employees (1570.111(a)).	1 year from TSA approval of security training program.	1 year from TSA approval of security training program.	60 calendar days after employee first performs a security-sensitive job function (60th day, aggregated over 12-month period, if intermittent employee).
Recurrent training of security-sensitive employees (1570.111(b)).	Within three-years of the date of initial training and every three-years thereafter.	Within 90 days of changes to security program or security plan affecting employees' security-related responsibilities.	

[47] *See https://www.tsa.gov/for-industry/sensitive-security-information.*

V. Miscellaneous Changes

This final rule includes the following changes to other provisions in TSA's regulations as necessary to implement these requirements.

A. Amendments to Part 1500

Consistent with the rule's organization, TSA includes definitions for terms relevant to several subchapters of TSA regulations, beyond the requirements of subchapter D, in part 1500. Terms only relevant to the provisions in subchapter D are incorporated in § 1570.3. Terms uniquely relevant to each mode or the other requirements in subchapter D are incorporated into the relevant parts.

As noted in the NPRM, TSA is meeting a 9/11 mandate to define, through notice and comment rulemaking, the term ''security-sensitive material.'' To meet the requirement, TSA is incorporating by reference the definition of hazardous materials for which a security program is required under 49 CFR 172.800(b), promulgated by PHMSA through notice and comment rulemaking and in consultation with TSA.[48] There are no current TSA-programmatic requirements linked to this definition. A full discussion of amendments to the terms in part 1500 is provided in the NPRM.[49]

B. Amendments to Part 1503

TSA is making minor amendments to part 1503 (Investigative and Enforcement Procedures), as necessary, to conform these regulations to changes made by this final rule. In § 1503.101(b), the scope of statutory provisions is amended to add authorities from the 9/11 Act that are administered by the TSA Administrator. These are conforming amendments with no cost impact.

C. Amendments to Part 1520

TSA is also finalizing proposed modifications to part 1520 (Protection of Sensitive Security Information). As discussed in the NPRM, these changes are necessary to conform the SSI provisions to include the transportation security-related requirements in this rule.[50] The amendments are limited to: (1) Eliminating unnecessary terms from part 1520 that are added to part 1500 and (2) replacing the limiting term ''rail transportation security requirement'' with ''surface transportation security requirement.'' In some places, such as the definition of ''vulnerability assessment'' in § 1520.3, TSA is streamlining a lengthy description of types of transportation to simply state ''aviation, maritime, or surface transportation.''

The impact of these revisions should also be minimal. Under § 1520.7(j), any person who has access to SSI is required to protect it according to the requirements of the regulation. Most of the population affected by this rule has previously received SSI information from TSA, as well as training on the proper handling of SSI, and have procedures in place to ensure the requirements of the regulation are met.[51]

D. Amendments to Part 1570

Because of the significant restructuring of part 1570, as discussed above, the rule text includes the entire part. In addition, TSA is adding a provision related to security responsibilities and relocating to this part the provisions related to compliance, inspection, and enforcement (previously in part 1580).

1. Security Responsibilities for Employees and Other Persons (§ 1570.7)

Under § 1570.7, the obligation for compliance is not limited to owner/operators specifically referenced under applicability provisions. Rather, any person may be held to have violated these rules, including contractors who provide service to owner/operators and the employees of such contractors. This provision in subchapter D ensures a uniform application of TSA's enforcement policy across all modes of transportation, consistent with TSA's authority under 49 U.S.C. 114(f).[52] In addition to violations for failure to comply with requirements, TSA can also pursue enforcement actions for interfering with compliance or hiding evidence of non-compliance. Contractors are also subject to inspection for compliance with this rule and enforcement actions, as discussed below.

2. Compliance, Inspection, and Enforcement (§ 1570.9)

TSA is mandated to: (1) Enforce its regulations and requirements; (2) oversee the implementation and ensure the adequacy of security measures; and (3) inspect, maintain, and test security facilities, equipment, and systems for all modes of transportation.[53] This mandate applies even in the absence of rulemaking, but TSA has chosen to include a restatement of its authority in its rules. The statute specifically requires TSA to—

- Assess threats to transportation;
- Enforce security-related regulations and requirements;
- Inspect, maintain, and test security of facilities, equipment, and systems;
- Ensure the adequacy of security measures for the transportation of cargo;
- Oversee the implementation, and ensure the adequacy, of security measures at airports and other transportation facilities;
- Require background checks for airport security screening personnel, individuals with access to secure areas of airports, and other transportation security personnel; and
- Carry out such other duties, and exercise such other powers, relating to transportation security as the Administrator considers appropriate, to the extent authorized by law.

While current part 1570 includes a provision stating TSA's compliance, inspection, and enforcement authority, it is not provide the same detail found in other regulatory provisions.[54] Therefore, TSA is transferring the text of current § 1580.5 to subpart A as § 1570.9, with minor modifications to reflect the addition of certain bus operations that have previously been unregulated by TSA.[55]

3. ''Covered Person'' (§ 1570.305)

This final rule includes a technical correction to § 1570.305 (currently § 1570.13) of subchapter D as part of this rulemaking. This provision prohibits public transportation agencies and rail carriers from knowingly misrepresenting Federal guidance or regulations related to security background checks for certain individuals.[56] The definitions in the section currently include the term ''covered individual,'' which may result in confusion as to whether the term has the same meaning as ''covered person'' in TSA's programs to address access to SSI.[57] To eliminate any potential for confusion, this rule amends § 1570.305

[48] *See* 81 FR at 91344.

[49] *See* section III.A. of the NPRM. 81 FR at 91342 *et seq.*

[50] *See id.* at 91343–91345.

[51] *See https://www.tsa.gov/for-industry/sensitive-security-information.*

[52] *See* 49 U.S.C. 114(f)(7) and (11). A similar provision applicable to aviation employees and other related persons is in 49 CFR 1540.105(a)(1) and (b).

[53] *See* 49 U.S.C. 114(f).

[54] Compare current § 1570.11 with current § 1580.5. The provision in part 1580 is also consistent with 49 CFR 1542.5, 1544.3. 1546.3, 1548.3, and 1549.3.

[55] A more detailed discussion of current § 1580.5, still relevant to the section, can be found in the preamble for current part 1580. *See* 71 FR 76852 (Dec. 21, 2006) and the Rail Security Rule, *see supra* n. 8. (Final Rule).

[56] This final rule moves this section from § 1570.13 of subchapter D to section § 1570.305. The requirement was added to address another 9/11 Act requirement. *See* 73 FR 44665 (July 31, 2008) for more information on the rulemaking that added this provision.

[57] *See* 49 CFR 1520.7.

to delete the definition and consistently use the term ''employee'' (as defined by this rulemaking in § 1570.3) rather than ''covered individual.'' This change is for clarification purposes only and has no substantive impact.

VI. Summary of Changes

The following table summarizes changes between the NPRM and final rule.

TABLE 4—SUMMARY OF CHANGES BETWEEN NPRM AND FINAL RULE

Section No.	Section title	Change from NPRM	Implication
1570.111(b)	Implementation schedules (recurrent security training).	In response to comments, TSA is modifying the recurrent security training schedule to a three-year cycle rather than annual. Changes to security programs and plans may require training certain employees within 90 days of the changes.	Cost Savings.
1570.113	Amendments requested by owner/operator.	NPRM proposed requiring owner/operators to request an amendment to their security training programs when there are changes to (a) ownership or control of operations and/or (b) measures, training, or staffing described in the security program. The final rule includes a specific list of the types of changes that would trigger the need to update the security training program. The NPRM also proposed to require an amendment to be filed within 45 days before the amendment takes effect. The final rule requires an amendment to be requested no later than 65 days after the change to the security program/measures/plans takes effect.	TSA recognizes that some owner/operators may have security programs that address issues not related to transportation security, such as theft or vandalism. TSA is narrowing the scope of the requirement to reduce the burden. The final rule identifies the types of issues that would require amendment. The list of issues used by TSA is consistent with the requirements for security plans in sections 1405, 1512, and 1531 of the 9/11 Act. Modifying the deadline for requesting an amendment is intended to provide clarity for compliance and be more appropriate for the types of amendment-requests TSA expects to receive.
1570.201	Security coordinator	NPRM proposed requiring all public transportation agencies to have a security coordinator. Final rule limits the scope of the requirement to rail operations of public transportation agencies and the bus-only operations of those determined by TSA to be higher-risk.	The scope of this requirement in the NPRM was broader than TSA intended as the result a drafting error. TSA intended the security coordinator requirement to apply to all of the rail operations and shippers/receivers covered by the Rail Security Rule, plus bus operations required to provide security training under this rule.
1570.203	Reporting significant security concerns.	NPRM proposed requiring all public transportation agencies to report security issues. Final rule limits the scope of the requirement to rail operations of public transportation agencies and the bus-only operations of those determined by TSA to be higher-risk.	The scope of this requirement in the NPRM was broader than TSA intended as the result of a drafting error. TSA intended the reporting requirement to apply to all of the rail operations and shippers/receivers covered by the Rail Security Rule, plus bus operations that are required to provide security training under this rule.
1570.305	False statements regarding security background checks by public transportation agency or railroad carrier.	TSA is making a technical correction to this provision by replacing the term ''covered individual,'' with the term ''employee,'' which is defined by this rulemaking in § 1570.3.	This technical revision eliminates potential confusion in the terminology.

VII. Response to Comments on NPRM

Following TSA's publication of the NRPM on December 16, 2016, industry associations, unions, and private citizens were among those who submitted comments in docket TSA 2015–0001. TSA's responses are organized by topic.

A. General Comments

1. Need for Rule

Comments endorsing the rulemaking and recommending an expanded scope: A number of submissions included a statement of general support for TSA to issue this rulemaking. Commenters also endorsed the rule, noting that proper training could prevent harm to both employees and passengers. A few commenters suggested expanding the scope of the rulemaking to include additional training for surface workers, such as self-defense training, or to provide training to all American citizens to identify terrorist threats. One commenter supported a ''community of the whole'' approach, reflecting the collaborative and cooperative partnership between TSA and industry to detect and deter individuals seeking to commit acts of terrorism.

TSA response: This rulemaking is intended to solidify a baseline of security training. Promulgation of this rule does not signal a change in TSA's commitment to maximize enhancements to surface transportation security through voluntary cooperation and collaboration. Consistent with this commitment, TSA does not believe it is necessary to expand the scope of applicability or requirements, but encourages owner/operators to provide additional security training as they consider appropriate to address potential vulnerabilities or threats within their unique operational environments. As noted in the NPRM, TSA encourages owner/operators covered by this rule to determine

whether there are employees not covered by the scope of the security-sensitive definition who could provide benefits to security if trained.

Regarding the recommended expansion of the rule to cover broader populations, including the general public, DHS has numerous programs and initiatives to provide and encourage awareness of terrorist threats and appropriate responses. These initiatives include ''hometown security'' and the ''See Something, Say Something'' campaign. More information on these initiatives and training available to support them can be found on the DHS website.[58] TSA also encourages owners/operators not within the scope of the rule's applicability to voluntarily provide security training to their employees, using the curriculum requirements in this rule to guide development of voluntary security training programs. As noted in section II.A., TSA also intends to provide resources developed to support this rule to other owner/operators, as appropriate.

Comments opposing rulemaking: Other commenters opposed the rulemaking, primarily because they believe certain modes already conduct training, and asserted these efforts make the rulemaking unnecessary. Three commenters expressed concern the rule overlaps with existing State and Federal training requirements, including the FRA's 2014 final rule, which established minimum training standards for all safety-related railroad employees.[59] One commenter suggested States may have different requirements, which should be considered in this rulemaking. Several commenters advocated for the rule to be voluntary, and noted voluntary training has so far produced exceptional results.

TSA response: As previously discussed, TSA has a statutory mandate to publish a final rule requiring security training for frontline employees of public transportation agencies, railroads, and OTRB owner/operators.[60] The statutory mandate includes specific requirements for the content of the required security training. In addition, TSA determined it is necessary to require security training for employees of higher-risk surface transportation operations and appropriate to use its general authority under ATSA to issue a rule including these requirements.[61]

The terrorism-related threat to surface transportation modes has not subsided and Congress has not retreated from its commitment to the need for this rule. Since enactment of the 9/11 Act, Members of Congress and the DHS Office of the Inspector General (OIG) have expressed continued interest in the publication of this rule.

This rulemaking is intended to solidify the baseline for security training of surface employees. TSA recognizes the substantial efforts of our stakeholders to enhance their security posture since 9/11 and seeks to recognize and build upon these efforts. As noted in the NPRM, owner/operators subject to requirements to provide similar training may request to use this training to satisfy requirements in this rule. For example, TSA is aware that many public transportation agencies and railroads currently provide security training to comply with State or Federal training requirements. (TSA is not aware of any overlapping requirements for OTRB owner/operators.) If an owner/operator intends to use previous training or existing training programs in order to satisfy some or all of the requirements of this rule, the program submitted to TSA for approval must identify how the other training satisfies TSA's requirements. This will likely necessitate submitting the curriculum or lesson plan for that program and training records, as well as information on the employees who have completed the training and the date of the most recent training.

Regarding voluntary training, TSA acknowledges many owner/operators of higher-risk surface transportation operations have voluntarily implemented security training programs addressing some of the requirements in this rule. As noted in the *Preliminary Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis* (NPRM RIA), however, the private market may not provide adequate incentives for owner/operators to make an optimal investment in the full range of measures to reduce the probability of a successful terrorist attack based on the economics of externalities. Mandating security training for higher-risk operations will solidify the current baseline of security training established through voluntary measures.[62]

2. Cost of Rule

Comments: Some commenters expressed concern that the cost of the rulemaking is too high, and that the rule is too costly for industry to implement. Commenters also asserted the estimate of OTRB owner/operators is too low, and questioned whether TSA's cost-estimate analysis considers the Unfunded Mandate Reform Act of 1995 (UMRA).[63] One commenter generally suggested that the expense of providing security awareness training to surface transportation personnel may not be justified by the potential benefits. Another commenter, a mass transit agency in a large metropolitan area, estimated the cost of the rule to be higher than the estimate TSA provided in the NPRM RIA.

TSA response: A full discussion of the cost-benefit analysis is included in the *Final Regulatory Impact Analysis and Regulatory Flexibility Analysis* (Final RIA)[64] and summarized in section VIII.B.1. While training and the other requirements of this final rule are not absolute deterrents for a terrorist intent on carrying out attacks on surface modes of transportation, TSA expects the probability of success for such attacks to decrease when the requirements of this rule are fully implemented.

Regarding the commenters concerns that TSA's estimate of OTRB owner/operators within the scope of applicability is too low, TSA acknowledges the inherent uncertainty in this estimate due to the fluid and opaque nature of the industry. As described in the Final RIA, ''many [OTRB] owner/operators that operate charter and/or tour services also provide scheduled or fixed-route services, sometimes on an ad hoc basis, making it difficult for any one source to keep track of those that may provide scheduled service as part of their non-primary operation.''[65] In response to the issue of disparate data, TSA consulted multiple sources and databases to build its estimate.' The commenter who stated the OTRB estimate was too low did not provide any reason to support the claim that TSA underestimated the number of affected owner/operators or any source/

[58] *See www.dhs.gov/hometown-security* and *www.dhs.gov/see-something-say-something.*

[59] *See* 79 FR 66460 (Nov. 7, 2014), codified at 49 CFR part 243.

[60] *See* discussion in section I.A. of this rule. *See also* 81 FR 91341 (discussion of statutory authorities and requirements for this rulemaking).

[61] *See* 81 FR 91339–91341 (discussion of purpose and authorities).

[62] *See* NPRM RIA at 116–117 (available in the docket to this rulemaking at *www.regulations.gov*).

[63] Public Law 104–4, 109 Stat. 48 (Mar. 22, 1995), codified at 2 U.S.C. 1501–1538.

[64] The Final RIA is available in the docket for this rulemaking at *www.regulations.gov.*

[65] *Id.* at 40. Note: Under the requirements of this rule, any owner/operators conducting ad hoc or sub-contracted service for a regulated person must comply with the requirements of the rule as an authorized representative. Similarly, an owner/operator not subject to the requirements of the rule may trigger applicability if they contract for ad hoc or subcontracted service through an area that triggers applicability.

data to back up the assertion. As mentioned in the NPRM RIA, TSA sought public contribution to refine its estimate, but neither the commenter nor anyone else provided any data or new information on which to build a different estimate.

Title II of UMRA, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.[66] Agencies must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.[67] TSA's analysis for both the NPRM RIA and Final RIA determined this rule does not contain a Federal mandate that may result in expenditures of $100 million or more either for State, local, and tribal governments in the aggregate, or for the private sector in any one year.

The commenter who stated security awareness training may not be justified by the potential benefits did not provide data to support this assertion. Based upon the data available to TSA, as shown in the Final RIA, TSA disagrees with the commenter. In both the NPRM and Final RIA, TSA includes a chapter, titled ''Benefits of Employee Security Training,'' which identifies the security risks to surface transportation and explained how providing employees with the knowledge to prepare, observe, assess, and respond to a terrorist related threat or incident reduces the vulnerability to a terrorist attack. In addition, TSA conducted a break even analysis that compared the cost of the surface training program to the direct economic losses that would be averted by avoiding certain terrorist attack scenarios. Given the relative small costs of implementing training compared to the catastrophic costs of a successful terrorist attack, this analysis found that the rule would only have to deter, at minimum, one attack every 40 years for the benefits to equal costs for freight rail, a number that increases to one attack every 166 years for OTRBs.[68] The monetized benefits of preventing an attack would likely be greater were TSA to conduct a break even analysis that accounts for the difficult-to-estimate macroeconomic and other indirect impacts (avoided indirect costs) that may be even more significant than the direct impacts of the attack. Avoided consequences, such as the value of a reduction in fear felt by the public at large, are not included in the analysis because they are difficult to measure and quantify. Given these results and the demonstrated effectiveness of employee training—including security awareness in mitigating terrorist attacks[69]—TSA believes the benefits of the rule justify its costs. Finally, as previously discussed, TSA is under a statutory mandate to publish a final rule requiring security training for frontline employees of public transportation agencies, railroads, and OTRB owner/operators.

One commenter, from a large metropolitan area public transportation system, provided information to support statements that the costs of implementing the rule would be higher than TSA estimated in the NPRM RIA for that commenter. TSA believes there are a number of issues with the commenter's estimate that result in an overestimation of the rule's burden. The commenter assumed the duration of training to be three hours when TSA estimates that training for security-sensitive employees of a PTPR owner/operator will likely average 1 hour and 20 minutes in order to address all of the required elements in this rule.[70] The commenter appears to base their three hour estimate on an assumption that a classroom setting and development of original course material is necessary. As further discussed below in section VII.D., TSA is not requiring instructor or classroom training and will further mitigate costs by providing a video, free of charge, to regulated owner/operators for compliance with the parts of the rule. TSA intends for this material to cover three of the four PTPR training elements in the rule and take less than one hour.

Finally, the commenter comes from one of the largest metropolitan areas in the United States with one of highest costs of living. This leads TSA to believe that the estimate provided by the commenter is likely higher than the national average of transit agencies. TSA used national wage data for transit agencies from the Bureau of Labor Statistics to estimate cost of the rule to PTPR owner/operators. TSA believes this is a reasonable rate to calculate incurred costs to regulated PTPR owner/operators because it encompasses the entire transit industry (which are typically found in cities around the country). Based on this analysis, TSA believes its cost-assessment for the final rule is representative of the incremental burden PTPR owner/operators will incur from implementing the regulatory requirements at a national level. However, TSA does acknowledge that differences in the cost of labor among the various cities may contribute to certain transit agencies having higher or lower costs than the national average.

3. Stakeholder Consultation

Comments: Several commenters suggested TSA consult with labor unions in drafting the rulemaking, as required by the 9/11 Act, and also reach out to international security experts.

TSA response: The 9/11 Act directed TSA to consult with major stakeholders during the development of the NPRM, including labor organizations. As noted and summarized in the NPRM, TSA conducted numerous meetings and conference calls with all necessary parties, including relevant labor organizations.[71] In addition to inviting participation of labor union representatives in many of the mode-specific meetings, TSA also met directly with labor unions as part of its stakeholder consultation process, including the Transportation Trades Department of the American Federation of Labor and Congress of Industrial Organizations, the International Brotherhood of Teamsters, the Brotherhood of Locomotive Engineers, and the Amalgamated Transit Union.[72]

International outreach is also a key component of TSA's transportation security mission. TSA surface representatives partner with the international community through a number of forums, such as INTERPOL, European Network of Railway Police Forces (RAILPOL), and the United Nations led International Working Group Land Transport Security (IWGLTS). These meetings include a regular exchange of lessons learned in addressing emerging threats within the surface transportation environment.

4. Terms

Comments on definition of ''transportation security-sensitive materials (TSSM)'': Several commenters

[66] *See supra* n. 63.

[67] *Id.* at sec. 202, codified at 2 U.S.C. 1532. The $100 million in 1995 dollars is adjusted for inflation to 2017 dollars using the GDP implicit price deflator for the U.S. economy. Bureau of Economic Analysis, *National Data,* Table 1.1.4. Price Indexes for Gross Domestic Product, Line 1 Gross domestic product. Available at: *https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=2#reqid=19&step=2&isuri=1&1921=survey.*

[68] *See* Final RIA at Section 4.3.

[69] *See id.* at Section 4.1 (full summary of the threat to surface transportation and an example of security training effectiveness).

[70] *See* Final RIA at Section 2.4 for an explanation and rationale to why TSA estimates 1 and 20 minutes needed to train mass transit agencies' security-sensitive employees on the training components of the final rule.

[71] *See* 81 FR 91336 at 91368–91370.

[72] *See id.* at 91370.

asked for clarification regarding how the TSSM definition applies to motor coaches, and suggested industry aid TSA in determining what should qualify as TSSM. One commenter asked TSA to provide handling and storage information regarding TSSM specific to the motor coach industry.

TSA response: As noted in the NPRM, TSA is satisfying a 9/11 Act requirement to define TSSM [73] by incorporating by reference the hazardous materials identified in 49 CFR 172.800(b). There are no specific requirements in the rule related to the definition. To the extent there are requirements associated with the materials identified in 49 CFR 172.800(b), persons should consult 49 CFR part 172, the hazardous materials rules promulgated by PHMSA. The PHMSA rules include security requirements related to these specific materials. The PHMSA requirements were promulgated through notice and comment rulemaking, including participation by relevant stakeholders in developing the list of materials.

Comments on definition of ''host railroad'': One commenter asserted the definition of ''host railroad'' is confusing. Additionally, the commenter noted TSA's expectations of the railroads responsible for ensuring training of employees in ''host'' situations are unclear, as railroads currently train employees under existing training programs.

TSA response: As noted in the NPRM,[74] TSA is defining ''host railroad'' consistent with the definition well-established by use for the rail industry under rules of the FRA.[75] Under this rule, both the host and tenant railroads are required to have a training program that appropriately addresses the ramifications of the hosting relationship. For example, the host railroad's training program will need to address the operational considerations of the hosting relationship, such as training dispatchers on their role and responsibilities in halting the tenant railroad's operations over a segment of track where there is a potential threat (such as a suspected IED or tampering with infrastructure). Similarly, a tenant railroad subject to the security training requirements of 49 CFR part 1582 (PTPR), will need to address the operational considerations of the hosting relationship, such as instructing its train and engine employees on the proper communication procedures to follow when a potential threat is identified. Under either example, the host and tenant railroad owner/operators will only be responsible for training their own employees.

When inspecting for compliance by regulated parties participating in a contractual relationship, TSA will consider the freight railroad carrier (the private company) to be an authorized representative of the PTPR owner/operator (the owner/operator of the passenger train service). TSA will hold the PTPR owner/operator primarily responsible for compliance and for ensuring that all security-sensitive employees receive the required training, whether they are employed directly by the PTPR owner/operator or contractor. The PTPR owner/operator must train the freight railroad carrier's employees performing security-sensitive functions related to the passenger train service.[76]

B. Investigative and Enforcement Procedures

Comments on penalties and violations under 49 CFR part 1503: Several commenters requested clarification regarding the exact penalties for non-compliance, and others asked TSA to explain the basis of violations.

TSA response: The 9/11 Act included authority for TSA to assess civil penalties for violations of title 49 of the U.S. Code, including surface transportation requirements.[77] TSA posts, and regularly updates, its sanction policies on its website.[78] Between this rule's date of publication and effective date, TSA will update this policy to address violations of this rule.

Comments on compliance, inspection, and enforcement under 49 CFR 1570.9: Several commenters expressed concern regarding how TSA will enforce the rule. One commenter suggested TSA and relevant DOT components should develop a cooperative enforcement program allowing DOT personnel to enforce TSA's security training requirements as they conduct their safety inspections. Several commenters suggested TSA coordinate with the owner/operator before an inspection, and one suggested that TSA provide an audit checklist before arriving on the owner/operator's property. Another commenter asked TSA inspectors to undergo safety training before visiting the property. Finally, one commenter suggested TSA consider an audit program for contractors, rather than making the owner/operator responsible for ensuring contractor receives training or otherwise comply with the rule's requirements.

TSA response: As explained in the NPRM, TSA is mandated to: (1) Enforce its rules and requirements; (2) oversee the implementation and ensure the adequacy of security measures; and; (3) inspect, maintain, and test security facilities, equipment, and systems for all modes of transportation.[79] TSA's authority over transportation security is comprehensive and supported with specific powers related to the development and enforcement of security-related regulations and other requirements. Within this broad authority, the agency may assess a security risk for any mode of transportation and develop security measures for dealing with this risk.[80] If TSA identifies noncompliance with its requirements, TSA may hold the owner/operators responsible for the violation and subject to enforcement action, which may result in civil monetary penalties.[81]

Pursuant to its statutory authority and responsibilities, TSA is the sole Federal agency with authority to enforce its regulations. DOT's components do not have authority to enforce TSA's rules and TSA cannot enforce theirs. DHS and DOT, however, do consult and coordinate with each other on security-related issues pursuant to various memoranda of understanding (MOU). To mitigate concerns about duplication of efforts by inspectors, DHS has entered into an MOU with DOT with separate annexes between TSA and the modal components of DOT. These annexes address coordination on regulatory matters.

When appropriate, TSA will coordinate with an owner/operator on inspections. Notice gives the parties to be inspected the opportunity to gather evidence of compliance and to arrange to have the appropriate personnel available to assist TSA. Some inspections, however, can only be effective if TSA's presence is unannounced. TSA must have the flexibility to respond to information, operations, and specific circumstances whenever they exist or develop.

Security concerns are different at different times of the day and on different days of the week. Terrorists may seek to take advantage of vulnerabilities whenever they occur.

[73] *Id.* at 91344.

[74] *Id.* at Table 3, *Explanation of Proposed Terms and Definitions.*

[75] *See* 49 CFR 236.1003.

[76] *See supra,* section II.A.4 for more discussion on the distinction between hosting and contractual relationships and the ramifications for responsibility of providing security training.

[77] *See* sec. 1302(a) of the 9/11 Act. TSA is issuing this rule under the authority of 49 U.S.C. 114.

[78] *See https://www.tsa.gov/sites/default/files/enforcement_sanction_guidance_policy.pdf.*

[79] *See* 81 FR 91341, *citing* 49 U.S.C. 114.

[80] 49 U.S.C. 114(f) and (l).

[81] 49 U.S.C. 114(f) and (v).

TSA has the authority to assess the security of transportation entities during all times of the day or night and under all operational situations (including nights, weekends, and holidays). The nature of any given TSA inspection will depend on the specific circumstances surrounding a particular owner/operator at a given point in time and will be considered in conjunction with available threat information.

An audit checklist is unnecessary for this program. Under the rule, owner/operators are required to submit a security training program to TSA for approval. As the regulated owner/operators are the original drafters of the security training program approved by TSA, they should not need a checklist from TSA to inform them of the program's content and requirements. The use of TSA-provided training material does not eliminate the owner/operator's ownership of the program and knowledge of the program's contents. The security training program developed and submitted by the owner/operator to TSA for approval is likely to include additional information provided or developed by the owner/operator to meet all of the curriculum requirements.

Regarding having TSA inspectors undergo safety training prior to visiting a property, TSA's inspectors are properly trained regarding how to safely inspect an owner/operator's property and the importance of complying with official safety-related requirements while on the owner/operator's property. For example, TSA puts its inspectors through a rigorous training program, incorporating classroom and field training, so inspectors are knowledgeable on all aspects related to this regulatory program as well as on safety issues. TSA recognizes the importance of this training to ensure inspectors avoid danger to themselves, to workers on the inspected property, to travelers, and to the inspected property.

Finally, concerning the suggestion that TSA consider an audit program for contractors, in lieu of making the owner/operator responsible for ensuring contractor receives training, TSA applies two important regulatory policies related to responsibilities of contractors. First, contractors performing measures required under TSA's rules are ''authorized representatives'' of the regulated party.[82] As part of its general enforcement policy, TSA consistently holds regulated parties responsible for the actions of their authorized representatives.

Second, authorized representatives and other contractors (and their employees) are also responsible for complying with TSA's regulatory requirements. Under section 1570.7 of this rule, any person may be subject to enforcement action for violations of the rule, including contractors who provide service to owner/operators and the employees of such contractors. As a result, TSA could pursue an enforcement action against the regulated party, the regulated party *and* the contractor as an authorized representative, or against the contractor.

C. Part 1570—General Rules

1. Terms Used in This Subchapter (§ 1570.3)

Comments on definition of ''security-sensitive employees'': In addition to comments of general support for the definition of security-sensitive employee, TSA received a few questions about the term. One commenter sought more information on what defines an employee in a security-sensitive position, specifically asking whether the definition includes a cyber-expert or a frontline engineer staffing a commuter train. Another commenter suggested replacing the term with ''Frontline Employees'' for consistency with the 9/11 Act, finding the term ''security-sensitive'' to be confusing and therefore subject to misinterpretation. Further, this commenter found no risk-based justification for establishing a classification of employees to determine who should receive security training.

TSA response: As discussed in the NPRM, the definition of ''security-sensitive employees'' includes employees who perform functions with a direct nexus to, or impact on, transportation security based on their job functions.[83] Engineers are specifically covered within the job functions identified for 49 CFR parts 1580 (freight railroads) and 1582 (public transportation and passenger railroads). A cyber-expert may be considered a security-sensitive employee based upon specific job functions, such as functions involving control or movement of trains, or because of other cyber-security responsibilities related to the owner/operators security measures in its security plan to protect the integrity of its information systems.

TSA chose the term ''security-sensitive'' for this rule to mirror the term ''safety-sensitive'' used in rules promulgated by DOT. There is no statutory requirement for TSA to specifically use the term ''frontline employee,'' as long as the scope of the rule includes the employees identified in relevant portions of the 9/11 Act, which it does.

Finally, as discussed in the NPRM,[84] TSA applied a risk-based approach to all requirements in this rule, including the definition of security-sensitive employee. The NPRM explained TSA began with an analysis of the employees listed in the 9/11 Act's definitions of ''frontline employees'' who must receive training[85] and then considered whether other employees may also be in a position to spot suspicious activity because of where they work, their interaction with the public, or their access to information. TSA also considered who needs to know how to report or respond to these potential threats. This additional group of employees includes managers, supervisors, or others who perform the function or who so directly supervise the performance of a function that their nexus to the job function is equivalent to the employee.

2. Recognition of Prior or Established Security Measures or Programs (§ 1570.7)

Comments related to use of existing training: Several commenters suggested that TSA should allow use of previous training or programs to satisfy the rule's requirements. The range of these existing programs include training provided under TSA's First Observer™ program and existing railroad security training, which commenters assert meets the intent of the 9/11 Act. Commenters noted that both freight and passenger railroads currently maintain effective security training programs.

Comments on how to use these existing programs varied, including allowing owner/operators to amend their existing programs to make them comply with the rule's requirements; letting currently trained employees be ''grandfathered'' in as long as their training meets the rule's requirements; and a request that TSA determine these existing training programs meet the 9/11 Act's requirements without imposing additional regulatory requirements.

Finally, a commenter expressed concern that owner/operators will be allowed to fulfill the training requirements in a variety of ways, creating unique programs for each system. The commenter noted the

[82] *See* the rule's definition of ''authorized representative'' in 49 CFR 1500.3.

[83] 81 FR 91333 *et seq.*

[84] *See id.* at 61353–61355.

[85] *See id.* at Table 6, *Comparison of security training NPRM proposed categories for ''security-sensitive employees'' to 9/11 Act definitions of ''frontline employees'' who must be trained.*

training requirements may become overly burdensome for employees and employers if an employee must be re-trained every time he or she leaves one transportation operation and joins another.

TSA response: Consistent with requirements of the 9/11 Act, the rule specifically provides for recognition of previous training in § 1570.107.[86] Under this section, owner/operators can use previously provided training meeting or exceeding the requirements of the rule to the extent they can provide documentation of the training and validation this training satisfies the requirements applicable to that employee. The rule also provides owner/operators with the flexibility to use other training programs addressing some or all of the same topics to satisfy the regulatory requirements in §§ 1580.113(c), 1582.113(c), and 1584.113(c).[87]

TSA recognizes that many of the owner/operators to be regulated by this rule have taken voluntary actions to raise their security baseline. TSA applauds these efforts, but also notes that they do not negate the benefits of this rulemaking. The purpose of this rule is to solidify the baseline for those that have already implemented security training programs, and to raise those who have not to a consistent standard across higher-risk operations. To the extent owner/operators established security training programs consistent with the 9/11 Act as a voluntary initiative or implemented use of TSA's First Observer™ program,[88] and continue to provide regular training to their employees, these efforts should significantly mitigate any costs for compliance with the rule.

Finally, the provision on use of previous training, in § 1570.107, also addresses concerns about unique training programs and the impact on employees who change jobs. If the owner/operator can validate the content and timing of the previous training, the rule allows this training to be credited towards satisfying the regulatory requirements. At most, the new employer may need to supplement portions of previous training to address unique aspects of its own TSA-approved security training program. This allows the owner/operator to ensure all of the security-sensitive employees receive training specific to their operations in order to best mitigate security risks.

3. Submission and Approval (§ 1570.109)

Comments on frequency of submitting security training programs to TSA: Two commenters suggested companies should be permitted to submit training plans and curriculum only once to TSA, which TSA would store and review on a yearly basis and make recommended changes based on the current threat.

TSA response: The rule does not impose a specific schedule for owner/operators to submit updates to their security programs, such as an annual update. It does, however, require owner/operators to request to amend their programs if necessary to reflect changes in ownership or permanent changes in operations affecting the security training program or curriculum.[89] For example, a program may need to be updated if the owner/operator replaces equipment resulting in instructions conflicting with the current security training curriculum, or expands operations into a new commodity with different risks, changes personnel structures affecting reporting, or begins operations in a new geographical area. In addition, the final rule narrows the scope of amendments required for changes to security measures or plans. Recognizing an owner/operator's security program may include issues not specifically relevant to the scope of transportation security this rule is intended to address, the final rule includes a list of the specific type of measures and program changes triggering the requirement to request an amendment. TSA may also require owner/operators to amend their plans in the interest of the public and transportation security.[90]

Comments on methods for submitting security programs to TSA: A number of commenters supported submitting training programs to TSA via electronic means, such as in email on a secured password protected platform. One commenter also expressed support for the proposed initial security program submission and approval process, as well as the amendment approval process.

Two commenters, however, raised concerns with this process, claiming it is too rigid and cumbersome to be effective. Commenters noted railroad training programs are robust and adaptable, evolving to address threats and security concerns. To continue to be effective, the commenters advocated that they be allowed to update their programs as needed without TSA approval. They also noted the FRA already oversees railroad security training programs, and TSA inspectors can review the same materials. They noted that given their current process, the NPRM lacked adequate justification for the imposition of a prescriptive process for submission, review, and approval of training programs already in effect.

TSA response: In response to concerns regarding form of submission, TSA intends to allow for electronic submission of required documentation, consistent with SSI requirements. Relating to the need for updating programs, the final rule requires owner/operators to adapt their training materials to address specific threats in the various modes as they emerge. TSA approval is not required for an update unless the changes stay in effect for more than 60 days. For example, an owner/operator may provide additional training to address risks associated with a city hosting a national special security event. If the changes are to stay in effect for more than 60 days, the owner/operator must formally request approval to amend their security program. As the required content for the required security training is general operation security, TSA does not anticipate the TSA-approved security training needing to change significantly in response to a specific threat.

As to the concern about duplication of effort, TSA may accept all or portions of an owner/operator's existing security training. Under § 1570.107, an owner/operator may rely on previous training provided within the stipulated periods for initial or recurrent training, as validated by TSA (based on information submitted by the owner/operator). In addition, the rule provides for owner/operators to rely on training conducted pursuant to other requirements to satisfy the rule's security training requirements.[91] In fact, the rule specifically references training required by FRA.[92] In reviewing material prepared for other requirements, TSA will determine whether the material adequately addresses security training from TSA's perspective and reduces the risk of a terrorist-related attack on the transportation. As previously noted, TSA mitigates concerns about

[86] *See id.* at 91347 for the discussion on this topic in the NPRM.

[87] *See id.* at 91361–91362.

[88] The First Observer™ program, previously known as Operation Secure Transport, has been in use for highway motor carriers (OTRB owner/operators) and covers the Observe, Assess, and Respond security training components required by this rulemaking. TSA credits those OTRB owner/operators who have used the First Observer™ program in its RIA (full description in Section 1.5 of the Final RIA).

[89] *See* § 1570.113 and discussion in section IV.B.1.

[90] *See* § 1570.115 and discussion in section IV.B.2.

[91] *See* §§ 1580.113(c), 1582.113(c), and 1584.113(c).

[92] *See* §§ 1580.113(c) and 1582.113(c).

duplication of inspections, through the annexes to the DHS/DOT MOU. These annexes address distinctions between TSA's focus on security and DOT's focus on safety, as well as coordination on regulatory matters between TSA and the relevant modal components of DOT.

Finally, regarding the prescriptive process requirements, TSA reviewed all requirements in this rule to identify any options to reduce the burden without undermining the rule's effectiveness or conflicting with requirements in the 9/11 Act. The 9/11 Act specifically requires submission of the training programs to DHS for approval and regular updates.[93] TSA believes the submission and approval requirements in § 1570.109 are consistent with this statutory requirement, provide clear instruction on how this requirement is to be met, and ensure consistent application of the rule's requirements.

4. Implementation Schedule (§ 1570.111)

Comments on initial security training: Several commenters advocated for the proposed accumulated grace periods, ranging from 90 to 180 days, to allow recently hired employees to work before they complete the training requirements. One commenter suggested abandoning the accumulated days concept and replacing it with a requirement for all employees to receive security training no later than 90 days after beginning employment. One commenter suggested a method for calculating date: A day should be based on full-time employment, with each 8-hour period worked counting as one day. Regarding contractors, the same commenter suggested the training responsibility should rest with the contracted company.

Comments also addressed how to regulate temporary and/or part-time employees. One commenter suggested all drivers, whether employees or contractors, should be trained. Another commenter explained ''pooling agreements,'' which allow or require employees from other companies to operate their equipment, and noted these arrangements should be covered in the final rule.

TSA response: While TSA appreciates concerns regarding the implementation schedule for initial training, the 60-day requirement is set by the statute. As noted in the NPRM, the 9/11 Act requires initial training within the first 60-days of employment for new employees or for those transitioning to a covered job function (as identified in Appendix B to parts 1580 (freight rail), 1582 (PTPR), and 1584 (OTRB).[94] TSA is not adopting the suggestion of a day equaling an aggregated 8-hour period. TSA's intent with this rule is to ensure employee's that are regularly positioned to identify and respond to security threats are prepared to do so. TSA does not believe that this priority is served by hourly calculations to determine what constitutes a day.

As to contractors, TSA consistently applies a policy requiring regulated parties to accept responsibility for their contractors, including employees operating under pooling agreements. Any person working for an owner/operators within the scope of applicability, performing a security-sensitive position—without regard to primary employer or full/part-time status—must be trained. In other words, a pooling agreement does not mitigate the need for security training. The impact of this policy is more fully discussed under comments related to 49 CFR part 1503.

Finally, TSA is not changing the aggregated employment requirement in § 1570.111(4) nor the requirement for employees (whether intermittent or contract) to be trained no later than the 60th day of aggregated employment performing a security-sensitive function. This requirement ensures these employees are trained after they are in a position with a particular owner/operator long enough to gain awareness of the operations necessary to determine when there is an anomaly that could constitute a threat.

In response to the comment about all drivers (presumably of OTRBs) being required to receive training, TSA is limiting it to individuals with a commercial driver's license to focus on those with a nexus to security, in other words, those likely to operate a bus to, through, or from a high-risk location, rather than employees moving a bus across a yard. While TSA is not currently requiring all drivers to receive the security training, this does not prevent owner/operators from voluntarily providing the security training required for security-sensitive employees to a broader population of employees.

In addition, TSA is developing training materials that can be consistently used across a particular mode. Use of this material, coupled with the ability to use previous training, will minimize the burden of ensuring employees in pooling agreements received adequate training. Owner/operators can rely on the TSA-provided material to address most of the requirements and limit their operation-specific training to procedures unique to their operation, such as points of contact to report security concerns and emergencies.

Comments on recurrent security training: TSA received a variety of comments on recurrent training. Some commenters generally supported annual recurrent training. Other commenters stated they should have flexibility to self-determine the training schedule for their employees, as opposed to an adhering to a ''one size fits all'' approach. Some commenters expressed concern with the time frame due to cost constraints and the practicality of training employees while simultaneously maintaining service. These commenters suggested longer time periods between training, such as two or three years. One commenter highlighted the safety requirements in FRA's rules, which require training every three years.

TSA response: TSA considered options for recurrent training both before proposing the requirement in the NPRM and in consideration of comments submitted on the NPRM. TSA continues to believe in the importance of recurrent training to meet the purpose of the rule, but is adjusting the frequency of training in consideration of the comments. The final rule requires recurrent training once every three years. If, however, the owner/operator modifies its security program or plan and those changes affect the responsibilities of specific security-sensitive employees, based on their position or function in relation to security program or plan requirements, the affected employees must receive recurrent training to address the changes within 90 days of implementation of the revisions. This change is consistent with the requirements for hazardous materials employees under 49 CFR 172.704.[95] The recurrent training requirements are discussed in more detail in section II.J.2.

5. Recordkeeping and Availability (§ 1570.121)

Comments: Two commenters said the proposed 5-year record-keeping requirement would be excessive in duration, costly and burdensome in administration, and unjustified by any risk-based factors. As an alternative, they suggested owner/operators should only be required to retain training from

[93] 9/11 Act sections 1408(d), 1517(d), and 1534(d).

[94] *See* 81 FR 91347.

[95] In addition, TSA notes that it may order modifications to a security program or plan, or order additional training, as necessary. *See, e.g.,* 49 U.S.C. 114(l).

the past three years (assuming TSA adopts a 3-year training requirement).

TSA response: Within the context of an annual recurrent training requirement, TSA considered modifying the record retention period based on the comments as three years would provide adequate records of previous training. The change, however, to recurrent training on a three-year cycle necessitates maintaining the 5-year retention schedule in order to ensure that the owner/operator can provide adequate representation of previous training consistent with recurrent training requirements as well as any training based on modification to the owner/operator's security program or plan.

6. Security Coordinator (§ 1570.201)

Comments on security coordinator availability: Two commenters suggested changes to the security coordinator requirements specifically for railroad companies. First, they suggested TSA only require affected railroads to maintain a 24/7 communications capability to ensure TSA can reach the rail security coordinators and designated representatives for the stated purpose of receiving intelligence information and coordinating on security practices and procedures.

Second, there was one objection to the proposed requirement for freight railroad operators to name rail security coordinators (RSC) ''accessible to TSA on a 24-hour a day, 7-day a week basis.'' The commenter suggests modifying this proposal to require the railroad to ''maintain a 24/7 communications capability to ensure TSA can reach the RSCs and designated representatives for the stated purpose of receiving intelligence information and coordinating on security practices and procedures.''

TSA response: First, TSA is reorganizing the location of the RSC requirements promulgated in 2008, moving the requirements from 49 CFR part 1580 to part 1570 (§§ 1570.201 and 1570.203) and expanding applicability of the existing RSC requirement to include bus operations of public transportation systems and OTRB owner/operators within the scope of the rule's applicability. TSA neither proposed nor is adopting any modifications to the RSC requirements as they apply to railroads and the requirement regarding 24/7 accessibility of security coordinators.

It is critical for security coordinators to be ''accessible to TSA on a [24/7] basis'' rather than accepting ''a 24/7 communications capability [that] can reach the RSCs.'' Although most communication between TSA and security coordinators may be routine, these individuals are intended to serve key roles in times of heightened and specific security threat and incident. During such periods, immediate communication with the security coordinators may be required to prevent or mitigate loss of life or severe harm to transportation security. TSA believes the requirement for security coordinators to be accessible to TSA on a 24-hour a day, 7-day a week basis is amply justified by commonly accepted principles of emergency and security management. If TSA needs to convey extremely time-sensitive security information to a regulated party, particularly in situations requiring frequent information updates, the information exchange benefits if there is continuity in participants. The security coordinator must be in a position to understand security problems, raise issues with corporate leadership, and recognize when emergency response action is appropriate. If the contact changes every time TSA makes a call, the loss of continuity will undermine the effectiveness of the communication.

Comments on citizenship requirement for security coordinators: Two commenters stated disclosing citizenship status is unnecessary and should not be required. One of the two commenters suggests TSA should recognize Canadian government security clearances in lieu of requiring RSC to be citizens of the United States.

TSA response: The rule does not require a rail security coordinator to be a citizen of the United States. It does however, require each owner/operator to report the citizen status of individuals it intends to put forward as its RSC under § 1570.201(d). This requirement is necessary to meet the 9/11 Act requirement that security coordinators be U.S. citizens unless TSA determines it is appropriate to waive the requirement ''based on a background check of the individual and a review of the consolidated terrorist watchlist.'' [96] By providing this information up front, TSA can initiate any additional actions necessary to comply with this requirement.

7. Reporting Significant Security Concerns (§ 1570.203)

Comments on mandatory reporting requirement, scope of reporting, and form of reporting: Several commenters opposed a mandatory reporting requirement. A few argued the requirements would open up their companies and employees to liability should an incident occur and an earlier warning action was not observed. Several other commenters specifically opposed the 24-hour proposed time limit, stating it was too short, and some transit agencies may not know what the threat is in that amount of time.

Commenters also suggested TSA authorize electronic reporting of significant security concerns to meet the reporting requirements in § 1580.203. These commenters noted the rail industry has developed an electronic reporting capability and demonstrated its effectiveness in three industry-wide exercises.

Finally, a few commenters asked for additional clarity regarding what ''significant security concern'' entails, and one asked for a list of examples. One commenter specifically suggested TSA harmonize its definition of ''security threat'' with the FRA's requirement in 49 CFR part 239. Several commenters suggested streamlining the requirements.

TSA response: As with the security coordinator requirement, TSA is reorganizing the location of the reporting significant security concerns requirements promulgated in 2008 (which were at 49 CFR part 1580), placing the requirement in part 1570 to expand its applicability to OTRBs and bus operations of public transportation system companies within the scope of the rule's applicability. As proposed in the NPRM, TSA is making three primary changes to the current requirement through this final rule. These changes affect all owner/operators required to report, but results in a reduced burden for rail operators previously required to report. First, the rule modifies the current requirement to report *immediately,* to allow *up to 24 hours* to report significant security concerns. TSA is providing a period of up to 24 hours to report the information for two reasons: (1) If there is an emergency, the immediate priority is to notify and work with first responders, not call TS, and (2) TSA is aware the quality of information provided is improved when owner/operators have an opportunity to review the information and ensure it constitutes a valid significant security concern consistent with the description of activities in Appendix A to part 1570 before it is reported. TSA believes 24 hours is an adequate period for this process to work effectively. If more time is granted, the information may be too stale to be of benefit to TSA or its other stakeholders.

Second, TSA is modifying the existing requirement to allow for electronic reporting. The current rule requires reporting to be made by telephone. With

[96] *See* 9/11 Act sections 1512(e)(2) and 1531(e)(2).

this final rule, TSA is expanding the requirement to allow for other methods prescribed by TSA. TSA will communicate these methods directly to security coordinators to avoid a situation where a phone number or email address may become outdated based on changes or requirements beyond the scope of this rulemaking.

Third, as noted in the NPRM and discussed in section III.C, TSA is including in the final rule a table that identifies categories of incidents and provides detailed descriptions.[97] These incidents are modified from the requirements promulgated in 2008 to align with other standards, including those mentioned by commenters, and recommendations from the Government Accountability Officer (GAO).

D. Subpart B—Security Programs

1. Security Training Program General Requirements (§§ 1580.113, 1582.113, and 1584.113)

Comment on content creation: TSA received several comments regarding responsibility for creating training content. TSA also received questions concerning who will conduct training and the training format, including recommendations for TSA to consider video training, in-classroom, and/or field training. Another commenter suggested putting a one-hour cap on course length. One commenter suggested an outside entity, not TSA, should provide oversight for compliance with the training. Several commenters also suggested TSA should require transit systems, rail carriers and OTRB operators to seek the input of employees and union representatives as they draft their training plans, which would ensure the plans consider individual circumstances and are effective in promoting transportation security.

TSA response: Rather than putting limits on curriculum development, the rule requires owner/operators to submit their security training programs to TSA for review and approval. While the burden is on owner/operators to develop and provide the training, the rule neither prescribes how the content is to be created nor dictates how it is to be provided. The flexible requirement is an intentional effort to address the varied operational issues for owner/operators required to provide training. For example, larger owner/operators may determine it is more cost-effective to incorporate the training required by this rule into existing training provided in a classroom. For smaller operators, web-based training may be easier.

To address this variety, the rule requires owner/operators to develop and implement a security training program meeting the requirements of the relevant subparts and ensures the standards are met by requiring the program to be submitted to TSA for review and approval of the curriculum (including lesson plans, objectives, and modes of delivery) and method for measuring effectiveness.[98] TSA is unwilling to put a cap on the requirement. Based on the security awareness training TSA requires for its own employees as well as its work and discussions with experts on content development, TSA assumes adequately addressing all of the required elements will take approximately one hour.

TSA is committed to providing maximum flexibility within the constraints of the 9/11 Act's requirements and needs of regulatory compliance. To support compliance, TSA intends to provide complimentary training material satisfying many of the rule's requirements. If owner/operators choose not to use this material, they will need to develop a *full* curriculum to be approved by TSA. If they do use it, they may still need to submit additional material for any portion of the required training (based on their unique operations) not covered by the TSA materials. As a result, the rule provides a process balancing flexibility (for owner/operators to develop a program specific to their operational environment) and TSA's need to ensure training programs meet the rule's purpose.

TSA does not agree with suggestions for third-parties (not TSA) to oversee the curriculum development and training. In light of the flexibility given for curriculum development, TSA must ensure the minimum requirements of the rule are met in order to satisfy both the mandate of the 9/11 Act and TSA's intent for this rule to provide a consistent baseline of security training across higher-risk operations. TSA's subject matter experts for the modes of operation covered by this rule will lead this review and approval process.

TSA agrees the materials should be relevant to the operational environment and the employees who work within that environment. Like other aspects of curriculum development, the rule gives owner/operators the flexibility necessary to meet this objective without imposing a prescriptive requirement. Similarly, the rule does not prohibit owner/operators from consulting with relevant parties or developing programs appropriate for their operational environment.

Comment on size of train crew: One commenter noted that a two-person minimum crew in train cabs is vital to defending national security. Their concerns reflected current operational requirements, such as monitoring of computer screens rather than monitoring conditions outside of the train (such as the track).

TSA response: The purpose of this regulation is to ensure employees performing security-sensitive functions receive adequate training. Staffing requirements for train operation are beyond the scope of this rulemaking.

Comments on effectiveness of security training: The rule requires owner/operators to include in their security training programs a method for evaluating the effectiveness of the program.[99] A few commenters suggested ways to ensure the training is effective and applicable to real-world situations. Suggestions included having businesses put up a poster as a general reminder of the material covered in the class, creating incentives (monetary or time-off awards) to completing training, and ensuring class is engaging and not only a lecture in a classroom. Another suggestion was to integrate randomized written tests or drills of the covered material, of which successful completion could warrant an award. Comments included suggestions for training to be conducted in a classroom, citing two benefits of classroom training: (1) Allows employees to ask questions and learn from questions and discussions and (2) allows instructors to work with employees through a variety of scenarios, which would include teaching how to look out for and spot various security threat and explain the various roles each employee serves in responding to these threats. One commenter asked whether the training could be incorporated into ''Entry Level Driver''-training, and also suggested an online ''train the trainer'' course.

Commenters were divided on the question of whether the training's effectiveness should be documented through testing. Several commenters stated that classroom testing should be augmented by field testing. Others suggested no testing should be required. Several commenters suggested that TSA incorporate efficacy standards or incentives for public transportation agency employees. As an alternative, a number of commenters opposed any kind of proficiency testing on the training course material.

[97] *See* Appendix A to part 1570. *See also* 81 FR 91351–91353.

[98] *See* §§ 1580.113(b)(6), 1582.113(b)(6), and 1584.113(b)(6).

[99] *See* §§ 1580.113(b)(9), 1582.113(b)(9), and 1584.113(b)(9). *See also* discussion at II.K.

TSA response: TSA is requiring the owner/operator to describe the method to be used for measuring effectiveness of security training and will conduct inspections to ensure the approved method is being used, as part of implementing the TSA-approved security training program. While TSA appreciates the information provided by commenters for measuring the effectiveness of training, TSA has decided not to dictate which method must be used. As part of its commitment to recognizing the many unique operational environments for owner/operators subject to this regulation, as well as the commitment to balance maximum flexibility with effective security, TSA is not requiring a specific method for measuring effectiveness.[100]

TSA recognizes that pre- and post-testing in a classroom setting is an efficient way to determine the effectiveness of training. TSA also acknowledges, however, that, other methods of documenting the effectiveness of training exist, which may be preferable for some employees and/or circumstances. Therefore, TSA is not specifying a particular type of testing or other method for determining effectiveness, but will use the owner/operator's TSA-approved standard for measuring effectiveness when inspecting an owner/operator's training documentation to verify that each employee who must be trained has received the required training and that the owner/operator has determined that the training is effective.

2. Security Training and Knowledge for Security-Sensitive Employees (§§ 1580.115, 1582.115, and 1584.115)

Comments on security training knowledge requirements: TSA received varied comments on the required security training curriculum content requirements. The comments ranged from asserting that the scope of the training content is overly broad to proposing additional training requirements to be added to the rule.

One commenter, concerned that the scope is too broad, suggested training beyond awareness observation and reporting may be excessive and counterproductive to the safety and convenience of passengers. The commenter recommended that security training requirements not exceed the parameters of the employee's unique tasks or working environment.

Finally, some commenters wanted topics added to the curriculum. Two commenters suggested the training focus on civil liberties, and integrate community policing principles. Other proposed topics included how to respond to an attack, high-jacking, and/or kidnapping scenario; self-defense training; specified training on high-risk events; training on accessing and interpreting situations; and development of communication skills.

Commenters suggested the training address issue of civil rights and liberties, expressing concerns about training employees to identify individuals as threats based on their socioeconomic status. One commenter specifically cautioned against enabling transit security personnel to profile riders based on race or religion, and suggested personnel should first be trained to respect rights of all individuals, and should also be trained in effective measures not involving ''stop and frisk,'' or similar measures.

TSA response: TSA believes the required security-training topics (covering prepare, observe, assess, and response) will provide a baseline of security awareness to enhance the overall safety and security of passenger and cargo transported by rail and highway. This type of security awareness does not inconvenience passengers or undermine their safety. It does, however, enhance passenger security. Furthermore, nothing in the rule empowers employees to engage in racial profiling or conduct police operations. TSA will not approve a training curriculum encouraging employees to conduct racial profiling or report threats based on socioeconomic status.

Finally, the regulatory requirements for training content provide flexibility to owner/operators to develop programs appropriate to their operational environment, including known threats and vulnerabilities. As a result, training may include how to identify threats such as a potential hijackers and how to prepare and use the required training during high-profile events (including appropriate communications with the public and first responders). The requirements of this rule will enhance such targeted, optional training. The rule's requirements will result in employees possessing an understanding of the norm for their operational environment, the skills and knowledge necessary to identify anomalies indicating a potential threat, and the capability to respond appropriately.

Comments on training to satisfy regulatory requirements: Several commenters requested more specificity regarding what type of training will satisfy the curriculum requirements, including a list of examples. One commenter asked for guidance on what type of training will satisfy the curriculum requirement concerning ''defending oneself.''

TSA response: In the past, TSA has worked with the relevant associations and FEMA to identify training to address specific security needs and anticipates continuing to do so as it relates to the requirements in this rule. In addition, TSA has partnered with national associations and industry to cooperatively develop security training curriculum and programs. While TSA does not intend to endorse specific third-party training programs owner/operators may submit these programs to TSA as part of their security training programs. TSA will assess all submitted programs to ensure compliance with the rule's requirements before approving the training program. As to the comment on providing more information on ''defending oneself,'' the rule does not require training on how to use self-defense devices or other protective equipment provided by the employer. TSA assumes the employer's standard employee training will address these issues at the time the equipment is provided (one commenter noted the Occupational Health and Safety Administration (OSHA) requires employees to receive training in the use of (PPE) required by their job functions).

Comments on impact of TSA-developed security training materials: One commenter suggested that TSA develop an annual course based on current threat and intelligence rather than requiring companies to create annual plans for TSA approval. Similarly, several commenters suggested that TSA create a baseline curriculum, such as a video, that would meet the regulatory requirements. One commenter suggested that companies could voluntarily submit supplemental training that exceeds the recommended baseline training that is specific to their mode. One commenter, however, specifically stated that TSA's First Observer™ training materials are inadequate.

TSA response: This rule does not require owner/operators to submit updated plans every year. Updates, or amendments, are only required for specific reasons, as discussed in section IV.B.

In regard to the comments regarding use of First Observer™, TSA notes that the First Observer™ program most familiar to regulated parties was created primarily for highway and motor carrier professionals. While TSA assessed that First Observer™ covers three of the required training elements for OTRB owner/operators, the program was not created to specifically address this rule

[100] For further discussion, *see* 81 FR at 91361.

nor was it meant to be applicable to all surface modes of transportation.

At the time the NPRM was published, TSA anticipated expanding the First Observer™ program to incorporate additional training material. Since publication of the NPRM, however, TSA initiated development of new materials to address three of the required training program components (Observe, Assess, and Respond) that are relevant to all owner/operators within the three covered modes.[101] While these videos are a new product intended to specifically align with the rule's requirements, they build upon previous training developed by TSA under First Observer™ and other transportation security-related training programs. TSA adapted this previously developed information, and supplemented it as necessary, to ensure the videos address as many of the required training elements as can be met through a one-size fits all training video. These materials may eventually be placed under the First Observer™ umbrella, but will not be the same as the original program.

As noted in the NPRM, use of TSA-developed and provided material is optional. TSA developed these materials to further reduce the burden of compliance to owner/operators with a resource they *may* use to meet a majority of the security training requirements under this rule. These videos will be made available to all of TSA's surface stakeholders.

TSA is aware that not all owner/operators will choose to use TSA-provided material, particularly if they are incorporating their training into existing training programs to meet other Federal, state, or local training requirements. Owner/operators may need to develop and/or provide supplemental material to ensure the training provided meets all of the training requirements, specifically reflecting nuances within the operations of a particular owner/operator or a particular sub-set or location of these operations. This additional information must be identified and included in the security training program submitted to TSA. As the videos use is not mandatory, the economic analysis does not account for them when estimating costs of compliance.

[101] The ''Prepare'' element of the required training curriculum is, by its nature, specific to each the operations of each owner/operator covered by the rule. As such, this element cannot be addressed in material intended to be applicable to multiple owner/operators.

E. Freight Rail Specific Issues

1. Applicability of Security Training Requirements (§ 1580.101)

Comments: Several commenters expressed concern related to the designated list of HTUAs in Appendix A to part 1580. One commenter believed the training is necessary for all frontline employees, not just those employed by higher-risk operations. Another noted that improving security at some locations may result in terrorists redirecting their operations to softer targets not covered under the rule. The commenter suggested the rule should require security training at all transportation locations. The commenter specifically recommended that the rule cover freight, passenger rail, and public transit systems.

TSA response: As discussed in the NPRM, TSA's risk-based determinations for applicability are consistent with the focus of the 9/11 Act's requirements on higher-risk operations.[102] This risk-based focus is reflected in the statutory requirement for the training to be provided to frontline employees, not all employees, and placing the security training requirements within the context of a broader security program focusing on higher-risk operations.

While hardening one target could make those with nefarious intent believe that other targets are more vulnerable, the threat (an adversary's intent and capability) is only one of the critical factors affecting risk (which also includes vulnerabilities and consequences). The risk analysis underlying the applicability for freight railroad is heavily weighted to address concerns regarding the vulnerabilities and consequences. TSA determined the highest risk freight railroads are those designated as Class I, based on their revenue and the Nation's dependence on these systems to move both freight in support of critical sectors and passengers. All Class I railroads must provide security training. Similarly, some shortlines (also known as Class II or Class III railroads) are higher-risk because of what they transport and where they transport it. As noted above, and in the NPRM, certain materials have a higher-risk associated with them based on the potential consequences should they be released.[103] The likelihood of catastrophic consequences is greater in HTUAs. By reducing the vulnerability through increased security training, the rule's applicability is intended to reduce the risk for these systems without increasing the risk for others. Finally, TSA encourages owner/operators not within the scope of the rule's applicability to use the regulatory requirements as guidance for voluntarily implementing a security training program for its security-sensitive and other employees, whether by using TSA-developed programs or through its own training. These owner/operators may contact TSA through the numbers and addressed identified in under **FOR FURTHER INFORMATION CONTACT**, or through modal associations (with whom TSA regularly interacts).

[102] *See* 81 FR 91355 *et seq.*

[103] *See id.*

2. Chain of Custody and Control Requirements (§ 1580.205)

Comments: Two commenters asserted threat assessments indicate freight railroads face a lower terrorist threat. The commenters concluded the transfer of custody procedures should only apply at elevated or imminent terrorism levels.

TSA response: TSA understands this comment to be about the chain of custody requirements currently required by 49 CFR 1580.107 and not this rule's requirements to provide training on the chain of custody procedures employed by the railroad. For the underlying chain of custody requirements, this rule merely relocates the requirement within the CFR; TSA did not propose modifying them. TSA thus considers these comments pertaining to substantive changes to the chain of custody requirements as beyond the scope of this rulemaking. Consistent, however, with the requirements of Executive Order 13777, *Enforcing the Regulatory Reform Agenda* (Feb. 24, 2017), TSA is addressing this comment as a suggested revision to existing regulations.

Under 49 U.S.C. 114(l)(3), TSA is required to consider the potential impact on security before it rescinds or revises a regulatory requirement. Transfer of custody requirements are intended to prevent access by unauthorized persons to railcars loaded with certain chemicals or materials may constitute an immediate threat to life or health if released into the environment. TSA does not agree that transfer of custody procedures should only apply to elevated or immediate threat risk. The state of the terrorism alert level is not related to the need to deny unauthorized persons access to railcars loaded with hazardous materials; unauthorized persons must be denied access to such railcars at all times. Terrorism alert levels are increased when there is reason to believe a heightened threat of an attack exists or may exist. Accessible freight cars containing hazardous materials may be

used to mount an attack spontaneously, without elaborate planning or premeditation on the part of the attacker, and therefore without warning or reason to elevate the threat level in advance of the attack. Current ''chain of custody'' requirements accomplish this objective and are retained in the final rule.

F. Public Transportation and Passenger Railroad Specific Issues

Comments: Several commenters questioned the scope of the rulemaking in relation to PTPR. Commenters specifically questioned TSA's criteria for identifying the current PTPR systems, and asked whether TSA will identify additional PTPR systems in the future. One commenter urged TSA to reconsider limiting the applicability to 46 systems rather than all PTPR systems, as the cost-savings is far outweighed by the cost-effectiveness achieved by meaningful training of all frontline transit employees in security-sensitive positions. One commenter asked if the Federal Transit Administration's (FTA's) impending repeal of 49 CFR part 659 would mean only TSA's identified ''higher risk'' PTPR systems will have security training requirements, vulnerability assessments, and security planning requirements after April 15, 2019.

TSA response: As noted above, TSA's risk-based determinations for applicability are consistent with the 9/11 Act's requirements regarding higher-risk operations. This focus on risk is reflected in the statutory requirement for training frontline employees, not *all* employees, and placement of the security training requirements within the context of a broader security program required to focus on higher-risk operations. In questioning TSA's criteria for its determination, the commenter provided no specific information regarding TSA's perceived failures nor provided alternatives. If TSA decides to expand the rule's applicability to additional systems, it would do so through appropriate rulemaking procedures consistent with TSA's statutory authorities and rulemaking requirements.

TSA cannot confirm the rule will continue to be as cost-effective if the number of PTPR systems is expanded. In the NPRM and Final RIA, TSA performed an alternatives analysis (Section 5.2 of the Final RIA), in which one of the alternatives expanded the scope of affected PTPR owner/operators from 47 (46 PTPR systems + Amtrak) to 253. This alternative would result in the costs of compliance for the PTPR industry to increase from $2.44 million to $14.93 million (both annualized and discounted at 7 percent).[104] It seems unlikely that expanding security training to an additional 206 owner/operators, to include operations not considered higher-risk, will yield a corresponding reduction in risk. As previously noted, TSA encourages owner/operators not covered by the rule's applicability to use the regulatory requirements as guidance for voluntarily implementing a security training program for its frontline employees, whether by using TSA-developed programs or through its own training.

Finally, the nexus between the FTA's requirements and this rule are more fully discussed in the NPRM.[105]

G. OTRB Specific Issues

1. Definition of Security-Sensitive Employees (§ 1584.3 and Appendix B to Part 1584)

Comments: Two commenters expressed concern that bus companies do not always know in advance exactly which buses will be used for which service. One of the commenters suggested it would be easiest for their company if all drivers take part in mandatory training, regardless of their normal scheduled route, as there is potential for a driver to be transferred to a different assignment at the last minute. Another commenter cautioned the rule may cause confusion as to which employees of an operation should be trained, and asked for clarification whether an operator should only train front line employees servicing identified destinations. The commenter explained a scheduled service operator may offer charter, shuttle bus, or other transportation services, in addition to fixed-route service to areas that are outside the UASI areas.

TSA response: To address the request for clarity, TSA recommends owner/operators first determine whether they have operations placing them within the scope of the rule's applicability, *i.e.,* whether the owner/operator provides fixed-route service to, through, or from one of the areas identified in Appendix A to part 1584. If so, the owner/operator must provide security training to all of its security-sensitive employees. The question of which employees receive training is not based on where the employee's job takes them, but what their job requires them to do. Thus, all employees who have a commercial driver's license and operate an OTRB for the owner/operator must receive security training, not just those who drive an OTRB to, through, or from an identified area.

The comments provided conflicting opinions on whether requiring all security-sensitive employees to receive the training, regardless of where the individual operates, is necessary. TSA is requiring that all security-sensitive employees must be trained, but notes that owner/operators may request alternative measures under the procedures in § 1570.117.

2. Applicability (§ 1584.101)

Comments on threat: One commenter disagreed that vehicle borne improvised explosive devices (VBIED) are the greatest and most likely attack risk, citing recent terrorism-related incidents involving vehicle ramming.

TSA response: Within the context of the 9/11 Act's mandate for TSA to require OTRB owner/operators to provide security training to their employees, TSA's risk analysis focused on what risks were greatest for OTRB, not all forms of motor vehicles. To the extent the commenter is suggesting use of an OTRB for vehicle ramming is greater than the risk of using an OTRB as a VBIED, the distinction would have no impact on how TSA uses its risk analysis to determine applicability as the vulnerabilities and consequences for OTRBs are similar. To the extent the commenter is referring to other types of motor carrier-related threats, TSA notes that security awareness training is a valuable countermeasure against vehicle ramming attacks. Because large commercial vehicles can do more damage in a ramming attack, teaching large vehicle operators to be more sensitive to and aware of possible hijacking or other attempts to procure their vehicle can mitigate losses and damages.

Comments on applicability: Several commenters expressed concern with the scope and applicability of the rule. One commenter agreed with the definition of ''higher risk'' and their application to the rule, but urged TSA to ensure DHS provides consistency throughout all its components regarding ''the factors that could make an OTRB a potential target.'' One commenter suggested that UASI may be ''over kill,'' and suggested only 10 areas. Another expressed concern that as UASI areas are re-determined annually, the prioritized locations could change frequently, which would result in an undue burden on operators and foster soft targets as resources are shifted to address new threats. Finally, commenters expressed concern that the rule may create ''soft targets'' which could be exploited by terrorists.

[104] *See* Final Rule RIA, tables 40 and 91 for total costs to PTPR in the preferred alternative and Alternative 2 (expanded population), respectively.

[105] *See* 81 FR at 91365.

TSA response: As discussed in the NPRM,[106] TSA's risk-based determinations for applicability are consistent with the focus of the 9/11 Act's requirements on higher-risk operations. This is reflected in the statutory requirement for the training to be provided to frontline employees, not *all* employees, and placing the security training requirements within the context of a broader security program that focuses on higher-risk operations.

While hardening one target could make those with nefarious intent believe that other targets are more vulnerable, the threat (an adversary's intent and capability) is only one of the critical factors affecting risk (which also includes vulnerabilities and consequences). The risk analysis underlying the applicability for OTRB is heavily weighted to address concerns regarding the vulnerabilities and consequences, including the vulnerability associated with scheduled service and the consequences should an attack occur in highly populated urban areas.

Because the risk involving an OTRB as a VBIED is primarily to the targeted urban area, TSA relied on a risk model developed by DHS to determine highest risk urban areas for the UASI grant program. This model has been approved by the Secretary of Homeland Security for calculating the relative risk of urban areas in order to inform UASI allocation determinations.[107] As with PTPR, TSA drew the line for applicability where there is a natural and significant break in the funding allocations as informed by the risk methodology.

As to concern about the impact of future changes to UASI designations, that concern is misplaced. While TSA used the UASI designations to develop its applicability determination, the term UASI is not used in the applicability. Instead, the rule applies to those providing fixed-route service to, through, or from one of the areas identified in Appendix A to part 1584. The table in this appendix includes specific counties to avoid any potential confusion regarding applicability.

Finally, TSA does not believe the regulation creates soft targets. By reducing the vulnerability through increased security training, the rule's applicability is intended to reduce the risk for these systems without increasing the risk for others. Finally, TSA notes that it encourages owner/operators not covered by the rule's applicability to use the regulatory requirements as guidance for voluntarily implementing a security training program for its frontline employees, whether by using TSA-developed programs or through its own training.

H. Comments Beyond Scope of Rulemaking

TSA received several comments regarding issuance of self-defense devices, such as tasers and mace, ranging from suggesting that we require employers to issue them to suggesting that we prohibit it. Either suggestion is beyond the scope of this rulemaking. The comment indicating that OSHA mandates employee training in the use of PPE, if required by their job functions, has already been noted.

VIII. Rulemaking Analyses and Notices

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) requires Federal agencies to consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA sec. 3507(d), obtain approval from the OMB for each collection of information it conducts, sponsors, or requires through regulations.[108]

OMB has approved a related information collection request for contact information for RSCs and alternate RSCs, as well as the reporting of significant security concerns by freight railroad carriers, passenger railroad carriers, and rail transit systems.[109]

This final rule, however, contains new information-collection activities subject to the PRA. Accordingly, TSA has submitted the following information requirements to OMB for its review. The Supporting Statement for this information collection request is available in the docket for this rulemaking.

Title: Security Training Programs for Surface Mode Employees.

Summary: This final rule requires the following information collections:

First, owner/operators identified in 49 CFR 1580.101, 1582.101, and 1584.101 are required to submit a security training program for security-sensitive employees that meets the requirements of subpart B of 49 CFR part 1580, subpart B of 49 CFR part 1582, and subpart B of 49 CFR part 1584. Additionally, they are required to submit a request to amend their security training program if certain changes are made to their operations or if notified by TSA that an amendment is necessary. For purposes of its burden estimates, TSA assumes such modification will occur every three years.

Second, the public transportation bus systems and OTRB owner/operators to whom the final rule applies would be required to obtain personal and contact information from their designated security coordinator, and alternate, and submit such records to TSA.

Third, respondents would be required to retain individual training records on security-sensitive employees at the location(s) specified in each respondent's respective security training program, and make such records available to TSA upon request.

Fourth, the public transportation bus systems and OTRB owner/operators to whom the final rule applies would be required to report significant security concerns, which includes incidents, suspicious activities, and/or threat information.

Use of: This information will be used to support the implementation of this final rule, including to TSA determinations that security training programs satisfy the requirements in this final rule. Recordkeeping requirements are necessary for TSA to verify employee training is in compliance with the final rule. Security coordinator information supports respondent communications with TSA concerning intelligence information, security related activities, and incident or threat response with appropriate law enforcement and emergency response agencies. The reporting of significant security concerns supports the analysis of trends and indicators of developing threats and potential terrorist activity.

Respondents (including number of): The likely respondents to this information collection are the owner/operators of covered surface modes, which are estimated to incur approximately 579,070 responses over the next 3 years (including 145,731 freight railroad responses; 254,754 PTPR responses; and 178,586 OTRB company responses), which amounts to an average annual cost of $0.93 million.

Frequency: TSA estimates that following initial submission, security training programs would need to be periodically updated as appropriate. Security training records would need to be updated after each training occurrence. Security coordinator information would need to be updated as appropriate. Significant security concerns would be reported as they occur. TSA estimates inspections for

[106] *See* general discussion on applicability, *id.* at 91355 *et seq. See also* OTRB specific discussion, *id.* at 91358 *et seq.*

[107] As the risk methodology relies upon SSI, it is not available to the public.

[108] Public Law 96–511, 94 Stat. 2812 (Dec. 11, 1980), as codified at 44 U.S.C. 3501 *et seq.*

[109] *See* OMB Control No. 1652–0051.

compliance would occur at a rate of one inspection per year per owner/operator.

Annual Burden Estimate: The average yearly burden for security training program development and submission, security coordinator submission, employee training documentation recordkeeping, and incident reporting is estimated to be 2,729 hours for freight railroads; 3,311 hours for PTPRs; and 6,278 hours for OTRB companies. The total average annual time burden estimate is approximately 12,318 hours. Table 5 shows the information collections and corresponding hour burdens for entities falling under the requirements of the final rule.

TABLE 5—PRA HOURS OF BURDEN

Collection	Time per response (hours)	Number of responses			3-Year time burden	Average annual time burden
		Year 1	Year 2	Year 3		
Initial Security Training Program Development and Submission						
Freight Rail	152	33	0	0	5,016	1,672
PTPR	88	47	0	0	4,136	1,379
OTRB (Large to Medium)	44	31	1	1	1,439	480
OTRB (Small)	28	174	3	3	5,062	1,687
Modified Security Training Program Development and Submission						
Freight Rail	25	30	0	0	743	248
PTPR	25	42	0	0	1,058	353
OTRB (Large to Medium)	25	28	1	1	736	245
OTRB (Small)	25	157	3	3	4,068	1,356
Security Coordinator Information Submission						
PTPR	0.5	52	6	6	32	11
OTRB	0.5	467	65	66	299	100
Employee Training Documentation Recordkeeping						
Freight Rail	0.017	136,155	4,750	4,764	2,428	809
PTPR	0.017	194,219	23,173	23,251	4,011	1,337
OTRB	0.017	39,147	5,142	5,206	825	275
Incident Reporting						
PTPR	0.05	4,652	4,652	4,652	698	233
OTRB	0.05	41,881	42,691	43,516	6,404	2,135
Total Burden (responses)					579,070	193,023
Total Burden (hours)					36,953	12,318

B. Economic Impact Analyses

1. Regulatory Impact Analysis Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866, *Regulatory Planning and Review,*[110] as supplemented by Executive Order 13563, *Improving Regulation and Regulatory Review,*[111] directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, E.O. 13771, *Reducing Regulation and Controlling Regulatory Costs,*[112] requires agencies to identify at least two regulations to be eliminated for every new regulation, and also requires that the cost of planned regulations be prudently managed and controlled through a budgeting process. Third, the Regulatory Flexibility Act of 1980[113] requires agencies to consider the economic impact of regulatory changes on small entities. Fourth, the Trade Agreement Act of 1979[114] prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fifth, UMRA requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).[115]

2. Executive Orders 12866, 13563, and 13711 Assessments

Under the requirements of Executive Orders 12866 and 13563, agencies must assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). These requirements were supplemented by Executive Order 13563, which emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Under Executive Order 13711, *Reducing Regulation and Controlling Regulatory Costs,*[116] agencies must identify whether a

[110] 58 FR 51735 (Oct. 4, 1993).

[111] 76 FR 3821 (Jan. 21, 2011).

[112] 82 FR 9339 (Feb. 3, 2017).

[113] Public Law 96–354, 94 Stat. 1164 (Sept. 19, 1980) as codified at 5 U.S.C. 601 *et seq.*

[114] Public Law 96–39, 93 Stat. 144 (July 26, 1979), codified at 19 U.S.C. 2531–2533.

[115] *Supra* n. 63.

[116] 82 FR 9339 (Feb. 3, 2017).

rulemaking is a regulatory or deregulatory action.

In conducting these analyses, TSA has determined:

1. This rulemaking is a significant regulatory action within the meaning of Executive Order 12866 and a regulatory action under Executive Order 13771. TSA has determined that this rulemaking is not economically significant. The rule will not result in an effect on the economy of $100 million or more in any year of the analysis. The total annualized costs of the final rule over a perpetual time period using a 7 percent discount rate, in 2016 dollars, and discounted back to 2016 is $5.28 million. The rule will not adversely affect the economy, interfere with actions taken or planned by other agencies, or generally alter the budgetary impact of any entitlements.

2. TSA prepared a Final Regulatory Flexibility Analysis (FRFA), which finds that this rulemaking would likely have a regulatory cost that exceeds one percent of revenue for 47 small entities—1 freight rail and 46 OTRB owner/operators—of the total 200 small entities that would be regulated by the final rule.

3. This rulemaking would not constitute a barrier to international trade.

4. This rulemaking does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector under UMRA.

In the NPRM RIA, TSA estimated that the rule would cost $157.27 million over ten years, discounted at 7 percent. In the Final RIA, TSA updated its benefit-cost analysis and estimated this regulation will cost $52.30 million over ten years, discounted at 7 percent. The change in cost estimate from the NPRM RIA to the Final RIA is due to the following:

- The final rule will require affected surface mode employees to undergo security training at least once every three years, which is a change in frequency from the annual training requirement in the NPRM. TSA updated training burden cost estimates to reflect the final rule's triennial training cycle.
- TSA updated employee population estimates in each of the three industries regulated by this final rule. In all three modes, the final rule employee population estimates decreased from the estimates in the NPRM: (1) The population of impacted freight rail employees decreased based on an updated source.[117] (2) The population of impacted PTPR employees decreased as a result of TSA using more detailed population data in this Final RIA, as well as an update in the percentage of employees performing security-sensitive roles. (3) The population of impacted OTRB employees decreased as a result of reevaluating the population of impacted OTRB owner/operators from the NPRM dataset. TSA made revisions based on new information about the owner/operator's operations (such as the lack of scheduled services), as well as the consolidation and closure of owner/operators within the industry. This re-evaluation resulted in eight fewer OTRB owner/operators than previously estimated in the NPRM, which in turn meant fewer employees were impacted.
- TSA updated its estimates of compensation rates, employee turnover rates, and various other inputs. TSA has reviewed all the inputs used in the NPRM RIA and updated them to ensure that the Final RIA uses the most recently available data.
- TSA added the cost for owner/operators to develop their own training programs in its primary cost analysis; in the NPRM RIA, only Alternative 2 made this assumption. In the primary cost analysis of the NPRM RIA, TSA assumed owner/operators would use a video provided by TSA, free of charge, to meet a majority of the training requirements. TSA still plans to make this video available, however for the purpose of presenting the full range of possible costs for owner/operators from the final rule, TSA decided to include the cost of developing a custom training program in the Final RIA. Because of this change, TSA increased the time burden for owner/operators to develop a training program. TSA also increased the time burden for TSA to review, modify, and re-review these programs. Lastly, TSA increased its estimate of hours spent per inspection because TSA believes Transportation Security Inspectors will need more time to inspect owner/operators on the particulars of their unique training program.
- TSA revised its assumption that owner/operators will, on average, update their training program every five years (as assumed in the NPRM RIA) to every three years. TSA made this change because it better aligns with the new assumption that owner/operators would create their own training program. TSA assumes a custom training program would involve more owner/operator-specific circumstantial changes and those would occur, on average, more often. This change increased the estimated cost to owner/operators and TSA because they will, respectively, submit and review training programs more frequently within a ten-year period.
- TSA added the cost for a name check of new security coordinators against its Terrorist Screening Database. This cost is absorbed by TSA, not owner/operators nor the security coordinators.
- TSA revised its time burden estimate for recordkeeping from 15 seconds to 1 minute. This more closely aligns to previous estimates TSA has made for other employee-specific recordkeeping requirements.

Table 6 shows the cost components that TSA expects industry and Government will incur from implementing the final rule. This table compares these cost components to their respective estimates in the NPRM and describes the changes made from the original analysis.

[117] The Final RIA used the 2017 version of ''AAR Railroad Facts'' versus the 2014 version used in the NPRM.

TABLE 6—10-YEAR TOTAL COST OF NPRM VS FINAL RULE

[Discounted at 7 percent, in $ thousands]

Requirements	Section	NPRM and FR comparison			Description	Significant change from NPRM to final rule
		NPRM	Final rule	Difference		
Training Cost	1580.113, 1582.113, and 1584.113.	$152,277	$43,429	($108,848)	Requirement to train security-sensitive employees on required elements (one of the elements is expanded for freight rail) of security training.	Changed cost estimate to reflect three-year training cycle. Updated and refined population data of security-sensitive employees. Overall estimate of affected employees decreased from the NPRM.
Training Plan	1570.109	1,653	4,372	2,718	Requirement to submit a training program to TSA. Costs include planning, drafting, review and submission.	Added the cost for creating custom training plans; TSA previously, assumed they would use the TSA-provided video.
Security Coordinator.	1570.201	77	48	(29)	Requirement to assign a security coordinator and an alternate to serve as a security liaison with TSA. Costs include initial and updated submissions from security coordinator turnover.	Added the TSA cost to perform a name check of new security coordinators against the Terrorist Screening Database.
Incident Reporting.	1570.203	2,052	2,404	353	Requirement to report significant security concerns within 24 hours of initial discovery. TSA assumes incident reporting will occur telephonically.	Included additional post-call administrative costs for TSA.
Recordkeeping ...	1570.121	592	875	283	Requirement to maintain security training records for each individual trained. These records may be stored either electronically or printed on paper and filed.	(1) Decreased cost associated with number of records due to reduced frequency of training and (2) increased the time burden per record from 15 seconds to 1 minute. This estimate is also more aligned with previous estimates TSA made for recordkeeping of other vetting programs.
Inspections	1570.9	622	1,175	553	Availability for inspection by TSA for compliance with the final rule. Costs assume annual inspections for each owner/operator; industry cost to prepare for and host TSA inspections. and presentation of training records and program curriculum when requested by TSA during inspection.	No significant changes. Cost difference due to updates in wages and population estimates.
Total Costs ..	.....	157,274	52,303	(104,971)		

TSA has prepared an analysis of its estimated costs and benefits, summarized in the following paragraphs. The OMB Circular A–4 Accounting Statement for this final rule is in section VIII.B.3. When estimating the cost of a rulemaking, agencies typically estimate future expected costs imposed by a regulation over a period of analysis. For this rule's period of analysis, TSA uses a 10-year period of analysis to estimate the initial and recurring costs of the regulated surface mode owner/operators and new owner/operators that are expected due to industry growth.

TSA concluded the following about the current, or baseline, training

environment for freight rail, public transportation and passenger railroad (PTPR), and OTRB employees (*see* section 1.8 of the RIA placed in the docket for further detailed information on the current baseline):

There are 574 U.S. freight rail owners/operators and are composed of 7 Class I, 21 Class II, and 546 Class III railroads.[118] A total of 33 (7 Class I, 8 Class II, and 18 Class III) out of the 574 U.S. freight rail owner/operators carry RSSM through an HTUA and would be affected by the final rule.[119] These 33 freight rail owner/operators provide security awareness [120] and chain of custody and control [121] trainings to their employees. These trainings address two of the required elements of security training required by the final rule in § 1580.115 (Security training and knowledge for security-sensitive employees: Prepare and Assess). Additionally, freight rail owner/operators are already required to comply with the requirements to assign security coordinators and report significant security concerns to TSA under current 49 CFR 1580. Table 7 below identifies the requirements of the final rule implemented by freight rail owner/operators. The check marked items in the table represent existing requirements under PHMSA's regulations (*see* 49 CFR 172.704 and 1580.107) and, therefore, do not represent additional burden to the freight rail owners/operators.

Table 7—Freight Rail Owner/Operator Baseline Assessment

Proposed Population	Training Components					Security Coordinators	Report Significant Security Concerns
	Prepare	Chain of Custody	Observe	Assess	Respond		
Freight rail		✓		✓		✓	✓

Note: Check marked items represents existing requirements. The "prepare" element of the training curriculum under proposed part 1580 includes training on the chain of custody requirements that are in current part 1580. For purposes of this table, "Prepare" refers to everything but "chain of custody," and "Chain of custody" only refers to that topic.

There are nearly 6,800 public transportation organizations in the United States.[122] Of these, 47 PTPR owner/operators [123] fall within the applicability of the final rule. Twenty-four of these 47 PTPR owner/operators effectively provide training to their employees on security awareness and employee- and company-specific security programs and measures.[124] This training address two of the required elements of security training required by the final rule in § 1582.115 (Prepare and Assess). Additionally, 24 PTPR owner/operators with rail operations are already required to comply with the requirements to assign security coordinators and report significant security concerns to TSA under current 49 CFR part 1580. Table 8 below identifies the requirements of the final rule already implemented by PTPR owner/operators. The check marked items in the table represent existing requirements under 49 CFR part 1580 and, therefore do not represent additional burden to the freight rail owners/operators.

[118] AAR, ''Railroad Facts, 2017 Edition,'' at pg.3 (2017).

[119] TSA used its railcar tracking system that monitors toxic inhalant hazard cars, the Rail Asset Integrated Logistics System, (RAILS), to identify freight rail owner/operators that transported one or more shipments of RSSM during the period in calendar year 2017.

[120] As required by PHMSA. *See* 49 CFR 172.704.

[121] In place because of the chain of custody requirement in 49 CFR 1580.107.

[122] APTA, ''2016 Public Transportation Fact Book'' (Feb. 2017), available at *http://www.apta.com/resources/statistics/Documents/FactBook/2016-APTA-Fact-Book.pdf.*

[123] TSA elicited and used input from SMEs in its Surface Division, combined with data from the Federal Transit Administration's (FTA) National Transit Database (NTD) to identify the 47 PTPR owner/operators.

[124] Agencies identified using latest evaluation from TSA's BASE assessment. Information on BASE assessment can be found at: *https://www.tsa.gov/news/top-stories/2015/09/21/transit-agencies-earn-high-ratings-through-base-program.*

Table 8—PTPR Owner/Operators Baseline Assessment

Proposed Population	Training Components				Security Coordinators	Report Significant Security Concerns
	Prepare	Observe	Assess	Respond		
PTPR owners/operators with rail service and a robust training program	✓		✓		✓	✓
PTPR owners/operators with rail service and no robust training program					✓	✓
Bus-only PTPR owners/operators with a robust training program	✓		✓			
Bus-only PTPR owners/operators with no robust training program						

Note: Check marked items represents existing requirements.

There are 2,990 U.S. companies in the motorcoach industry.[125] Of these, 205 [126] fall within the applicability of the final rule. Three of the 205 are large OTRB companies that currently use the TSA-supplied First Observer™ program, which covers a majority of the 9/11 Act security training requirements, to train their employees. This training addresses three of the security training elements of this final rule (Observe, Assess, and Respond). Table 9 identifies the requirements of this final rule implemented by OTRB owner/operators. The check marked items in the table represent the training components already covered by the First Observer™ program and, therefore do not represent additional burden to the OTRB owners/operators currently using this program compared to the ''no-action'' baseline.[127] In Appendix A of the RIA, however, TSA has also monetized the cost of their current participation in First Observer™. TSA estimated this cost at $0.57 million to these owner/operators over 10 years (discounted at 7 percent).[128]

Table 9—OTRB Owner/Operators Baseline Assessment

Proposed Population	Training Components				Security Coordinators	Report Significant Security Concerns
	Prepare	Observe	Assess	Respond		
Three "large" OTRB owners/operators		✓	✓	✓		
Remaining OTRB owner/operators						

Note: Check marked items represents voluntary participation in First Observer™.

TSA summarizes the costs of the final rule to be borne by four affected parties: freight railroad owner/operators, PTPR owner/operators, OTRB owner/operators, and TSA. As displayed in Table 10, TSA estimates the 10-year total cost of this final rule to be $73.17 million undiscounted, $62.82 million discounted at 3 percent, and $52.30 million discounted at 7 percent. The costs to industry (all three surface modes) comprise approximately 96.2 percent of the total costs of the rule; and the remaining costs are incurred by TSA.

TABLE 10—TOTAL COST OF THE FINAL RULE BY ENTITY

[$ millions]

Year	Freight rail	PTPR	OTRB	TSA	Total final rule cost		
					Undiscounted	Discounted at 3%	Discounted at 7%
1	$8.82	$5.74	$2.28	$0.63	$17.46	$16.95	$16.32
2	0.31	0.67	0.42	0.21	1.60	1.50	1.39
3	0.31	0.67	0.42	0.21	1.61	1.47	1.31

[125] American Bus Association Foundation, ''Motorcoach Census 2015'' (Oct. 9, 2017), available at *https://www.buses.org/assets/images/uploads/pdf/Motorcoach_Census_2015.pdf.*

[126] TSA relied on a variety of sources to identify the 205 owner/operators: Intercity Bus Security Grant Program (IBSGP) applications submitted to FEMA and reviewed by TSA, the American Intercity Bus Riders Association (AIBRA) intercity bus service operator list, consultations with ABA, and internet research of websites like *GotoBus.com* and other publicly available sources of information.

[127] OMB, ''Circular A–4,'' at 2, available at *https://www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/a-4.pdf.* (''Benefits and costs are defined in comparison with a clearly stated alternative. This normally will be a 'no action' baseline: What the world will be like if the proposed rule is not adopted.'')

[128] OMB also requires TSA to consider a ''pre-statute'' baseline. Id. at 16. Costs of First Observer™ have accrued since passage of the 9/11 Act and are part of this ''pre-statute'' baseline.

TABLE 10—TOTAL COST OF THE FINAL RULE BY ENTITY—Continued
[$ millions]

Year	Freight rail	PTPR	OTRB	TSA	Total final rule cost		
					Undiscounted	Discounted at 3%	Discounted at 7%
4	8.08	4.49	2.02	0.27	14.87	13.21	11.34
5	0.58	1.10	0.56	0.22	2.46	2.12	1.75
6	0.58	1.11	0.57	0.22	2.48	2.07	1.65
7	7.64	3.82	1.91	0.28	13.65	11.10	8.50
8	0.82	1.41	0.68	0.23	3.14	2.48	1.83
9	0.83	1.42	0.69	0.23	3.17	2.43	1.72
10	7.25	3.35	1.85	0.29	12.74	9.48	6.48
Total	35.21	23.78	11.40	2.78	73.17	62.82	52.30
Annualized	.....	.....	.....	.....	.....	7.36	7.45

Note: Totals may not add due to rounding.

TSA estimates the 10-year costs to the freight railroad industry to be $35.21 million undiscounted, $30.18 million discounted at 3 percent, and $25.09 million discounted at 7 percent, as displayed by cost categories in Table 11.

Table 11—Total Cost to the Freight Rail Industry from the Final Rule ($ millions)

Year	Training Costs	Training Plan Costs	Recordkeeping Costs	Inspection Costs	Total Freight Rail Cost		
					Undiscounted	Discounted at 3%	Discounted at 7%
1.....	$8.26	$0.40	$0.15	$0.00	$8.82	$8.56	$8.24
2.....	0.29	0.00	0.01	0.01	0.31	0.29	0.27
3.....	0.29	0.00	0.01	0.01	0.31	0.28	0.25
4.....	7.79	0.14	0.14	0.01	8.08	7.18	6.17
5.....	0.55	0.00	0.01	0.01	0.58	0.50	0.41
6.....	0.55	0.00	0.01	0.01	0.58	0.48	0.39
7.....	7.35	0.14	0.14	0.01	7.64	6.21	4.76
8.....	0.79	0.00	0.01	0.01	0.82	0.65	0.48
9.....	0.80	0.00	0.01	0.01	0.83	0.63	0.45
10....	6.97	0.14	0.13	0.01	7.25	5.39	3.68
Total					$35.21	$30.18	$25.09
Annualized						$3.54	$3.57

Note: Totals may not add due to rounding.

TSA estimates the 10-year costs to the PTPR industry to be $23.78 million undiscounted, $20.48 million discounted at 3 percent, and $17.12 million discounted at 7 percent, as displayed by cost categories in Table 12.

Table 12—Total Cost to the PTPR Industry from the Final Rule ($ millions)

Year	Training Costs	Training Plan Costs	Security Coordinator Costs	Incident Reporting Costs	Recordkeeping Costs	Inspection Costs	Total PTPR Cost		
							Undiscounted	Discounted at 3%	Discounted at 7%
1…..	$5.13	$0.46	$0.00	$0.02	$0.12	$0.00	$5.74	$5.57	$5.36
2…..	0.61	0.00	$0.00	0.02	$0.01	0.02	0.67	0.63	0.58
3…..	0.61	0.00	$0.00	0.02	$0.01	0.02	0.67	0.61	0.54
4…..	4.16	0.20	$0.00	0.02	$0.10	0.02	4.49	3.99	3.43
5…..	1.04	0.00	$0.00	0.02	$0.02	0.02	1.10	0.95	0.79
6…..	1.04	0.00	$0.00	0.02	$0.02	0.02	1.11	0.93	0.74
7…..	3.50	0.20	$0.00	0.02	$0.08	0.02	3.82	3.10	2.38
8…..	1.34	0.00	$0.00	0.02	$0.03	0.02	1.41	1.12	0.82
9…..	1.35	0.00	$0.00	0.02	$0.03	0.02	1.42	1.09	0.77
10…	3.04	0.20	$0.00	0.02	$0.07	0.02	3.35	2.50	1.70
Total							$23.78	$20.48	$17.12
Annualized								$2.40	$2.44

Note: Totals may not add due to rounding.

TSA estimates the 10-year costs to the OTRB industry to be $11.40 million undiscounted, $9.74 million discounted at 3 percent, and $8.06 million discounted at 7 percent, as displayed by cost categories in Table 13.

Table 13—Total Cost to the OTRB Industry from the Final Rule ($ millions)

Year	Training Costs	Training Plan Costs	Security Coordinator Costs	Incident Reporting Costs	Recordkeeping Costs	Inspection Costs	Total OTRB Cost		
							Undiscounted	Discounted at 3%	Discounted at 7%
1…..	1.20	0.88	0.02	0.16	0.02	0.00	2.28	2.21	2.13
2…..	0.16	0.02	0.00	0.16	0.00	0.07	0.42	0.39	0.36
3…..	0.16	0.02	0.00	0.17	0.00	0.07	0.42	0.39	0.34
4…..	0.98	0.78	0.00	0.17	0.01	0.07	2.02	1.80	1.54
5…..	0.27	0.03	0.00	0.17	0.00	0.08	0.56	0.48	0.40
6…..	0.27	0.03	0.00	0.18	0.00	0.08	0.57	0.48	0.38
7…..	0.84	0.80	0.00	0.18	0.01	0.08	1.91	1.55	1.19
8…..	0.36	0.05	0.00	0.18	0.01	0.08	0.68	0.53	0.39
9…..	0.36	0.05	0.00	0.19	0.01	0.08	0.69	0.53	0.37
10…	0.75	0.81	0.00	0.19	0.01	0.08	1.85	1.38	0.94
Total							$11.40	$9.74	$8.06
Annualized								$1.14	$1.15

Note: Totals may not add due to rounding.

TSA estimates the 10-year costs to TSA to be $2.78 million undiscounted, $2.41 million discounted at 3 percent, and $2.03 million discounted at 7 percent, as displayed by cost categories in Table 14.

Table 14—Total Cost to TSA from the Final Rule ($ millions)

Year	Training Plans	Security Coordinators	Incident Reporting	Inspection	Total TSA Costs		
					Undiscounted	Discounted at 3%	Discounted at 7%
1…….	$0.36	$0.01	$0.14	$0.13	$0.63	$0.61	$0.59
2…….	0.00	0.00	0.14	0.06	0.21	0.19	0.18
3…….	0.00	0.00	0.14	0.06	0.21	0.19	0.17
4…….	0.06	0.00	0.15	0.06	0.27	0.24	0.21
5…….	0.00	0.00	0.15	0.06	0.22	0.19	0.15
6…….	0.00	0.00	0.15	$.06	0.22	0.18	0.15
7…….	0.06	0.00	0.15	0.06	0.28	0.23	0.17
8…….	0.01	0.00	0.16	0.07	0.23	0.18	0.13
9…….	0.01	0.00	0.16	0.07	0.23	0.18	0.13
10…...	0.06	0.00	0.16	0.07	0.29	0.22	0.15
Total					$2.78	$2.41	$2.03
Annualized						$0.28	$0.29

Note: Totals may not add due to rounding.

This final rule will enhance surface transportation security by reducing the risk of terrorist attacks in four ways. First, the rule ensures employees on the frontline of higher-risk surface transportation systems and operations (defined as ''security-sensitive employees'') are trained on how to observe, assess, and respond to a security threat, enhancing their capabilities to take appropriate actions and mitigate the consequences of any threat or incident. Second, security-sensitive employees with responsibilities under their employer's security plan or for specific security measures will be prepared through training to perform any actions associated with that responsibility. Third, there will be more effective communication between TSA and all higher-risk operations through the designation of security coordinators by all higher-risk operations. Finally, the expanded scope of owner/operators required to report significant security concerns will enhance TSA's ability to identify risks and recommend appropriate actions based on a more comprehensive picture of threats to surface transportation security.

While training and the other requirements of this final rule are not absolute deterrents for terrorists intent on carrying out attacks on surface modes of transportation, TSA expects the probability of success for such attacks to decrease when the requirements of this rule are fully implemented.

TSA uses a break-even analysis to frame the relationship between the potential benefits of the final rule and the costs of implementing the rule. When it is not possible to quantify or monetize a majority of the incremental benefits of a regulation, OMB recommends conducting a threshold, or ''break-even'' analysis. According to OMB Circular No. A–4, ''Regulatory Analysis,'' such an analysis answers the question ''How small could the value of the non-qualified benefits be (or how large would the value of the non-quantified costs need to be) before the rule would yield zero net benefits?'' [129]

To conduct the break-even analysis, TSA evaluates three composite scenarios for each the three modes covered by the final rule. For each scenario, TSA calculates a total monetary consequence from an estimated statistical value of the human casualties and capital replacement resulting from the attack (see Section 4.3 of the Final RIA for a more detailed description of these calculations; however, many assumptions regarding specific terrorist attacks scenarios are SSI and cannot be publicly released).

Table 15 presents the composite or weighted average of direct consequences from a successful attack on each mode.

[129] *See id.*

[130] As explained in the Final RIA, available in the docket, to monetize injuries, TSA used two approaches (depending on whether the injury was due to exposure to hazardous chemicals). To monetize ''non-chemical'' injuries, TSA uses guidance from the Department of Transportation for valuing injuries based on the Abbreviated Injury Scale. To monetize chemical-related injuries, TSA obtained information on the cost of medical treatment for poisoning injuries.

[131] Total Direct Consequences = (Deaths × $9.6 million VSL) + (Severe injuries × $2.55 million) + (Moderate injuries × $0.45 million) + (Severe chemical injuries × $43,743) + (Moderate chemical injuries × $1,687) + Public property loss + Private property loss + Rescue and clean-up cost.

Table 15—Composite Monetized Consequences from a Successful Attack[130]

Variables		Transportation Mode		
		Freight	PTPR	OTRBs
Weighted Average Values	Number of Deaths	29.41	36.22	38.34
	Number of Severe Injuries (non-chemical)	39.77	43.69	0.70
	Number of Moderate Injuries (non-chemical)	34.07	49.60	0.45
	Number of Chemical Severe Injuries	42.30	0.00	0.00
	Number of Chemical Moderate Injuries	80.21	0.00	0.00
	Monetized Public Infrastructure Loss ($ thousands)	$11,406	$5,322	$48
	Monetized Private Property Loss ($ thousands)	$18,429	$95	$424
	Monetized Rescue and Cleanup ($ thousands)	$74,806	$704	$435
Total Monetized Direct Consequences[131] ($ thousands)		$505,866	$487,799	$370,997

Note: Totals may not add due to rounding.

TSA compared the estimated direct monetary costs of an attack to the annualized cost (discounted at 7 percent) to industry and TSA from the final rule for each mode to estimate how often an attack of that nature would need to be averted for the expected benefits to equal estimated costs. Table 16 presents the results of the break-even analysis for each mode. For example, Table 16 shows that if the freight rail training requirements in this rule prevents one freight rail terrorist attack every 141 years, this rule ''breaks-even'' (the benefits equal the costs).

The break-even analysis does not include the difficult-to-quantify indirect costs of an attack or the macroeconomic impacts that could occur due to a major attack. In addition to the direct impacts of a terrorist attack in terms of lost life and property, there are other more indirect impacts that are difficult to measure. As noted by Cass Sunstein in *Laws of Fear,* ''. . . fear is a real social cost, and it is likely to lead to other social costs.'' [132] In addition, Ackerman and Heinzerling state ''. . . terrorism 'works' through the fear and demoralization caused by uncontrollable uncertainty.'' [133] As devastating as the direct impacts of a successful terrorist attack can be in terms of the immediate loss of life and property, avoiding the impacts of the more difficult to measure indirect effects are also substantial benefits of preventing a terrorist attack.

TABLE 16—BREAK-EVEN ANALYSIS RESULTS

[$ millions]

Modes	Weighted average direct costs of a successful attack a	Annualized cost of the final rule at 7% b	Breakeven averted attack frequency c = a ÷ b
Freight Rail	$505.87	$3.60	One attack every 141 years.
PTPR	487.80	2.48	One attack every 197 years.
OTRB	371.00	1.37	One attack every 271 years.

Note: Totals may not add due to rounding.

3. OMB A–4 Statement

The OMB A–4 Accounting Statement (in Table 17) presents annualized costs and qualitative benefits of the final rule.

[132] Cass R. Sunstein, *Laws of Fear* at 127 (2005).

[133] Frank Ackerman and Lisa Heinzerling, *Priceless On Knowing the Price of Everything and the Value of Nothing* at 136 (2004).

TABLE 17—OMB A–4 ACCOUNTING STATEMENT

[in $ millions, 2017 dollars]

Category	Primary estimate		Minimum estimate	Maximum estimate	Source citation (Final RIA, preamble, etc.)
Benefits ($ millions)					
Annualized monetized benefits (discount rate in parentheses).	N/A	N/A	N/A	N/A	Final RIA
Unquantified benefits	The requirements proposed in this rule produce benefits by reducing security risks through training security-sensitive surface mode employees to identify and/or mitigate an attempted terrorist attack.				Final RIA
Costs ($ millions)					
Annualized monetized costs (discount rate in parentheses).	(7%) (3%)	$7.45 $7.36			Final RIA
Annualized quantified, but unmonetized, costs.	0		0	0	Final RIA
Qualitative costs (unquantified)	N/A				Final RIA
Transfers					
Annualized monetized transfers: "on budget".	N/A		N/A	N/A	Final RIA
From whom to whom?	N/A		N/A	N/A	None
Annualized monetized transfers: "off-budget".	N/A		N/A	N/A	Final RIA
From whom to whom?	N/A		N/A	N/A	None
Miscellaneous analyses/category	Effects				Source citation (NPRM RIA, preamble, etc.)
Effects on State, local, and/or tribal governments.	None				Final RIA
Effects on small businesses	Prepared FRFA				FRFA (Chapter 6 RIA)
Effects on wages	None				None
Effects on growth	None				None

4. Alternatives Considered

In addition to the final rule, TSA also considered two alternative policies. In comparison to the final rule, the first alternative (Alternative 1) removes requirements for recordkeeping, security incident reporting, and security coordinators for bus-only PTPR owner/operators. This alternative also removes the requirement to train freight railroad security-sensitive employees on chain of custody and control requirements.[134] The second alternative (Alternative 2) increases the training frequency to an annual basis and expands the population of owners/operators to all who operate within any UASI, which includes the entire metropolitan statistical area.[135] All other requirements remain the same.

Though not the least costly option, TSA selects the requirements in this final rule as the preferred alternative. TSA rejected Alternative 1 because it omitted the following important security measures TSA proposed in the NPRM: (1) Recordkeeping requirements to ensure TSA can determine compliance (all modes), (2) expanding security coordinator requirements to provide a security point of contact for bus-only operations (PTPR), (3) expanding reporting requirements for security incidents to ensure TSA has a more complete picture of potential threats to surface transportation (PTPR and OTRB); and (4) ensuring freight railroad security-sensitive employees with responsibilities under TSA's chain of custody and control requirements have the necessary training to ensure compliance with these security measures in place since promulgation of TSA's Rail Security Rule.[136] By including these security measures, TSA can ensure compliance with the rule, obtain a complete picture of potential threats to surface transportation across multiple modes, and enhance compliance with security measures required for freight railroads.

TSA also rejected Alternative 2. As discussed in the NPRM, TSA applied a risk-based approach to determining applicability of this final rule.[137] Expanding the population would be inconsistent with TSA's commitment to risk-based security.[138] TSA is also rejecting requiring annual recurrent training in response to comments

[134] Table 64 in the RIA found in the docket provides a section-by section analysis of which regulatory provisions are statutorily required and which provisions are discretionary.

[135] As previously noted, *see* section VII.C.4. of the preamble to this final rule, TSA proposed an annual recurrent training requirement in the NPRM. *See also* 81 FR at 91348. For the NPRM, TSA also considered an alternative to "train security-sensitive employees once every three years using TSA-provided materials. *Id.* at 91379. In response to comments, TSA is adopting a three-year recurrent training cycle for purposes of the final rule, making the annual recurrent training requirement the alternative considered for purposes of the alternatives analysis.

[136] 73 FR 72129, 72130–72179 (Nov. 26, 2008). "Rail Transportation Security; Final Rule."

[137] *See supra* n. 13.

[138] *Id.*.

received on the NPRM.[139] In response to these comments which suggested longer time periods between training, TSA modified the recurrent training requirement to at least once every three years in the final rule, and rejected the annual recurrent training requirement in Alternative 2.

TABLE 18—COMPARISON OF COSTS BETWEEN ALTERNATIVES

[in millions]

	Initial Affected population (number of owner/operators)	Requirements	10-Year costs (in $ millions) at a 7% discount rate		
			Industry	TSA	Total
Final Rule	33 Freight Rails 47 PTPRs 205 OTRBs	1. Provide security training to security-sensitive employees once every three years. 2. Designate a security coordinator (expanded requirement to include bus-only PTPR and OTRB). 3. Report significant security incidents to TSA (expanded requirement to include bus-only PTPR and OTRB) Maintain employee training records and. 4. Provide access to TSA and proof of compliance.	$50.28	$2.03	$52.30
Alternative 1		1. Provide security training to security-sensitive employees once every three years (except for Chain of custody and control);. 2. Designate a security coordinator (expanded requirement limited to OTRB). 3. Maintain employee training records and. 4. Provide access to TSA and proof of compliance.	48.03	0.99	49.02
Alternative 2	69 Freight Rails 253 PTPRs 403 OTRBs	1. Provide annual security training to security-sensitive employees within expanded applicability. 2. Designate a security coordinator. 3. Report significant security incidents to TSA. 4. Maintain employee training records and. 5. Provide access to TSA and proof of compliance.	219.54	4.52	224.05

Note: Totals may not add due to rounding.

5. Regulatory Flexibility Assessment

The RFA [140] requires agencies to consider the impacts of their rules on small entities. TSA performed a Final Regulatory Flexibility Analysis (FRFA) to analyze the impact to small entities affected by the final rule.[141] The RFA analysis presented below is a summary of the FRFA, including the six elements in 5 U.S.C. 604.

a. A Statement of the Need for, and Objectives of, the Rule. Sections 1408, 1517, and 1534 of the 9/11 Act require TSA to issue a security training rule requiring owner/operators of various modes of surface transportation to provide training to frontline employees of freight rail, PTPR, and OTRB employees. Owner/operators are required to submit a training program to TSA for review that will be marked SSI. An owner/operator must also keep records of whether each employee has successfully completed their training. Additionally, TSA will collect security coordinator and alternate coordinator information from entities covered in the final rule, as well as require reporting of suspicious activities or incidents by these owner/operators. TSA requests this information from owner/operators to be better prepared to respond to emergencies or incidents and to have designated points of contacts with covered entities when information needs to be shared or retrieved. TSA requests reporting of security-related incidents and suspicious activities to assess if there is a new threat or increased threat to the surface modes of transportation.

b. A Statement of the Significant Issues Raised by Public Comments in Response to the IRFA, a Statement of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments. The public did not submit significant comments during the comment period specifically on the IRFA. However, elsewhere in in the preamble of the final rule, TSA answered public comments on the cost estimate of the rule.

c. Description of and an Estimate of the Number of Small Entities to Which the Rule Will Apply or an Explanation of Why No Such Estimate is Available. Under the RFA, the term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and small governmental jurisdictions with populations of less than 50,000. Individuals and States are not considered ''small entities'' based on the definitions in the RFA (5 U.S.C. 601).

The PTPR owner/operators affected by this final rule are not considered small entities because they are either owned/operated by governmental jurisdictions that exceed the RFA population threshold of 50,000 or a

[139] *See* section VI.C.4 of this final rule.

[140] *See supra* n. 113.

[141] *See* Chapter 6 of the Final RIA in the docket for the full FRFA.

business that exceeds the Small Business Administration's (SBA) size threshold. Only freight rail and OTRB owner/operators have small entities affected by the final rule.

The final rule requires security training for Class I freight rail owner/operators and freight rail owner/operators that transport RSSM in one or more HTUAs [142] or host high-risk passenger rail operations on their tracks. TSA identified 33 freight railroad entities affected by the final rule.

TSA uses the SBA size standards to identify that 18 of the 33 freight rail owner/operators affected by the final rule are considered a small business. TSA calculates that final rule's requirements are estimated to cost $61.82 per employee and $18,390.32 per freight rail owner/operator. Of these 18 small freight rail owner/operators, TSA estimates that one of these freight rail owner/operators would likely have a regulatory cost that exceeds one percent of their revenue. Table 19 presents the likely distribution of costs for small freight rail owner/operators.

TABLE 19—COSTS AS A PERCENT OF REVENUE FOR SMALL FREIGHT RAIL OWNER/OPERATORS

Revenue impact range	Number of entities	Percent of entities
0% < Impact ≤ 1%	17	94
1% < Impact ≤ 3%	0	0
3% < Impact ≤ 5%	1	6
5% < Impact ≤ 10%	0	0
Above 10%	0	0
Total	18	100.0

TSA identified 205 OTRB owner/operators entities affected by the final rule. Using SBA's size threshold, TSA estimates that 182 OTRB owner/operators regulated by the final rule are considered a small business. TSA calculates that the final rule's requirements are estimated to cost $35.68 per employee and $5,759.94 per entity to these OTRB owner/operators. Using a relevant sample of these 143 small OTRB owner/operators, TSA estimates that 32% of them would likely have a regulatory cost that exceeds one percent of their revenue. Table 20 presents the likely distribution of costs for this sample of small OTRB owner/operators.

TABLE 20—COSTS AS A PERCENT OF REVENUE FOR SMALL OTRB OWNER/OPERATORS

Revenue impact range	Number of entities	Percent of entities
0% < Impact ≤ 1%	97	68
1% < Impact ≤ 3%	36	25
3% < Impact ≤ 5%	6	4
5% < Impact ≤ 10%	4	3
Above 10%	0	0
Total	143	100.0

d. The Response of the Agency to Any Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration in Response to the Proposed Rule, and a Detailed Statement of Any Change Made to the Proposed Rule in the Final Rule as a Result of the Comments. The Small Business Administration did not submit any comments during the comment period for the NPRM.

e. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule, Including an Estimate of the Classes of Small Entities that Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record. This final rule's reporting, recordkeeping and other compliance requirements will include submission of security training programs, security coordinator and security incident information, retention of training records, and availability for compliance inspections. TSA assumes that any training program, incident report, security coordinator package, or other information submitted to TSA will be completed by management-level personnel. TSA also assumes that owner/operators will have a manager prepare before a TSA compliance inspection. TSA assumes the recordkeeping requirements of the final rule will be fulfilled by employees with administrative and clerical skills.

f. A Description of the Steps the Agency has Taken to Minimize Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes, including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each of the Other Significant Alternatives to the Rule Considered by the Agency which Affect the Impact on Small Entities was Rejected. TSA will allow owner/operators to develop their own training programs (which must receive TSA approval). TSA will give owner/operators the flexibility to use different training materials to satisfy the final rule's training requirements. Additionally, in an effort to create a baseline for security training and minimize costs on regulated owner/operators, TSA will provide training videos to incorporate the non-entity-specific training requirements laid out in the final rule. TSA will make these training videos available to all owner/operators, including small entities not

[142] *See* Appendix A to part 1580 of this final rule for list of HTUAs.

covered by the high-risk criteria, which could be used on a voluntary basis by entities seeking to improve their security posture.

TSA considered two other feasible alternatives, detailed in chapter 5 of the Final RIA, in addition to the final rule.

Alternative 1: Requirements Limited to Those Expressly Authorized by Statute. In comparison to the final rule, the first regulatory alternative TSA considered would limit the requirements to those expressly authorized by the 9/11 Act or other relevant statutory provisions, such as 49 U.S.C. 114. Under this alternative, the applicability of owner/operators required to comply and employees to be trained would remain the same and the recurrence of training would be the same as the final rule (once every three years), but TSA would remove the following requirements:

- Recordkeeping (final rule requires retention of records necessary to validate compliance);
- Training freight rail employees on the chain of custody procedures required by TSA's regulations (*see* § 1580.205 for chain of custody and control requirements relocated from § 1580.107);
- Security coordinators and reporting security incidents by bus-only PTPR owner/operators; and
- Reporting security incidents by OTRB owner/operators.

The alternative would still include requirements to provide security training to security-sensitive employees (with the exception of chain of custody and control) once every three years, designating security coordinators for OTRB owner/operators, and providing access to TSA to inspect for compliance. The narrower scope from this alternative means the costs to small businesses would be less than the final rule. TSA rejected this alternative based on the determination that recordkeeping is implicitly required as it is a necessary component of enforcing a regulation, and the other measures are necessary for consistent application of the TSA's requirements imposed to enhance surface transportation security.

Alternative 2: Increased Population Alternative with Program Creation Assumptions. TSA considered a second regulatory alternative that would require annual training and increase the population of owner/operators required to comply with the final rule. For Alternative 2, TSA considered expanding the scope of applicability to any freight railroad, PTPR system, or OTRB operator operating fixed-route service to, through, or from a UASI. Under this alternative, TSA would impose additional burdens to a significant number of small owner/operators, including those that TSA has not determined to be higher-risk. This alternative could have a disproportionate impact upon small entities. Alternative 2 would increase total costs upon the regulated community as a whole. Additionally, TSA received comments to the NPRM (section VI.C.4 of this preamble) that suggested longer time periods between training, such as two or three years. In response to these comments, TSA modified the recurrent training requirement to at least once every three years in the final rule, and rejected the annual recurrent training requirement in Alternative 2. TSA rejected this alternative as it is inconsistent with the agency's risk-based security policy determination to focus on higher-risk owner/operators and commitment to outcomes-based regulations. TSA also rejected this alternative because of its annual recurrent training requirement.

6. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. TSA has assessed the potential effect of this final rule and has determined that it would have only a domestic impact and therefore no effect on any trade-sensitive activity.

7. Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' [143]

This final rule does not contain such a mandate. Therefore, the requirements in Title II of UMRA do not apply and TSA has not prepared a statement.

C. Executive Order 13132, Federalism

TSA has analyzed this rulemaking under the principles and criteria of Executive Order 13132, Federalism. We determined that this action 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, and therefore would not have federalism implications.

D. Environmental Analysis

TSA has reviewed this rulemaking for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment. This action is covered by categorical exclusion (CATEX) number A3(b) in DHS Management Directive 023–01 (formerly Management Directive 5100.1), Environmental Planning Program, which guides TSA compliance with NEPA.

E. Energy Impact Analysis

The energy impact of this rulemaking has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (42 U.S.C. 6362). TSA has determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects

49 CFR Part 1500

Air carriers, Air transportation, Aircraft, Airports, Bus transit systems, Commuter bus systems, Law enforcement officer, Maritime carriers, Over-the-Road buses, Public transportation, Rail hazardous materials receivers, Rail hazardous materials shippers, Rail transit systems, Railroad carriers, Railroad safety, Railroads, Reporting and recordkeeping requirements, Security measures, Transportation facility, Vessels.

49 CFR Part 1520

Air carriers, Air transportation, Aircraft, Airports, Bus transit systems, Commuter bus systems, Law enforcement officer, Maritime carriers, Over-the-Road buses, Public transportation, Rail hazardous materials receivers, Rail hazardous materials shippers, Rail transit systems, Railroad carriers, Railroad safety, Railroads, Reporting and recordkeeping requirements, Security measures, Transportation facility, Vessels.

[143] *Supra* n. 63 as codified at 2 U.S.C. 1532.

49 CFR Part 1570

Commuter bus systems, Crime, Fraud, Hazardous materials transportation, Motor carriers, Over-the-Road bus safety, Over-the-Road buses, Public transportation, Public transportation safety, Rail hazardous materials receivers, Rail hazardous materials shippers, Rail transit systems, Railroad carriers, Railroad safety, Railroads, Reporting and recordkeeping requirements, Security measures, Transportation facility, Transportation Security-Sensitive Materials.

49 CFR Part 1580

Hazardous materials transportation, Rail hazardous materials receivers, Rail hazardous materials shippers, Railroad carriers, Railroad safety, Railroads, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1582

Public transportation, Public transportation safety, Railroad carriers, Railroad safety, Railroads, Rail transit systems, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1584

Over-the-Road bus safety, Over-the-Road buses, Reporting and recordkeeping requirements, Security measures.

The Amendments

For the reasons set forth in the preamble, the Transportation Security Administration amends chapter XII, of title 49, Code of Federal Regulations as follows:

Subchapter A—Administrative and Procedural Rules

PART 1500—APPLICABILITY, TERMS, AND ABBREVIATIONS

■ 1. The authority citation for part 1500 is revised to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44907, 44913–44914, 44916–44918, 44935–44936, 44942, 46105; Pub. L. 110–53 (121 Stat. 266, Aug. 3, 2007) secs. 1408 (6 U.S.C. 1137), 1501 (6 U.S.C. 1151), 1517 (6 U.S.C. 1167), and 1534 (6 U.S.C. 1184).

■ 2. Revise § 1500.3 to read as follows:

§ 1500.3 Terms and abbreviations used in this chapter.

As used in this chapter:

Administrator means the Assistant Secretary for Homeland Security, Transportation Security Administration (Assistant Secretary), who is the highest-ranking TSA official, or his or her designee. Administrator also means the Under Secretary of Transportation for Security identified in 49 U.S.C. 114(b).

Authorized representative means any individual who is not a direct employee of a person regulated under this title, but is authorized to act on that person's behalf to perform measures required under the Transportation Security Regulations, or a TSA security program. For purposes of this subchapter, the term ''authorized representative'' includes agents, contractors, and subcontractors, and employees of the same.

Bus means any of several types of motor vehicles used by public or private entities to provide transportation service for passengers.

Bus transit system means a public transportation system providing frequent transportation service (not limited to morning and evening peak travel times) for the primary purpose of moving passengers between bus stops, often through multiple connections (a bus transit system does not become a commuter bus system even if its primary purpose is the transportation of commuters). This term does not include tourist, scenic, historic, or excursion operations.

Commuter bus system means a system providing passenger service primarily during morning and evening peak periods, between an urban area and more distant outlying communities in a greater metropolitan area. This term does not include tourist, scenic, historic, or excursion operations.

Commuter passenger train service means ''train, commuter'' as defined in 49 CFR 238.5, and includes service provided by diesel or electric powered locomotives and railroad passenger cars to serve an urban area, its suburbs, and more distant outlying communities in the greater metropolitan area. A commuter passenger train service is part of the general railroad system of transportation regardless of whether it is physically connected to other railroads.

DHS means the Department of Homeland Security and any directorate, bureau, or other component within the Department of Homeland Security, including the United States Coast Guard.

DOT means the Department of Transportation and any operating administration, entity, or office within the Department of Transportation.

Fixed-route service means the provision of transportation service by private entities operated along a prescribed route according to a fixed schedule.

General railroad system of transportation means ''the network of standard gauge track over which goods may be transported throughout the nation and passengers may travel between cities and within metropolitan and suburban areas'' as defined in appendix A to 49 CFR part 209.

Hazardous material means ''hazardous material'' as defined in 49 CFR 171.8.

Heavy rail transit means service provided by self-propelled electric railcars, typically drawing power from a third rail, operating in separate rights-of-way in multiple cars; also referred to as subways, metros or regional rail.

Host railroad means a railroad that has effective control over a segment of track.

Improvised explosive device (IED) means a device fabricated in an improvised manner that incorporates explosives or destructive, lethal, noxious, pyrotechnic, or incendiary chemicals in its design, and generally includes a power supply, a switch or timer, and a detonator or initiator.

Intercity passenger train service means both ''train, long-distance intercity passenger'' and ''train, short-distance intercity passenger'' as defined in 49 CFR 238.5.

Light rail transit means service provided by self-propelled electric railcars, typically drawing power from an overhead wire, operating in either exclusive or non-exclusive rights-of-way in single or multiple cars, with shorter distance trips, and frequent stops; also referred to as streetcars, trolleys, and trams.

Motor vehicle means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service.

Over-the-Road Bus (OTRB) means a bus characterized by an elevated passenger deck located over a baggage compartment.

Owner/operator means any person that owns, or maintains operational control over, any transportation infrastructure asset, facility, or system regulated under this title, including airport operator, aircraft operator, foreign air carrier, indirect air carrier, certified cargo screening facility, flight school within the meaning of 49 CFR 1552.1(b), motor vehicle, public transportation agency, or railroad carrier. For purposes of a maritime facility or a vessel, owner/operator has

the same meaning as defined in 33 CFR 101.105.

Passenger rail car means rail rolling equipment intended to provide transportation for members of the general public and includes a self-propelled rail car designed to carry passengers, baggage, mail, or express. This term includes a rail passenger coach, cab car, and a Multiple Unit (MU) locomotive. In the context of articulated equipment, ''passenger rail car'' means that segment of the rail rolling equipment located between two trucks. This term does not include a private rail car.

Passenger railroad carrier means a railroad carrier that provides transportation to persons (other than employees, contractors, or persons riding equipment to observe or monitor railroad operations) by railroad in intercity passenger service or commuter or other short-haul passenger service in a metropolitan or suburban area.

Passenger train means a train that transports or is available to transport members of the general public.

Person means an individual, corporation, company, association, firm, partnership, society, joint-stock company, or governmental authority. It includes a trustee, receiver, assignee, successor, or similar representative of any of them.

Private rail car means rail rolling equipment that is used only for excursion, recreational, or private transportation purposes. A private rail car is not a passenger rail car.

Public transportation means transportation provided to the general public by a regular and continuing general or specific transportation vehicle that is owned or operated by a public transportation agency, including providing one or more of the following types of passenger transportation:

(1) Intercity or commuter passenger train service or other short-haul railroad passenger service in a metropolitan or suburban area (as described by 49 U.S.C. 20102(1)).

(2) Heavy or light rail transit service, whether on or off the general railroad system of transportation.

(3) An automated guideway, cable car, inclined plane, funicular, or monorail system.

(4) Bus transit or commuter bus service.

Public transportation agency means any publicly-owned or operated provider of regular and continuing public transportation.

Rail hazardous materials receiver means any owner/operator of a fixed-site facility that has a physical connection to the general railroad system of transportation and receives or unloads from transportation in commerce by rail one or more of the categories and quantities of rail security-sensitive materials identified in 49 CFR 1580.3, but does not include the owner/operator of a facility owned or operated by a department, agency or instrumentality of the Federal Government.

Rail hazardous materials shipper means the owner/operator of any fixed-site facility that has a physical connection to the general railroad system of transportation and offers (as defined in the definition of ''person who offers or offeror'' in 49 CFR 171.8), prepares or loads for transportation by rail one or more of the categories and quantities of rail security-sensitive materials as identified in 49 CFR 1580.3, but does not include the owner/operator of a facility owned or operated by a department, agency or instrumentality of the Federal Government.

Rail secure area means a secure location(s) identified by a rail hazardous materials shipper or rail hazardous materials receiver where security-related pre-transportation or transportation functions are performed or rail cars containing the categories and quantities of rail security-sensitive materials are prepared, loaded, stored, and/or unloaded.

Rail transit facility means rail transit stations, terminals, and locations at which rail transit infrastructure assets are stored, command and control operations are performed, or maintenance is performed. The term also includes rail yards, crew management centers, dispatching centers, transportation terminals and stations, fueling centers, and telecommunication centers.

Rail transit system or ''Rail Fixed Guideway System'' means any light, heavy, or rapid rail system, monorail, inclined plane, funicular, cable car, trolley, or automated guideway that traditionally does not operate on track that is part of the general railroad system of transportation.

Railroad carrier means an owner/operator providing railroad transportation.

Railroad transportation means:

(1) Any form of non-highway ground transportation that runs on rails or electromagnetic guideways, including:

(i) Commuter or other short-haul rail passenger service in a metropolitan or suburban area; and

(ii) High speed ground transportation systems that connect metropolitan areas, without regard to whether these systems use new technologies not associated with traditional railroads.

(2) Such term includes rail transit service operating on track that is part of the general railroad system of transportation but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

Record includes any means by which information is preserved, irrespective of format, including a book, paper, drawing, map, recording, tape, film, photograph, machine-readable material, and any information stored in an electronic format. The term record also includes any draft, proposed, or recommended change to any record.

Sensitive security information (SSI) means information that is described in and must be managed in accordance with 49 CFR part 1520.

State means a State of the United States and the District of Columbia.

Tourist, scenic, historic, or excursion operation means a railroad or bus operation that carries passengers, often using antiquated equipment, with the conveyance of the passengers to a particular destination not being the principal purpose. Train or bus movements of new passenger equipment for demonstration purposes are not tourist, scenic, historic, or excursion operations.

Transit means mass transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include school bus, charter, or sightseeing transportation. Rail transit may occur on or off the general railroad system of transportation.

Transportation or *transport* means the movement of property including loading, unloading, and storage. Transportation or transport also includes the movement of people, boarding, and disembarking incident to that movement.

Transportation facility means a location at which transportation cargo, equipment or infrastructure assets are stored, equipment is transferred between conveyances and/or modes of transportation, transportation command and control operations are performed, or maintenance operations are performed. The term also includes, but is not limited to, passenger stations and terminals (including any fixed facility at which passengers are picked-up or discharged), vehicle storage buildings or yards, crew management centers, dispatching centers, fueling centers, and telecommunication centers.

Transportation security equipment and systems means items, both integrated into a system and stand-alone, used by owner/operators to enhance capabilities to detect, deter,

prevent, or respond to a threat or incident, including, but not limited to, video surveillance, explosives detection, radiological detection, intrusion detection, motion detection, and security screening.

Transportation Security Regulations (TSR) means the regulations issued by the Transportation Security Administration, in title 49 of the Code of Federal Regulations, chapter XII, which includes parts 1500 through 1699.

Transportation Security-Sensitive Material (TSSM) means hazardous materials identified in 49 CFR 172.800(b).

TSA means the Transportation Security Administration.

United States, in a geographical sense, means the States of the United States, the District of Columbia, and territories and possessions of the United States, including the territorial sea and the overlying airspace.

Vulnerability assessment includes any review, audit, or other examination of the security of a transportation system, infrastructure asset, or a transportation-related automated system or network to determine its vulnerability to unlawful interference, whether during the conception, planning, design, construction, operation, or decommissioning phase. A vulnerability assessment includes the methodology for the assessment, the results of the assessment, and any proposed, recommended, or directed actions or countermeasures to address security concerns.

PART 1503—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

■ 3. The authority citation for part 1503 continues to read as follows:

Authority: 18 U.S.C. 6002; 28 U.S.C. 2461 (note); 49 U.S.C. 114, 20109, 31105, 40113–40114, 40119, 44901–44907, 46101–46107, 46109–46110, 46301, 46305, 46311, 46313–46314; Public Law 104–134 (110 Stat. 1321; April 26, 1996), as amended by Pub. L. 114–74 (129 Stat. 584; Nov. 2, 2015); and Pub. L. 110–53 (121 Stat. 266, Aug. 3, 2007) secs. 1408 (6 U.S.C. 1137), 1413 (6 U.S.C. 1142), 1501 (6 U.S.C. 1151), 1512 (6 U.S.C. 1162), 1517 (6 U.S.C. 1167), 1531 (6 U.S.C. 1181), and 1534 (6 U.S.C. 1184).

Subpart B—Scope of Investigative and Enforcement Procedures

■ 4. In § 1503.101 revise paragraphs (b)(1) and (2) and add paragraph (b)(3) to read as follows:

§ 1503.101 TSA requirements.

* * * * *

(b) * * *

(1) Those provisions of title 49 U.S.C. administered by the Administrator;

(2) 46 U.S.C. chapter 701; and

(3) Provisions of Public Law 110–53 (121 Stat. 266, Aug. 3, 2007) not codified in title 49 U.S.C. that are administered by the Administrator.

Subchapter B—Security Rules for all Modes of Transportation

PART 1520—PROTECTION OF SENSITIVE SECURITY INFORMATION

■ 5. The authority citation for part 1520 continues to read as follows:

Authority: 46 U.S.C. 114, 40113, 44901–44907, 44913–44914, 44916–44918, 44935–44936, 44942, 46105, 70102–70106, 70117; Pub. L. 110–53 (121 Stat. 266, Aug. 3, 2007) secs. 1408 (6 U.S.C. 1137), 1413 (6 U.S.C. 1142), 1501 (6 U.S.C. 1151), 1512 (6 U.S.C. 1162), 1517 (6 U.S.C. 1167), 1531 (6 U.S.C. 1181), and 1534 (6 U.S.C. 1184).

§ 1520.3 [Amended]

■ 6. In § 1520.3, remove the definitions of ''DHS, ''DOT'', ''Rail facility'', ''Rail hazardous materials receiver'', ''Rail hazardous materials shipper, ''Rail transit facility'', ''Rail transit system or Rail Fixed Guideway System'', ''Railroad'', ''Record'', and ''Vulnerability assessment''.

■ 7. In § 1520.5, revise paragraphs (b)(1), (b)(6)(i), (b)(8) introductory text, (b)(10), (b)(12) introductory text, and (b)(15) to read as follows:

§ 1520.5 Sensitive security information.

* * * * *

(b) * * *

(1) *Security programs, security plans, and contingency plans.* Any security program, security plan, or security contingency plan issued, established, required, received, or approved by DHS or DOT, including any comments, instructions, or implementing guidance, including—

(i) Any aircraft operator, airport operator, fixed base operator, or air cargo security program, or security contingency plan under this chapter;

(ii) Any vessel, maritime facility, or port area security plan required or directed under Federal law;

(iii) Any national or area security plan prepared under 46 U.S.C. 70103;

(iv) Any security incident response plan established under 46 U.S.C. 70104, and

(v) Any security program or plan required under subchapter D of this title.

* * * * *

(6) * * *

(i) Details of any aviation, maritime, or surface transportation inspection, or any investigation or an alleged violation of aviation, maritime, or surface transportation security requirements of Federal law, that could reveal a security vulnerability, including the identity of the Federal special agent or other Federal employee who conducted the inspection or investigation, and including any recommendations concerning the inspection or investigation.

* * * * *

(8) *Security measures.* Specific details of aviation, maritime, or surface transportation security measures, both operational and technical, whether applied directly by the Federal government or another person, including the following:

* * * * *

(10) *Security training materials.* Records created or obtained for the purpose of training persons employed by, contracted with, or acting for the Federal government or another person to carry out aviation, maritime, or surface transportation security measures required or recommended by DHS or DOT.

* * * * *

(12) *Critical transportation infrastructure asset information.* Any list identifying systems or assets, whether physical or virtual, so vital to the aviation, maritime, or surface transportation that the incapacity or destruction of such assets would have a debilitating impact on transportation security, if the list is—

* * * * *

(15) *Research and development.* Information obtained or developed in the conduct of research related to aviation, maritime, or surface transportation, where such research is approved, accepted, funded, recommended, or directed by DHS or DOT, including research results.

* * * * *

■ 8. In § 1520.7, revise paragraph (n) to read as follows:

§ 1520.7 Covered persons.

* * * * *

(n) Each owner/operator of maritime or surface transportation subject to the requirements of subchapter D of this chapter.

■ 9. Revise the heading for subchapter D to read as follows:

Subchapter D—Maritime and Surface Transportation Security

■ 10. Revise part 1570 to read as follows:

PART 1570—GENERAL RULES

Subpart A—General

Sec.
1570.1 Scope.
1570.3 Terms used in this subchapter.
1570.5 Fraud and intentional falsification of records.
1570.7 Security responsibilities of employees and other persons.
1570.9 Compliance, inspection, and enforcement.

Subpart B—Security Programs

1570.101 Scope.
1570.103 Content.
1570.105 Responsibility for Determinations.
1570.107 Recognition of prior or established security measures or programs.
1570.109 Submission and approval.
1570.111 Implementation schedules.
1570.113 Amendments requested by owner/operator.
1570.115 Amendments required by TSA.
1570.117 Alternative measures.
1570.119 Petitions for reconsideration.
1570.121 Recordkeeping and availability.

Subpart C—Operations

1570.201 Security Coordinator.
1570.203 Reporting significant security concerns.

Subpart D—Security Threat Assessments

1570.301 Fraudulent use or manufacture; responsibilities of persons.
1570.303 Inspection of credential.
1570.305 False statements regarding security background checks by public transportation agency or railroad carrier.
Appendix A to Part 1570—Reporting of Significant Security Concerns

Authority: 18 U.S.C. 842, 845; 46 U.S.C. 70105; 49 U.S.C. 114, 5103a, 40113, and 46105; Pub. L. 108–90 (117 Stat. 1156, Oct. 1, 2003), sec. 520 (6 U.S.C. 469), as amended by Pub. L. 110–329 (122 Stat. 3689, Sept. 30, 2008) sec. 543 (6 U.S.C. 469); Pub. L. 110–53 (121 Stat. 266, Aug. 3, 2007) secs. 1402 (6 U.S.C. 1131), 1405 (6 U.S.C. 1134), 1408 (6 U.S.C. 1137), 1413 (6 U.S.C. 1142), 1414 (6 U.S.C. 1143), 1501 (6 U.S.C. 1151), 1512 (6 U.S.C. 1162), 1517 (6 U.S.C. 1167), 1522 (6 U.S.C. 1170), 1531 (6 U.S.C. 1181), and 1534 (6 U.S.C. 1184).

Subpart A—General

§ 1570.1 Scope.

This part applies to any person involved in maritime or surface transportation as specified in this subchapter.

§ 1570.3 Terms used in this subchapter.

In addition to the definitions in §§ 1500.3, 1500.5, and 1503.202 of subchapter A, the following terms are used in this subchapter:

Adjudicate means to make an administrative determination of whether an applicant meets the standards in this subchapter, based on the merits of the issues raised.

Alien means any person not a citizen or national of the United States.

Alien registration number means the number issued by the DHS to an individual when he or she becomes a lawful permanent resident of the United States or attains other lawful, non-citizen status.

Applicant means a person who has applied for one of the security threat assessments identified in this subchapter.

Commercial driver's license (CDL) is used as defined in 49 CFR 383.5.

Contractor means a person or organization that provides a service for an owner/operator regulated under this subchapter consistent with a specific understanding or arrangement. The understanding can be a written contract or an informal arrangement that reflects an ongoing relationship between the parties.

Convicted means any plea of guilty or nolo contendere, or any finding of guilt, except when the finding of guilt is subsequently overturned on appeal, pardoned, or expunged. For purposes of this subchapter, a conviction is expunged when the conviction is removed from the individual's criminal history record and there are no legal disabilities or restrictions associated with the expunged conviction, other than the fact that the conviction may be used for sentencing purposes for subsequent convictions. In addition, where an individual is allowed to withdraw an original plea of guilty or nolo contendere and enter a plea of not guilty and the case is subsequently dismissed, the individual is no longer considered to have a conviction for purposes of this subchapter.

Determination of No Security Threat means an administrative determination by TSA that an individual does not pose a security threat warranting denial of an HME or a TWIC.

Employee means an individual who is engaged or compensated by an owner/operator regulated under this subchapter, or by a contractor to an owner/operator regulated under this subchapter. The term includes direct employees, contractor employees, authorized representatives, immediate supervisors, and individuals who are self-employed.

Federal Maritime Security Coordinator (FMSC) has the same meaning as defined in 46 U.S.C. 70103(a)(2)(G); is the Captain of the Port (COTP) exercising authority for the COTP zones described in 33 CFR part 3, and is the Port Facility Security Officer as described in the International Ship and Port Facility Security (ISPS) Code, part A.

Final Determination of Threat Assessment means a final administrative determination by TSA, including the resolution of related appeals, that an individual poses a security threat warranting denial of an HME or a TWIC.

Hazardous materials endorsement (HME) means the authorization for an individual to transport hazardous materials in commerce, an indication of which must be on the individual's commercial driver's license, as provided in the Federal Motor Carrier Safety Administration regulations in 49 CFR part 383.

Immediate supervisor means a manager, supervisor, or agent of the owner/operator to the extent the individual:

(1) Performs the work of a security-sensitive employee; or

(2) Supervises and otherwise directs the performance of a security-sensitive employee.

Imprisoned or *imprisonment* means confined to a prison, jail, or institution for the criminally insane, on a full-time basis, pursuant to a sentence imposed as the result of a criminal conviction or finding of not guilty by reason of insanity. Time spent confined or restricted to a half-way house, treatment facility, or similar institution, pursuant to a sentence imposed as the result of a criminal conviction or finding of not guilty by reason of insanity, does not constitute imprisonment for purposes of this rule.

Incarceration means confined or otherwise restricted to a jail-type institution, half-way house, treatment facility, or another institution on a full or part-time basis, pursuant to a sentence imposed as the result of a criminal conviction or finding of not guilty by reason of insanity.

Initial Determination of Threat Assessment means an initial administrative determination by TSA that an applicant poses a security threat warranting denial of an HME or a TWIC.

Initial Determination of Threat Assessment and Immediate Revocation means an initial administrative determination that an individual poses a security threat that warrants immediate revocation of an HME or invalidation of a TWIC. In the case of an HME, the State must immediately revoke the HME if TSA issues an Initial Determination of Threat Assessment and Immediate Revocation. In the case of a TWIC, TSA invalidates the TWIC when TSA issues an Initial Determination of Threat Assessment and Immediate Revocation.

Invalidate means the action TSA takes to make a credential inoperative when

it is reported as lost, stolen, damaged, no longer needed, or when TSA determines an applicant does not meet the security threat assessment standards of 49 CFR part 1572.

Lawful permanent resident means an alien lawfully admitted for permanent residence, as defined in 8 U.S.C. 1101(a)(20).

Maritime facility has the same meaning as ''facility'' together with ''OCS facility'' (Outer Continental Shelf facility), as defined in 33 CFR 101.105.

Mental health facility means a mental institution, mental hospital, sanitarium, psychiatric facility, and any other facility that provides diagnoses by licensed professionals of mental retardation or mental illness, including a psychiatric ward in a general hospital.

National of the United States means a citizen of the United States, or a person who, though not a citizen, owes permanent allegiance to the United States, as defined in 8 U.S.C. 1101(a)(22), and includes American Samoa and Swains Island.

Revocation means the termination, deactivation, rescission, invalidation, cancellation, or withdrawal of the privileges and duties conferred by an HME or TWIC, when TSA determines an applicant does not meet the security threat assessment standards of 49 CFR part 1572.

Secure area means the area on board a vessel or at a facility or outer continental shelf facility, over which the owner/operator has implemented security measures for access control, as defined by a Coast Guard approved security plan. It does not include passenger access areas or public access areas, as these terms are defined in 33 CFR 104.106 and 105.106 respectively. Vessels operating under the waivers provided for at 46 U.S.C. 8103(b)(3)(A) or (B) have no secure areas. Facilities subject to 33 CFR chapter I, subchapter H, part 105 may, with approval of the Coast Guard, designate only those portions of their facility that are directly connected to maritime transportation or are at risk of being involved in a transportation security incident as their secure areas.

Security-sensitive employee, for purposes of this part, means ''security sensitive employee'' as defined in § 1580.3, § 1582.3, or § 1584.3 of this title.

Security-sensitive job function, for purposes of this part, means a job function identified in appendix B to part 1580, appendix B to part 1582, and appendix B to part 1584 of this title.

Security threat means an individual whom TSA determines or suspects of posing a threat to national security; to transportation security; or of terrorism.

Transportation Worker Identification Credential (TWIC) means a Federal biometric credential, issued to an individual, when TSA determines that the individual does not pose a security threat.

Withdrawal of Initial Determination of Threat Assessment is the document that TSA issues after issuing an Initial Determination of Security Threat, when TSA determines that an individual does not pose a security threat that warrants denial of an HME or TWIC.

§ 1570.5 Fraud and intentional falsification of records.

No person may make, cause to be made, attempt, or cause to attempt any of the following:

(a) Any fraudulent or intentionally false statement in any record or report that is kept, made, or used to show compliance with the subchapter, or exercise any privileges under this subchapter.

(b) Any reproduction or alteration, for fraudulent purpose, of any record, report, security program, access medium, or identification medium issued under this subchapter or pursuant to standards in this subchapter.

§ 1570.7 Security responsibilities of employees and other persons.

(a) No person may—

(1) Tamper or interfere with, compromise, modify, attempt to circumvent, or cause another person to tamper or interfere with, compromise, modify, or attempt to circumvent any security measure implemented under this subchapter.

(2) Enter, or be present within, a secured or restricted area without complying with the security measures applied as required under this subchapter to control access to, or presence or movement in, such areas.

(3) Use, allow to be used, or cause to be used, any approved access medium or identification medium that authorizes the access, presence, or movement of persons or vehicles in secured or restricted areas in any other manner than that for which it was issued by the appropriate authority to meet the requirements of this subchapter.

(b) The provisions of paragraph (a) of this section do not apply to conducting inspections or tests to determine compliance with this subchapter authorized by—

(1) TSA and DHS officials working with TSA; or

(2) The owner/operator when acting in accordance with the procedures described in a security plan and/or program approved by TSA.

§ 1570.9 Compliance, inspection, and enforcement.

(a) Each person subject to any of the requirements of this subchapter, must allow TSA and other authorized DHS officials, at any time and in a reasonable manner, without advance notice, to enter, assess, inspect, and test property, facilities, equipment, and operations; and to view, inspect, and copy records, as necessary to carry out TSA's security-related statutory or regulatory authorities, including its authority to—

(1) Assess threats to transportation.

(2) Enforce security-related laws, regulations, directives, and requirements.

(3) Inspect, maintain, and test the security of facilities, equipment, and systems.

(4) Ensure the adequacy of security measures for the transportation of passengers and cargo.

(5) Oversee the implementation, and ensure the adequacy, of security measures for the owner/operator's conveyances and vehicles, at transportation facilities and infrastructure and other assets related to transportation.

(6) Review security plans and/or programs.

(7) Determine compliance with any requirements in this chapter.

(8) Carry out such other duties, and exercise such other powers, relating to transportation security, as the Administrator for TSA considers appropriate, to the extent authorized by law.

(b) At the request of TSA, each owner/operator subject to the requirements of this subchapter must provide evidence of compliance with this chapter, including copies of records.

(c) TSA and other authorized DHS officials, may enter, without advance notice, and be present within any area or within any vehicle or conveyance, terminal, or other facility covered by this chapter without access media or identification media issued or approved by an owner/operator covered by this chapter in order to inspect or test compliance, or perform other such duties as TSA may direct.

(d) TSA inspectors and other authorized DHS officials working with TSA will, on request, present their credentials for examination, but the credentials may not be photocopied or otherwise reproduced.

Subpart B—Security Programs

§ 1570.101 Scope.

The requirements of this subpart address general security program requirements applicable to each owner/operator required to have a security program under subpart B to 49 CFR parts 1580, 1582, and 1584.

§ 1570.103 Content.

(a) *Security program.* Except as otherwise approved by TSA, each owner/operator required to have a security program must address each of the security program requirements identified in subpart B to 49 CFR parts 1580, 1582, and 1584.

(b) *Use of appendices.* The owner/operator may comply with the requirements referenced in paragraph (a) of this section by including in its security program, as an appendix, any document that contains the information required by the applicable subpart B, including procedures, protocols or memorandums of understanding related to external agency response to security incidents or events. The appendix must be referenced in the corresponding section(s) of the security program.

§ 1570.105 Responsibility for Determinations.

(a) *Higher-risk operations.* While TSA has determined the criteria for applicability of the requirements in subpart B to 49 CFR parts 1580, 1582, and 1584 based on risk-assessments for freight railroad, public transportation system, passenger railroad, or over-the-road (OTRB) owner/operators are required to determine if the applicability criteria identified in subpart B to parts 1580, 1582, and 1584 apply to their operations. Owner/operators are required to notify TSA of applicability within 30 days of June 22, 2020.

(b) *New or modified operations.* If an owner/operator commences new operations or modifies existing operations after June 22, 2020, that person is responsible for determining whether the new or modified operations would meet the applicability criteria in subpart B to 49 CFR part 1580, 1582, or 1584 and must notify TSA no later than 90 calendar days before commencing operations or implementing modifications.

§ 1570.107 Recognition of prior or established security measures or programs.

Previously provided security training may be credited towards satisfying the requirements of this subchapter provided the owner/operator—

(a) Obtains a complete record of such training and validates the training meets requirements of § 1580.115, § 1582.115, or § 1584.115 of this subchapter as it relates to the function of the individual security-sensitive employee and the training was provided within the schedule required for recurrent training.

(b) Retains a record of such training in compliance with the requirements of § 1570.121 of this part.

§ 1570.109 Submission and approval.

(a) *Submission of security program.* Each owner/operator required under parts 1580, 1582, or 1584 of this subchapter to adopt and carry out a security program must submit it to TSA for approval in a form and manner prescribed by TSA.

(b) *Security training deadlines.* Except as otherwise directed by TSA, each owner/operator required under subpart B to part 1580, 1582, or 1584 of this subchapter to develop a security training program must—

(1) Submit its program to TSA for approval no later than 90 calendar days after June 22, 2020.

(2) If commencing or modifying operations so as to be subject to the requirements of subpart B to 49 CFR part 1580, 1582, or 1584 after June 22, 2020, submit a training program to TSA no later than 90 calendar days before commencing new or modified operations.

(c) *TSA approval.* (1) No later than 60 calendar days after receiving the proposed security program required by subpart B to 49 CFR parts 1580, 1582, and 1584, TSA will either approve the program or provide the owner/operator with written notice to modify the program to comply with the applicable requirements of this subchapter. TSA will notify the owner/operator if it needs an extension of time to approve the program or provide the owner/operator with written notice to modify the program to comply with the applicable requirements of this subchapter.

(2) *Notice to modify.* If TSA provides the owner/operator with written notice to modify the security program to comply with the applicable requirements of this subchapter, the owner/operator must provide a modified security program to TSA for approval within the timeframe specified by TSA.

(3) TSA may request additional information, and the owner/operator must provide the information within the time period TSA prescribes. The 60-day period for TSA approval or modification will begin when the owner/operator provides the additional information.

(g) *Petition for reconsideration.* Within 30 days of receiving the notice to modify, the owner/operator may file a petition for reconsideration under § 1570.119 of this part.

§ 1570.111 Implementation schedules.

(a) *Initial security training.* Each owner/operator required under parts 1580, 1582, or 1584 of this subchapter to adopt and carry out a security program must provide initial security training to security-sensitive employees, using the curriculum approved by TSA—

(1) No later than one year after the date of TSA-approval of the owner/operator's security training program if the employee is employed to perform a security-sensitive function on the date TSA approves the program.

(2) No later than 60 calendar days after the employee first performs a security-sensitive job function if performance of a security-sensitive job function is initiated after TSA approves the security training program.

(3) No later than the 60th calendar day of employment performing a security-sensitive function, aggregated over a consecutive 12-month period, if the security-sensitive job function is performed intermittently.

(b) *Recurrent security training.* (1) Except as provided in paragraph (b)(2) of this section, a security-sensitive employee required to receive training under part 1580, 1582, or 1584 of this subchapter must receive the required training at least once every three years.

(2) If an owner/operator modifies a security program or security plan for which training is required under § 1580.203(b), § 1582.115(b), or § 1584.115(b) of this subchapter, the owner/operator must ensure each security-sensitive employee with position- or function-specific responsibilities related to the revised plan or program changes receives training on the revisions within 90 days of implementation of the revised plan or program changes. All other employees must receive training that reflects the changes to the operating security requirements as part of their regularly scheduled recurrent training.

(3) The three-year recurrent training cycle is based on the anniversary calendar month of the employee's initial security training. If the owner/operator provides the recurrent security training in the month of, the month before, or the month after it is due, the employee is considered to have taken the training in the month it is due.

(c) *Extensions of time.* TSA may grant an extension of time for implementing a security program identified in subpart B to parts 1580, 1582, and 1584 of this subchapter upon a showing of good

cause. The owner/operator must request the extension of time in writing and TSA must receive the request within a reasonable time before the due date to be extended; an owner/operator may request an extension after the expiration of a due date by sending a written request describing why the failure to meet the due date was excusable. TSA will respond to the request in writing.

§ 1570.113 Amendments requested by owner/operator.

(a) *Changes to ownership or control of operations.* Each owner/operator required under part 1580, 1582, or 1584 of this subchapter to adopt and carry out a security program must submit a request to amend its security program if, after approval, there are any changes to the ownership or control of the operation.

(b) *Changes to conditions affecting security.* Each owner/operator required under part 1580, 1582, or 1584 of this subchapter to adopt and carry out a security program must submit a request to amend its security program if, after approval, the owner/operator makes, or intends to make, permanent changes to any of the following procedures, measures, or other aspects of security or emergency response planning implemented by the owner/operator to address:

(1) Specific procedures implemented or used to prevent and detect unauthorized access to restricted areas designated by the owner/operator;

(2) Measures to be implemented in response to a period of heightened security risk, communicated through a DHS enhanced security notification, including the process used to notify all employees of changes in alert level status or requirements to implement specific elements of the security plan and verify that appropriate enhanced security measures have been implemented at all relevant locations.

(3) Emergency response plans, including:

(i) Coordinated response plans establishing procedures for appropriate interaction with State, local, and tribal law enforcement agencies, emergency responders, and Federal officials in order to coordinate security measures and plans for response in the event of a terrorist threat, attack, or other transportation security-related incident;

(ii) Specific procedures to be implemented or used by the owner/operator in response to a terrorist attack, including evacuation and communication plans that include individuals with disabilities; and

(iii) Additional measures to be adopted to address weaknesses in emergency response procedures identified during regular drills or exercises that test corporate capabilities to direct, coordinate, and execute prevention and response activities for terrorist attacks or other security threats, including tunnel evacuation procedures, if applicable.

(iv) Redundant and backup systems to ensure the continuity of operations of critical assets and infrastructure system in the event of a terrorist attack or other transportation security-related incident.

(c) *Changes to security training curriculum.* Each owner/operator required under part 1580, 1582, or 1584 of this subchapter to adopt and carry out a security program must submit a request to amend its security program if, after approval, the owner/operator makes, or intends to make, permanent changes to its security training curriculum required under part 1580, 1582, or 1584, including changes to address:

(1) Determinations that the security training program is ineffective based on the approved method for evaluating effectiveness in the security training program approved by TSA under subpart B of parts 1580, 1582, and 1584; or

(2) Development of recurrent training material for purposes of meeting the requirements in § 1570.111(b) of this part or other alternative training materials not previously approved by TSA.

(d) *Permanent change.* For purposes of this section, a ''permanent change'' is one intended to be in effect for 60 or more calendar days.

(e) *Schedule for requesting amendment.* The owner/operator must file the request for an amendment with TSA no later than 65 calendar days after the change in subsection (b) takes effect, unless TSA allows a shorter time period.

(f) *TSA approval.* (1) Within 30 calendar days after receiving a proposed amendment, TSA will, in writing, either approve or deny the request to amend. TSA will notify the owner/operator if it needs an extension of time to consider the proposed amendment.

(2) TSA may approve—

(i) An amendment to a security program if TSA determines that it is in the interest of the public and transportation security and the proposed amendment provides the level of security required under this subchapter.

(ii) Modification to security training curriculum, including alternative training for purposes of meeting the recurrent training requirement, if all the required training elements are addressed and the material is consistent with the most recent iteration of the security program submitted to, and approved by, TSA (including amendments made to reflect relevant changes to operations and/or security measures and response plans).

(iii) TSA may request additional information from the owner/operator before rendering a decision.

(g) *Petition for reconsideration.* No later than 30 calendar days after receiving a denial, the owner/operator may file a petition for reconsideration under § 1570.119 of this part.

§ 1570.115 Amendments required by TSA.

(a) *Notification of requirement to amend.* TSA may require amendments to a security program in the interest of the public and transportation security, including any new information about emerging threats, or methods for addressing emerging threats, as follows:

(1) TSA will notify the owner/operator of the proposed amendment, fixing a period of not less than 30 calendar days within which the owner/operator may submit written information, views, and arguments on the amendment.

(2) After TSA considers all relevant material received, TSA will notify the owner/operator of any amendment adopted or rescind the notice.

(b) *Effective date of amendment.* If TSA adopts the amendment, it becomes effective not less than 30 calendar days after the owner/operator receives the notice of amendment, unless the owner/operator disagrees with the proposed amendment and files a petition for reconsideration under § 1570.119 of this part no later than 15 calendar days before the effective date of the amendment. A timely petition for reconsideration stays the effective date of the amendment.

(c) *Emergency amendments.* If TSA determines that there is an emergency requiring immediate action in the interest of the public or transportation security, TSA may issue an amendment, without the prior notice and comment procedures in paragraph (a) of this section, effective without stay on the date the covered owner/operator receives notice of it. In such a case, TSA will incorporate in the notice a brief statement of the reasons and findings for the amendment to be adopted. The owner/operator may file a petition for reconsideration under § 1570.119 of this part; however, this does not stay the effective date of the emergency amendment.

§ 1570.117 Alternative measures.

(a) If in TSA's judgment, the overall security of transportation provided by an owner/operator subject to the requirements of 49 CFR part 1580, 1582, or 1584 are not diminished, TSA may approve alternative measures.

(b) Each owner/operator requesting alternative measures must file the request for approval in a form and manner prescribed by TSA. The filing of such a request does not affect the owner/operator's responsibility for compliance while the request is being considered.

(c) TSA may request additional information, and the owner/operator must provide the information within the time period TSA prescribes. Within 30 calendar days after receiving a request for alternative measures and all requested information, TSA will, in writing, either approve or deny the request.

(d) If TSA finds that the use of the alternative measures is in the interest of the public and transportation security, it may grant the request subject to any conditions TSA deems necessary. In considering the request for alternative measures, TSA will review all relevant factors including—

(1) The risks associated with the type of operation, for example, whether the owner/operator transports hazardous materials or passengers within a high threat urban area, whether the owner/operator transports passengers and the volume of passengers transported, or whether the owner/operator hosts a passenger operation.

(2) Any relevant threat information.

(3) Other circumstances concerning potential risk to the public and transportation security.

(e) No later than 30 calendar days after receiving a denial, the owner/operator may petition for reconsideration under § 1570.119 of this part.

§ 1570.119 Petitions for reconsideration.

(a) If an owner/operator seeks to petition for reconsideration of a determination, required modification, denial of a request for amendment by the owner/operator, denial to rescind a TSA-required amendment, or denial of an alternative measure, the owner/operator must submit a written petition for reconsideration that includes a statement and any supporting documentation explaining why the owner/operator believes TSA's decision is incorrect.

(b) Upon review of the petition for reconsideration, the Administrator or designee will dispose of the petition by affirming, modifying, or rescinding its previous decision. This is considered a final agency action.

§ 1570.121 Recordkeeping and availability.

(a) *Retention.* Each owner/operator required to have a security program under subpart B to parts 1580, 1582, and 1584 of this subchapter must—

(1) Retain security training records for each individual required to receive security training under §§ 1580.115, 1582.115, and 1584.115 that, at a minimum—

(i) Includes employee's full name, job title or function, date of hire, and date of initial and recurrent security training; and

(ii) Identifies the date, course name, course length, and list of topics addressed for the security training most recently provided in each of the areas required under §§ 1580.115, 1582.115, and 1584.115 of this subchapter.

(2) Retain records of initial and recurrent security training for no less than five (5) years from the date of training.

(3) Provide records to current and former employees upon request and at no charge as necessary to provide proof of training.

(b) *Electronic records.* Each owner/operator required to retain records under this section may keep them in electronic form. An owner/operator may maintain and transfer records through electronic transmission, storage, and retrieval provided that the electronic system provides for the maintenance of records as originally submitted without corruption, loss of data, or tampering.

(c) *Protection of SSI.* Each owner/operator must restrict the distribution, disclosure, and availability of security sensitive information, as identified in part 1520 of this chapter, to persons with a need to know. The owner/operator must refer requests for such information by other persons to TSA.

(d) *Availability.* Each owner/operator must make the records available to TSA upon request for inspection and copying.

Subpart C—Operations

§ 1570.201 Security Coordinator.

(a) Except as provided in paragraphs (b) and (c) of this section, each owner/operator identified in §§ 1580.1, 1582.1, and 1584.101 of this subchapter must designate and use a primary and at least one alternate Security Coordinator.

(b) An owner/operator identified in § 1582.1(a)(2) of this subchapter (public transportation agency) that owns or operates a bus-only operation must designate and use a primary and at least one alternate Security Coordinator only if the owner/operator is identified in appendix A to part 1582 of this subchapter or is notified by TSA in writing that a threat exists concerning that operation.

(c) An owner/operator identified in § 1580.1(a)(5) or § 1582.1(a)(4) of this subchapter (private rail car, tourist, scenic, historic, or excursion rail operations) must designate and use a primary and at least one alternate Security Coordinator, only if notified by TSA in writing that a threat exists concerning that type of operation.

(d) The Security Coordinator and alternate(s) must be appointed at the corporate level.

(e) Each owner/operator required to have a Security Coordinator must provide in writing to TSA the names, U.S. citizenship status, titles, phone number(s), and email address(es) of the Security Coordinator and alternate Security Coordinator(s) within 37 calendar days of the effective date of this rule, commencement of operations, or change in any of the information required by this section.

(f) Each owner/operator required to have a Security Coordinator must ensure that at least one Security Coordinator—

(1) Serves as the primary contact for intelligence information and security-related activities and communications with TSA. Any individual designated as a Security Coordinator may perform other duties in addition to the duties described in this section.

(2) Is accessible to TSA on a 24 hours a day, 7 days a week basis.

(3) Coordinates security practices and procedures internally and with appropriate law enforcement and emergency response agencies.

§ 1570.203 Reporting significant security concerns.

(a) Each owner/operator identified in §§ 1580.1, 1582.1, and 1584.101 of this subchapter must report, within 24 hours of initial discovery, any potential threats and significant security concerns involving transportation-related operations in the United States or transportation to, from, or within the United States as soon as possible by the methods prescribed by TSA.

(b) Potential threats or significant security concerns encompass incidents, suspicious activities, and threat information including, but not limited to, the categories of reportable events listed in appendix A to this part.

(c) Information reported must include the following, as available and applicable:

(1) The name of the reporting individual and contact information,

including a telephone number or email address.

(2) The affected freight or passenger train, transit vehicle, motor vehicle, station, terminal, rail hazardous materials facility, or other facility or infrastructure, including identifying information and current location.

(3) Scheduled origination and termination locations for the affected freight or passenger train, transit vehicle, or motor vehicle–including departure and destination city and route.

(4) Description of the threat, incident, or activity, including who has been notified and what action has been taken.

(5) The names, other available biographical data, and/or descriptions (including vehicle or license plate information) of individuals or motor vehicles known or suspected to be involved in the threat, incident, or activity.

(6) The source of any threat information.

Subpart D—Security Threat Assessments

§ 1570.301 Fraudulent use or manufacture; responsibilities of persons.

(a) No person may use or attempt to use a credential, security threat assessment, access control medium, or identification medium issued or conducted under this subchapter that was issued or conducted for another person.

(b) No person may make, produce, use or attempt to use a false or fraudulently created access control medium, identification medium or security threat assessment issued or conducted under this subchapter.

(c) No person may tamper or interfere with, compromise, modify, attempt to circumvent, or circumvent TWIC access control procedures.

(d) No person may cause or attempt to cause another person to violate paragraphs (a) through (c) of this section.

§ 1570.303 Inspection of credential.

(a) Each person who has been issued or possesses a TWIC must present the TWIC for inspection upon a request from TSA, the Coast Guard, or other authorized DHS representative; an authorized representative of the National Transportation Safety Board; or a Federal, State, or local law enforcement officer.

(b) Each person who has been issued or who possesses a TWIC must allow his or her TWIC to be read by a reader and must submit his or her reference biometric, such as a fingerprint, and any other required information, such as a PIN, to the reader, upon a request from TSA, the Coast Guard, other authorized DHS representative; or a Federal, State, or local law enforcement officer.

§ 1570.305 False statements regarding security background checks by public transportation agency or railroad carrier.

(a) *Scope.* This section implements sections 1414(e) (6 U.S.C. 1143) and 1522(e) (6 U.S.C. 1170) of the ''Implementing Recommendations of the 9/11 Commission Act of 2007,'' Public Law 110–53 (121 Stat. 266, Aug. 3, 2007).

(b) *Definitions.* In addition to the terms in §§ 1500.3, 1500.5, and 1503.202 of subchapter A and § 1570.3 of subchapter D of this chapter, the following term applies to this part:

Security background check means reviewing the following for the purpose of identifying individuals who may pose a threat to transportation security, national security, or of terrorism:

(i) Relevant criminal history databases.

(ii) In the case of an alien (as defined in sec. 101 of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)), the relevant databases to determine the status of the alien under the immigration laws of the United States.

(iii) Other relevant information or databases, as determined by the Secretary of Homeland Security.

(c) *Prohibitions.* (1) A public transportation agency or a contractor or subcontractor of a public transportation agency may not knowingly misrepresent to an employee or other relevant person, including an arbiter involved in a labor arbitration, the scope, application, or meaning of any rules, regulations, directives, or guidance issued by the Secretary of Homeland Security related to security background check requirements for employees when conducting a security background check.

(2) A railroad carrier or a contractor or subcontractor of a railroad carrier may not knowingly misrepresent to an employee or other relevant person, including an arbiter involved in a labor arbitration, the scope, application, or meaning of any rules, regulations, directives, or guidance issued by the Secretary of Homeland Security related to security background check requirements for employees when conducting a security background check.

Appendix A to Part 1570—Reporting of Significant Security Concerns

Category	Description
Breach, Attempted Intrusion, and/or Interference	Unauthorized personnel attempting to or actually entering a restricted area or secure site relating to a transportation facility or conveyance owned, operated, or used by an owner/operator subject to this part. This includes individuals entering or attempting to enter by impersonation of authorized personnel (for example, police/security, janitor, vehicle owner/operator). Activity that could interfere with the ability of employees to perform duties to the extent that security is threatened.
Misrepresentation	Presenting false, or misusing, insignia, documents, and/or identification, to misrepresent one's affiliation with an owner/operator subject to this part to cover possible illicit activity that may pose a risk to transportation security.
Theft, Loss, and/or Diversion	Stealing or diverting identification media or badges, uniforms, vehicles, keys, tools capable of compromising track integrity, portable derails, technology, or classified or sensitive security information documents which are proprietary to the facility or conveyance owned, operated, or used by an owner/operator subject to this part.
Sabotage, Tampering, and/or Vandalism	Damaging, manipulating, or defeating safety and security appliances in connection with a facility, infrastructure, conveyance, or routing mechanism, resulting in the compromised use or the temporary or permanent loss of use of the facility, infrastructure, conveyance or routing mechanism. Placing or attaching a foreign object to a rail car(s).
Cyber Attack	Compromising, or attempting to compromise or disrupt the information/technology infrastructure of an owner/operator subject to this part.
Expressed or Implied Threat	Communicating a spoken or written threat to damage or compromise a facility/infrastructure/conveyance owned, operated, or used by an owner/operator subject to this part (for example, a bomb threat or active shooter).

Category	Description
Eliciting Information	Questioning that may pose a risk to transportation or national security, such as asking one or more employees of an owner/operator subject to this part about particular facets of a facility's conveyance's purpose, operations, or security procedures.
Testing or Probing of Security	Deliberate interactions with employees of an owner/operator subject to this part or challenges to facilities or systems owned, operated, or used by an owner/operator subject to this part that reveal physical, personnel, or cyber security capabilities.
Photography	Taking photographs or video of facilities, conveyances, or infrastructure owned, operated, or used by an owner/operator subject to this part in a manner that may pose a risk to transportation or national security. Examples include taking photographs or video of infrequently used access points, personnel performing security functions (for example, patrols, badge/vehicle checking), or security-related equipment (for example, perimeter fencing, security cameras).
Observation or Surveillance	Demonstrating unusual interest in facilities or loitering near conveyances, railcar routing appliances or any potentially critical infrastructure owned or operated by an owner/operator subject to this part in a manner that may pose a risk to transportation or national security. Examples include observation through binoculars, taking notes, or attempting to measure distances.
Materials Acquisition and/or Storage	Acquisition and/or storage by an employee of an owner/operator subject to this part of materials such as cell phones, pagers, fuel, chemicals, toxic materials, and/or timers that may pose a risk to transportation or national security (for example, storage of chemicals not needed by an employee for the performance of his or her job duties).
Weapons Discovery, Discharge, or Seizure.	Weapons or explosives in or around a facility, conveyance, or infrastructure of an owner/operator subject to this part that may present a risk to transportation or national security (for example, discovery of weapons inconsistent with the type or quantity traditionally used by company security personnel).
Suspicious Items or Activity	Discovery or observation of suspicious items, activity or behavior in or around a facility, conveyance, or infrastructure of an owner/operator subject to this part that results in the disruption or termination of operations (for example, halting the operation of a conveyance while law enforcement personnel investigate a suspicious bag, briefcase, or package).

■ 11. Revise part 1580 to read as follows:

PART 1580—FREIGHT RAIL TRANSPORTATION SECURITY

Subpart A—General

Sec.
1580.1 Scope.
1580.3 Terms used in this part.
1580.5 Preemptive effect.

Subpart B—Security Programs

1580.101 Applicability.
1580.103 [Reserved]
1580.105 [Reserved]
1580.107 [Reserved]
1580.109 [Reserved]
1580.111 [Reserved]
1580.113 Security training program general requirements.
1580.115 Security training and knowledge for security-sensitive employees.

Subpart C—Operations

1580.201 Applicability.
1580.203 Location and shipping information.
1580.205 Chain of custody and control requirements.
1580.207 Harmonization of Federal regulation of nuclear facilities.
Appendix A to Part 1580—High Threat Urban Areas (HTUAS)
Appendix B to Part 1580—Security-Sensitive Job Functions for Freight Rail

Authority: 49 U.S.C. 114; Pub. L. 110–53 (121 Stat. 266, Aug. 3, 2007) secs. 1501 (6 U.S.C. 1151), 1512 (6 U.S.C. 1162) and 1517 (6 U.S.C. 1167).

Subpart A—General

§ 1580.1 Scope.

(a) Except as provided in paragraph (b) of this section, this part includes requirements for the following persons. Specific sections in this part provide detailed requirements.

(1) Each freight railroad carrier that operates rolling equipment on track that is part of the general railroad system of transportation.

(2) Each rail hazardous materials shipper.

(3) Each rail hazardous materials receiver located within an HTUA.

(4) Each freight railroad carrier serving as a host railroad to a freight railroad operation described in paragraph (a)(1) of this section or a passenger operation described in § 1582.1 of this subchapter.

(5) Each owner/operator of private rail cars, including business/office cars and circus trains, on or connected to the general railroad system of transportation.

(b) This part does not apply to a freight railroad carrier that operates rolling equipment only on track inside an installation that is not part of the general railroad system of transportation.

§ 1580.3 Terms used in this part.

In addition to the terms in §§ 1500.3, 1500.5, and 1503.202 of subchapter A and § 1570.3 of subchapter D of this chapter, the following terms apply to this part:

Class I means Class I as assigned by regulations of the Surface Transportation Board (STB) (49 CFR part 1201; General Instructions 1–1).

Attended, in reference to a rail car, means an employee—

(1) Is physically located on-site in reasonable proximity to the rail car;

(2) Is capable of promptly responding to unauthorized access or activity at or near the rail car, including immediately contacting law enforcement or other authorities; and

(3) Immediately responds to any unauthorized access or activity at or near the rail car either personally or by contacting law enforcement or other authorities.

Document the transfer means documentation uniquely identifying that the rail car was attended during the transfer of custody, including:

(1) Car initial and number.

(2) Identification of individuals who attended the transfer (names or uniquely identifying employee number).

(3) Location of transfer.

(4) Date and time the transfer was completed.

High threat urban area (HTUA) means, for purposes of this part, an area comprising one or more cities and surrounding areas including a 10-mile buffer zone, as listed in appendix A to this part 1580.

Maintains positive control means that the rail hazardous materials receiver

and the railroad carrier communicate and cooperate with each other to provide for the security of the rail car during the physical transfer of custody. *Attending* the rail car is a component of maintaining positive control.

Rail security-sensitive materials (RSSM) means—

(1) A rail car containing more than 2,268 kg (5,000 lbs.) of a Division 1.1, 1.2, or 1.3 (explosive) material, as defined in 49 CFR 173.50;

(2) A tank car containing a material poisonous by inhalation as defined in 49 CFR 171.8, including anhydrous ammonia, Division 2.3 gases poisonous by inhalation as set forth in 49 CFR 173.115(c), and Division 6.1 liquids meeting the defining criteria in 49 CFR 173.132(a)(1)(iii) and assigned to hazard zone A or hazard zone B in accordance with 49 CFR 173.133(a), excluding residue quantities of these materials; and

(3) A rail car containing a highway route-controlled quantity of a Class 7 (radioactive) material, as defined in 49 CFR 173.403.

Residue means the hazardous material remaining in a packaging, including a tank car, after its contents have been unloaded to the maximum extent practicable and before the packaging is either refilled or cleaned of hazardous material and purged to remove any hazardous vapors.

Security-sensitive employee means an employee who performs—

(1) Service subject to the Federal hours of service laws (49 U.S.C. chapter 211), regardless of whether the employee actually performs such service during a particular duty tour; or

(2) One or more of the security-sensitive job functions identified in Appendix B to this part where the security-sensitive function is performed in the United States or in direct support of the common carriage of persons or property between a place in the United States and any place outside of the United States.

§ 1580.5 Preemptive effect.

Under 49 U.S.C. 20106, issuance of the regulations in this subchapter preempts any State law, regulation, or order covering the same subject matter, except an additional or more stringent law, regulation, or order that is necessary to eliminate or reduce an essentially local security hazard; that is not incompatible with a law, regulation, or order of the U.S. Government; and that does not unreasonably burden interstate commerce. For example, under 49 U.S.C. 20106, issuance of 49 CFR 1580.205 preempts any State or tribal law, rule, regulation, order or common law requirement covering the same subject matter.

Subpart B—Security Programs

§ 1580.101 Applicability.

This subpart applies to each of the following owner/operators:

(a) Described in § 1580.1(a)(1) of this part that is a Class I freight railroad.

(b) Described in § 1580.1(a)(1) of this part that transports one or more of the categories and quantities of RSSM in an HTUA.

(c) Described in § 1580.1(a)(4) of this part that serves as a host railroad to a freight railroad described in paragraph (a) of (b) of this section or a passenger operation described in § 1582.101 of this subchapter.

§ 1580.103 [Reserved]

§ 1580.105 [Reserved]

§ 1580.107 [Reserved]

§ 1580.109 [Reserved]

§ 1580.111 [Reserved]

§ 1580.113 Security training program general requirements.

(a) *Security training program required.* Each owner/operator identified in § 1580.101 of this part is required to adopt and carry out a security training program under this subpart.

(b) *General requirements.* The security training program must include the following information:

(1) Name of owner/operator.

(2) Name, title, telephone number, and email address of the primary individual to be contacted with regard to review of the security training program.

(3) Number, by specific job function category identified in Appendix B to this part, of security-sensitive employees trained or to be trained.

(4) Implementation schedule that identifies a specific date by which initial and recurrent security training required by § 1570.111 of this subchapter will be completed.

(5) Location where training program records will be maintained.

(6) Curriculum or lesson plan, including learning objectives and method of delivery (such as instructor-led or computer-based training) for each course used to meet the requirements of § 1580.115 of this part. TSA may request additional information regarding the curriculum during the review and approval process. If recurrent training under § 1570.111 of this subchapter is not the same as initial training, a curriculum or lesson plan for the recurrent training will need to be submitted and approved by TSA.

(7) Plan for ensuring supervision of untrained security-sensitive employees performing functions identified in Appendix B to this part.

(8) Plan for notifying employees of changes to security measures that could change information provided in previously provided training.

(9) Method(s) for evaluating the effectiveness of the security training program in each area required by § 1580.115 of this part.

(c) *Relation to other training.* (1) Training conducted by owner/operators to comply other requirements or standards, such as emergency preparedness training required by the Department of Transportation (DOT) (49 CFR part 239) or other training for communicating with emergency responders to arrange the evacuation of passengers, may be combined with and used to satisfy elements of the training requirements in this subpart.

(2) If the owner/operator submits a security training program that relies on pre-existing or previous training materials to meet the requirements of subpart B, the program submitted for approval must include an index, organized in the same sequence as the requirements in this subpart.

(d) *Submission and implementation.* The owner/operator must submit and implement the security training program in accordance with the schedules identified in §§ 1570.109 and 1570.111 of this subchapter.

§ 1580.115 Security training and knowledge for security-sensitive employees.

(a) *Training required for security-sensitive employees.* No owner/operator required to have a security training program under § 1580.101 of this part may use a security-sensitive employee to perform a function identified in Appendix B to this part, unless that individual has received training as part of a security training program approved by TSA under 49 CFR part 1570, subpart B, or is under the direct supervision of an employee who has received the training required by this section as applicable to that security-sensitive function.

(b) *Limits on use of untrained employees.* Notwithstanding paragraph (a) of this section, a security-sensitive employee may not perform a security-sensitive function for more than sixty (60) calendar days without receiving security training.

(c) *Prepare.* (1) Each owner/operator must ensure that each of its security-sensitive employees with position- or

function-specific responsibilities under the owner/operator's security program has knowledge of how to fulfill those responsibilities in the event of a security threat, breach, or incident to ensure—

(i) Employees with responsibility for transportation security equipment and systems are aware of their responsibilities and can verify the equipment and systems are operating and properly maintained; and

(ii) Employees with other duties and responsibilities under the company's security plans and/or programs, including those required by Federal law, know their assignments and the steps or resources needed to fulfill them.

(2) Each employee who performs any security-related functions under § 1580.205 of this subpart must be provided training specifically applicable to the functions the employee performs. As applicable, this training must address—

(i) Inspecting rail cars for signs of tampering or compromise, IEDs, suspicious items, and items that do not belong;

(ii) Identification of rail cars that contain rail security-sensitive materials, including the owner/operator's procedures for identifying rail security-sensitive material cars on train documents, shipping papers, and in computer train/car management systems; and

(iii) Procedures for completing transfer of custody documentation.

(d) *Observe.* Each owner/operator must ensure that each of its security-sensitive employees has knowledge of the observational skills necessary to recognize—

(1) Suspicious and/or dangerous items (such as substances, packages, or conditions (for example, characteristics of an IED and signs of equipment tampering or sabotage);

(2) Combinations of actions and individual behaviors that appear suspicious and/or dangerous, inappropriate, inconsistent, or out of the ordinary for the employee's work environment, which could indicate a threat to transportation security; and

(3) How a terrorist or someone with malicious intent may attempt to gain sensitive information or take advantage of vulnerabilities.

(e) *Assess.* Each owner/operator must ensure that each of its security-sensitive employees has knowledge necessary to—

(1) Determine whether the item, individual, behavior, or situation requires a response as a potential terrorist threat based on the respective transportation environment; and

(2) Identify appropriate responses based on observations and context.

(f) *Respond.* Each owner/operator must ensure that each of its security-sensitive employees has knowledge of how to—

(1) Appropriately report a security threat, including knowing how and when to report internally to other employees, supervisors, or management, and externally to local, state, or Federal agencies according to the owner/operator's security procedures or other relevant plans;

(2) Interact with the public and first responders at the scene of the threat or incident, including communication with passengers on evacuation and any specific procedures for individuals with disabilities and the elderly; and

(3) Use any applicable self-defense devices or other protective equipment provided to employees by the owner/operator.

Subpart C—Operations

§ 1580.201 Applicability.

This subpart applies to the following:

(1) Each owner/operator described in § 1580.1(a)(1) of this part that transports one or more of the categories and quantities of rail security-sensitive materials.

(2) Each owner/operator described in § 1580.1(a)(2) and (3) of this part.

§ 1580.203 Location and shipping information.

(a) *General requirement.* Each owner/operator described in § 1580.201 of this part must have procedures in place to determine the location and shipping information for each rail car under its physical custody and control that contains one or more of the categories and quantities of rail security-sensitive materials.

(b) *Required information.* The location and shipping information must include the following:

(1) The rail car's current location by city, county, and state, including, for freight railroad carriers, the railroad milepost, track designation, and the time that the rail car's location was determined.

(2) The rail car's routing, if a freight railroad carrier.

(3) A list of the total number of rail cars containing rail security-sensitive materials, broken down by—

(i) The shipping name prescribed for the material in column 2 of the table in 49 CFR 172.101;

(ii) The hazard class or division number prescribed for the material in column 3 of the table in 49 CFR 172.101; and

(iii) The identification number prescribed for the material in column 4 of the table in 49 CFR 172.101.

(4) Each rail car's initial and number.

(5) Whether the rail car is in a train, rail yard, siding, rail spur, or rail hazardous materials shipper or receiver facility, including the name of the rail yard or siding designation.

(c) *Timing-Class I freight railroad carriers.* Upon request by TSA, each Class I freight railroad carrier described in paragraph (a) of this section must provide the location and shipping information to TSA no later than—

(1) Five minutes if the request applies to a single (one) rail car; and

(2) Thirty minutes if the request concerns multiple rail cars or a geographic region.

(d) *Timing-other than Class I freight railroad carriers.* Upon request by TSA, all owner/operators described in paragraph (a) of this section, other than Class I freight railroad carriers, must provide the location and shipping information to TSA no later than 30 minutes, regardless of the number of cars covered by the request.

(e) *Method.* All owner/operators described in paragraph (a) of this section must provide the requested location and shipping information to TSA by one of the following methods:

(1) Electronic data transmission in spreadsheet format.

(2) Electronic data transmission in Hyper Text Markup Language (HTML) format.

(3) Electronic data transmission in Extensible Markup Language (XML).

(4) Facsimile transmission of a hard copy spreadsheet in tabular format.

(5) Posting the information to a secure website address approved by TSA.

(6) Another format approved by TSA.

(f) *Telephone number.* Each owner/operator described in § 1580.201 of this part must provide a telephone number for use by TSA to request the information required in paragraph (b) of this section.

(1) The telephone number must be monitored at all times.

(2) A telephone number that requires a call back (such as an answering service, answering machine, or beeper device) does not meet the requirements of this paragraph.

§ 1580.205 Chain of custody and control requirements.

(a) *Within or outside of an HTUA, rail hazardous materials shipper transferring to carrier.* Except as provided in paragraph (g) of this section, at each location within or outside of an HTUA, a rail hazardous materials shipper transferring custody of

a rail car containing one or more of the categories and quantities of rail security-sensitive materials to a freight railroad carrier must do the following:

(1) Physically inspect the rail car before loading for signs of tampering, including closures and seals; other signs that the security of the car may have been compromised; and suspicious items or items that do not belong, including the presence of an improvised explosive device.

(2) Keep the rail car in a rail secure area from the time the security inspection required by paragraph (a)(1) of this section or by 49 CFR 173.31(d), whichever occurs first, until the freight railroad carrier takes physical custody of the rail car.

(3) Document the transfer of custody to the railroad carrier in hard copy or electronically.

(b) *Within or outside of an HTUA, carrier receiving from a rail hazardous materials shipper.* At each location within or outside of an HTUA where a freight railroad carrier receives from a rail hazardous materials shipper custody of a rail car containing one or more of the categories and quantities of rail security-sensitive materials, the freight railroad carrier must document the transfer in hard copy or electronically and perform the required security inspection in accordance with 49 CFR 174.9.

(c) *Within an HTUA, carrier transferring to carrier.* Within an HTUA, whenever a freight railroad carrier transfers a rail car containing one or more of the categories and quantities of rail security-sensitive materials to another freight railroad carrier, each freight railroad carrier must adopt and carry out procedures to ensure that the rail car is not left unattended at any time during the physical transfer of custody. These procedures must include the receiving freight railroad carrier performing the required security inspection in accordance with 49 CFR 174.9. Both the transferring and the receiving railroad carrier must document the transfer of custody in hard copy or electronically.

(d) *Outside of an HTUA, carrier transferring to carrier.* Outside an HTUA, whenever a freight railroad carrier transfers a rail car containing one or more of the categories and quantities of rail security-sensitive materials to another freight railroad carrier, and the rail car containing this hazardous material may subsequently enter an HTUA, each freight railroad carrier must adopt and carry out procedures to ensure that the rail car is not left unattended at any time during the physical transfer of custody. These procedures must include the receiving railroad carrier performing the required security inspection in accordance with 49 CFR 174.9. Both the transferring and the receiving railroad carrier must document the transfer of custody in hard copy or electronically.

(e) *Within an HTUA, carrier transferring to rail hazardous materials receiver.* A freight railroad carrier delivering a rail car containing one or more of the categories and quantities of rail security-sensitive materials to a rail hazardous materials receiver located within an HTUA must not leave the rail car unattended in a non-secure area until the rail hazardous materials receiver accepts custody of the rail car. Both the railroad carrier and the rail hazardous materials receiver must document the transfer of custody in hard copy or electronically.

(f) *Within an HTUA, rail hazardous materials receiver receiving from carrier.* Except as provided in paragraph (j) of this section, a rail hazardous materials receiver located within an HTUA that receives a rail car containing one or more of the categories and quantities of rail security-sensitive materials from a freight railroad carrier must—

(1) Ensure that the rail hazardous materials receiver or railroad carrier maintains positive control of the rail car during the physical transfer of custody of the rail car;

(2) Keep the rail car in a rail secure area until the car is unloaded; and

(3) Document the transfer of custody from the railroad carrier in hard copy or electronically.

(g) *Within or outside of an HTUA, rail hazardous materials receiver rejecting car.* This section does not apply to a rail hazardous materials receiver that does not routinely offer, prepare, or load for transportation by rail one or more of the categories and quantities of rail security-sensitive materials. If such a receiver rejects and returns a rail car containing one or more of the categories and quantities of rail security-sensitive materials to the originating offeror or shipper, the requirements of this section do not apply to the receiver. The requirements of this section do apply to any railroad carrier to which the receiver transfers custody of the rail car.

(h) *Document retention.* Covered entities must maintain the documents required under this section for at least 60 calendar days and make them available to TSA upon request.

(i) *Rail secure area.* The rail hazardous materials shipper and the rail hazardous materials receiver must use physical security measures to ensure that no unauthorized individual gains access to the rail secure area.

(j) *Exemption for rail hazardous materials receivers.* A rail hazardous materials receiver located within an HTUA may request from TSA an exemption from some or all of the requirements of this section if the receiver demonstrates that the potential risk from its activities is insufficient to warrant compliance with this section. TSA will consider all relevant circumstances, including the following:

(1) The amounts and types of all hazardous materials received.

(2) The geography of the area surrounding the receiver's facility.

(3) Proximity to entities that may be attractive targets, including other businesses, housing, schools, and hospitals.

(4) Any information regarding threats to the facility.

(5) Other circumstances that indicate the potential risk of the receiver's facility does not warrant compliance with this section.

§ 1580.207 Harmonization of Federal regulation of nuclear facilities.

TSA will coordinate activities under this subpart with the Nuclear Regulatory Commission (NRC) and the Department of Energy (DOE) with respect to regulation of rail hazardous materials shippers and receivers that are also licensed or regulated by the NRC or DOE under the Atomic Energy Act of 1954, as amended, to maintain consistency with the requirements imposed by the NRC and DOE.

Appendix A to Part 1580—High Threat Urban Areas (HTUAs)

State	Urban area	Geographic areas
AZ	Phoenix Area	Chandler, Gilbert, Glendale, Mesa, Peoria, Phoenix, Scottsdale, Tempe, and a 10-mile buffer extending from the border of the combined area.
CA	Anaheim/Santa Ana Area.	Anaheim, Costa Mesa, Garden Grove, Fullerton, Huntington Beach, Irvine, Orange, Santa Ana, and a 10-mile buffer extending from the border of the combined area.

State	Urban area	Geographic areas
	Bay Area	Berkeley, Daly City, Fremont, Hayward, Oakland, Palo Alto, Richmond, San Francisco, San Jose, Santa Clara, Sunnyvale, Vallejo, and a 10-mile buffer extending from the border of the combined area.
	Los Angeles/Long Beach Area.	Burbank, Glendale, Inglewood, Long Beach, Los Angeles, Pasadena, Santa Monica, Santa Clarita, Torrance, Simi Valley, Thousand Oaks, and a 10-mile buffer extending from the border of the combined area.
	Sacramento Area	Elk Grove, Sacramento, and a 10-mile buffer extending from the border of the combined area.
	San Diego Area	Chula Vista, Escondido, and San Diego, and a 10-mile buffer extending from the border of the combined area.
CO	Denver Area	Arvada, Aurora, Denver, Lakewood, Westminster, Thornton, and a 10-mile buffer extending from the border of the combined area.
DC	National Capital Region	National Capital Region and a 10-mile buffer extending from the border of the combined area.
FL	Fort Lauderdale Area	Fort Lauderdale, Hollywood, Miami Gardens, Miramar, Pembroke Pines, and a 10-mile buffer extending from the border of the combined area.
	Jacksonville Area	Jacksonville and a 10-mile buffer extending from the city border.
	Miami Area	Hialeah, Miami, and a 10-mile buffer extending from the border of the combined area.
	Orlando Area	Orlando and a 10-mile buffer extending from the city border.
	Tampa Area	Clearwater, St. Petersburg, Tampa, and a 10-mile buffer extending from the border of the combined area.
GA	Atlanta Area	Atlanta and a 10-mile buffer extending from the city border.
HI	Honolulu Area	Honolulu and a 10-mile buffer extending from the city border.
IL	Chicago Area	Chicago and a 10-mile buffer extending from the city border.
IN	Indianapolis Area	Indianapolis and a 10-mile buffer extending from the city border.
KY	Louisville Area	Louisville and a 10-mile buffer extending from the city border.
LA	Baton Rouge Area	Baton Rouge and a 10-mile buffer extending from the city border.
	New Orleans Area	New Orleans and a 10-mile buffer extending from the city border.
MA	Boston Area	Boston, Cambridge, and a 10-mile buffer extending from the border of the combined area.
MD	Baltimore Area	Baltimore and a 10-mile buffer extending from the city border.
MI	Detroit Area	Detroit, Sterling Heights, Warren, and a 10-mile buffer extending from the border of the combined area.
MN	Twin Cities Area	Minneapolis, St. Paul, and a 10-mile buffer extending from the border of the combined entity.
MO	Kansas City Area	Independence, Kansas City (MO), Kansas City (KS), Olathe, Overland Park, and a 10-mile buffer extending from the border of the combined area.
	St. Louis Area	St. Louis and a 10-mile buffer extending from the city border.
NC	Charlotte Area	Charlotte and a 10-mile buffer extending from the city border.
NE	Omaha Area	Omaha and a 10-mile buffer extending from the city border.
NJ	Jersey City/Newark Area.	Elizabeth, Jersey City, Newark, and a 10-mile buffer extending from the border of the combined area.
NV	Las Vegas Area	Las Vegas, North Las Vegas, and a 10-mile buffer extending from the border of the combined entity.
NY	Buffalo Area	Buffalo and a 10-mile buffer extending from the city border.
	New York City Area	New York City, Yonkers, and a 10-mile buffer extending from the border of the combined area.
OH	Cincinnati Area	Cincinnati and a 10-mile buffer extending from the city border.
	Cleveland Area	Cleveland and a 10-mile buffer extending from the city border.
	Columbus Area	Columbus and a 10-mile buffer extending from the city border.
	Toledo Area	Oregon, Toledo, and a 10-mile buffer extending from the border of the combined area.
OK	Oklahoma City Area	Norman, Oklahoma and a 10-mile buffer extending from the border of the combined area.
OR	Portland Area	Portland, Vancouver, and a 10-mile buffer extending from the border of the combined area.
PA	Philadelphia Area	Philadelphia and a 10-mile buffer extending from the city border.
	Pittsburgh Area	Pittsburgh and a 10-mile buffer extending from the city border.
TN	Memphis Area	Memphis and a 10-mile buffer extending from the city border.
TX	Dallas/Fort Worth/Arlington Area.	Arlington, Carrollton, Dallas, Fort Worth, Garland, Grand Prairie, Irving, Mesquite, Plano, and a 10-mile buffer extending from the border of the combined area.
	Houston Area	Houston, Pasadena, and a 10-mile buffer extending from the border of the combined entity.
	San Antonio Area	San Antonio and a 10-mile buffer extending from the city border.
WA	Seattle Area	Seattle, Bellevue, and a 10-mile buffer extending from the border of the combined area.
WI	Milwaukee Area	Milwaukee and a 10-mile buffer extending from the city border.

Appendix B to Part 1580—Security-Sensitive Functions for Freight Rail

This table identifies security-sensitive job functions for owner/operators regulated under this part. All employees performing security-sensitive functions are ''security-sensitive employees'' for purposes of this rule and must be trained.

Categories	Security-sensitive job functions for freight rail	Examples of job titles applicable to these functions*
A. Operating a vehicle	1. Employees who operate or directly control the movements of locomotives or other self-powered rail vehicles.	Engineer, conductor

Categories	Security-sensitive job functions for freight rail	Examples of job titles applicable to these functions *
	2. Train conductor, trainman, brakeman, or utility employee or performs acceptance inspections, couples and uncouples rail cars, applies handbrakes, or similar functions. 3. Employees covered under the Federal hours of service laws as "train employees." *See* 49 U.S.C. 21101(5) and 21103..	
B. Inspecting and maintaining vehicles	Employees who inspect or repair rail cars and locomotives.	Carman, car repairman, car inspector, engineer, conductor.
C. Inspecting or maintaining building or transportation infrastructure	1. Employees who— a. Maintain, install, or inspect communications and signal equipment. b. Maintain, install, or inspect track and structures, including, but not limited to, bridges, trestles, and tunnels. 2. Employees covered under the Federal hours of service laws as "signal employees." *See* 49 U.S.C. 21101(3) and 21104.	Signalman, signal maintainer, track-man, gang foreman, bridge and building laborer, roadmaster, bridge, and building inspector/operator.
D. Controlling dispatch or movement of a vehicle	1. Employees who— a. Dispatch, direct, or control the movement of trains. b. Operate or supervise the operations of moveable bridges. c. Supervise the activities of train crews, car movements, and switching operations in a yard or terminal. 2. Employees covered under the Federal hours of service laws as "dispatching service employees." *See* 49 U.S.C. 21101(2) and 21105.	Yardmaster, dispatcher, block operator, bridge operator.
E. Providing security of the owner/operator's equipment and property	Employees who provide for the security of the railroad carrier's equipment and property, including acting as a railroad police officer (as that term is defined in 49 CFR 207.2).	Police officer, special agent; patrolman; watchman; guard.
F. Loading or unloading cargo or baggage	Includes, but is not limited to, employees that load or unload hazardous materials.	Service track employee.
G. Interacting with travelling public (on board a vehicle or within a transportation facility).	Employees of a freight railroad operating in passenger service.	Conductor, engineer, agent.
H. Complying with security programs or measures, including those required by Federal law.	1. Employees who serve as security coordinators designated in § 1570.201 of this subchapter, as well as any designated alternates or secondary security coordinators. 2. Employees who—. a. Conduct training and testing of employees when the training or testing is required by TSA's security regulations. b. Perform inspections or operations required by § 1580.205 of this subchapter. c. Manage or direct implementation of security plan requirements.	Security coordinator, train master, assistant train master, roadmaster, division roadmaster.

* These job titles are provided solely as a resource to help understand the functions described; whether an employee must be trained is based upon the function, not the job title.

■ 12. Add part 1582 to read as follows:

PART 1582—PUBLIC TRANSPORTATION AND PASSENGER RAILROAD SECURITY

Subpart A—General

Sec.

1582.1 Scope.
1582.3 Terms used in this part.
1582.5 Preemptive effect.

Subpart B—Security Programs

1582.101 Applicability.
1582.103 [Reserved]
1582.105 [Reserved]
1582.107 [Reserved]
1582.109 [Reserved]
1582.111 [Reserved]
1582.113 Security training program general requirements.
1582.115 Security training and knowledge for security-sensitive employees.
Appendix A to Part 1582—Determinations for Public Transportation and Passenger Railroads

Appendix B to Part 1582—Security-Sensitive Job Functions For Public Transportation and Passenger Railroads

Authority: 49 U.S.C. 114; Pub. L. 110–53 (121 Stat. 266, Aug. 3, 2007) secs. 1402 (6 U.S.C. 1131), 1405 (6 U.S.C. 1134), and 1408 (6 U.S.C. 1137).

Subpart A—General

§ 1582.1 Scope.

(a) Except as provided in paragraph (b) of this section, this part includes requirements for the following persons. Specific sections in this part provide detailed requirements.

(1) Each passenger railroad carrier.

(2) Each public transportation agency.

(3) Each operator of a rail transit system that is not operating on track that is part of the general railroad system of transportation, including heavy rail transit, light rail transit, automated guideway, cable car, inclined plane, funicular, and monorail systems.

(4) Each tourist, scenic, historic, and excursion rail owner/operator, whether operating on or off the general railroad system of transportation.

(b) This part does not apply to a ferry system required to conduct training pursuant to 46 U.S.C. 70103.

§ 1582.3 Terms used in this part.

In addition to the terms in §§ 1500.3, 1500.5, and 1503.202 of subchapter A and § 1570.3 of subchapter D of this chapter, the following term applies to this part.

Security-sensitive employee means an employee whose responsibilities for the owner/operator include one or more of the security-sensitive job functions identified in appendix B to this part if the security-sensitive function is performed in the United States or in direct support of the common carriage of persons or property between a place in the United States and any place outside of the United States.

§ 1582.5 Preemptive effect.

Under 49 U.S.C. 20106, issuance of the passenger railroad and public transportation regulations in this subchapter preempts any State law, regulation, or order covering the same subject matter, except an additional or more stringent law, regulation, or order that is necessary to eliminate or reduce an essentially local security hazard; that is not incompatible with a law, regulation, or order of the U.S. Government; and that does not unreasonably burden interstate commerce.

Subpart B—Security Programs

§ 1582.101 Applicability.

The requirements of this subpart apply to the following:

(a) Amtrak (also known as the National Railroad Passenger Corporation).

(b) Each owner/operator identified in Appendix A to this part.

(c) Each owner/operator described in § 1582.1(a)(1) through (3) of this part that serves as a host railroad to a freight operation described in § 1580.301 of this subchapter or to a passenger train operation described in paragraph (a)(1) or (a)(2) of this section.

§ 1582.103 [Reserved]

§ 1582.105 [Reserved]

§ 1582.107 [Reserved]

§ 1582.109 [Reserved]

§ 1582.111 [Reserved]

§ 1582.113 Security training program general requirements.

(a) *Security training program required.* Each owner/operator identified in § 1582.101 of this part is required to adopt and carry out a security training program under this subpart.

(b) *General requirements.* The security training program must include the following information:

(1) Name of owner/operator.

(2) Name, title, telephone number, and email address of the primary individual to be contacted with regard to review of the security training program.

(3) Number, by specific job function category identified in Appendix B to this part, of security-sensitive employees trained or to be trained.

(4) Implementation schedule that identifies a specific date by which initial and recurrent security training required by § 1570.111 of this subchapter will be completed.

(5) Location where training program records will be maintained.

(6) Curriculum or lesson plan, including learning objectives and method of delivery (such as instructor-led or computer-based training) for each course used to meet the requirements of § 1582.115 of this part. TSA may request additional information regarding the curriculum during the review and approval process. If recurrent training under § 1570.111 of this subchapter is not the same as initial training, a curriculum or lesson plan for the recurrent training will need to be submitted and approved by TSA.

(7) Plan for ensuring supervision of untrained security-sensitive employees performing functions identified in Appendix B to this part.

(8) Plan for notifying employees of changes to security measures that could change information provided in previously provided training.

(9) Method(s) for evaluating the effectiveness of the security training program in each area required by § 1582.115 of this part.

(c) *Relation to other training.* (1) Training conducted by owner/operators to comply other requirements or standards, such as emergency preparedness training required by the Department of Transportation (DOT) (49 CFR part 239) or other training for communicating with emergency responders to arrange the evacuation of passengers, may be combined with and used to satisfy elements of the training requirements in this subpart.

(2) If the owner/operator submits a security training program that relies on pre-existing or previous training materials to meet the requirements of subpart B, the program submitted for approval must include an index, organized in the same sequence as the requirements in this subpart.

(d) *Submission and implementation.* The owner/operator must submit and implement the security training program in accordance with the schedules identified in §§ 1570.109 and 1570.111 of this subchapter.

§ 1582.115 Security training and knowledge for security-sensitive employees.

(a) *Training required for security-sensitive employees.* No owner/operator required to have a security training program under § 1582.101 of this part may use a security-sensitive employee to perform a function identified in appendix B to this part unless that individual has received training as part of a security training program approved by TSA under 49 CFR part 1570, subpart B, or is under the direct supervision of an employee who has received the training required by this section as applicable to that security-sensitive function.

(b) *Limits on use of untrained employees.* Notwithstanding paragraph (a) of this section, a security-sensitive employee may not perform a security-sensitive function for more than sixty (60) calendar days without receiving security training.

(c) *Prepare.* Each owner/operator must ensure that each of its security-sensitive employees with position- or function-specific responsibilities under the owner/operator's security program have knowledge of how to fulfill those

responsibilities in the event of a security threat, breach, or incident to ensure—

(1) Employees with responsibility for transportation security equipment and systems are aware of their responsibilities and can verify the equipment and systems are operating and properly maintained; and

(2) Employees with other duties and responsibilities under the company's security plans and/or programs, including those required by Federal law, know their assignments and the steps or resources needed to fulfill them.

(d) *Observe.* Each owner/operator must ensure that each of its security-sensitive employees has knowledge of the observational skills necessary to recognize—

(1) Suspicious and/or dangerous items (such as substances, packages, or conditions (for example, characteristics of an IED and signs of equipment tampering or sabotage);

(2) Combinations of actions and individual behaviors that appear suspicious and/or dangerous, inappropriate, inconsistent, or out of the ordinary for the employee's work environment, which could indicate a threat to transportation security; and

(3) How a terrorist or someone with malicious intent may attempt to gain sensitive information or take advantage of vulnerabilities.

(e) *Assess.* Each owner/operator must ensure that each of its security-sensitive employees has knowledge necessary to—

(1) Determine whether the item, individual, behavior, or situation requires a response as a potential terrorist threat based on the respective transportation environment; and

(2) Identify appropriate responses based on observations and context.

(f) *Respond.* Each owner/operator must ensure that each of its security-sensitive employees has knowledge of how to—

(1) Appropriately report a security threat, including knowing how and when to report internally to other employees, supervisors, or management, and externally to local, state, or Federal agencies according to the owner/operator's security procedures or other relevant plans;

(2) Interact with the public and first responders at the scene of the threat or incident, including communication with passengers on evacuation and any specific procedures for individuals with disabilities and the elderly; and

(3) Use any applicable self-defense devices or other protective equipment provided to employees by the owner/operator.

Appendix A to Part 1582—Determinations for Public Transportation and Passenger Railroads

State	Urban area	Systems
CA	Bay Area	Alameda-Contra Costa Transit District (AC Transit).
		Altamont -Corridor Express (ACE).
		City and County of San Francisco (San Francisco Bay Area Rapid Transit District) (BART).
		Central Contra Costa Transit Authority.
		≤Golden Gate Bridge, Highway and Transportation District (GGBHTD).
		Peninsula Corridor Joint Powers Board (PCJPB) (Caltrain).
		San Francisco Municipal Railway (MUNI) (San Francisco Municipal Transportation Agency).
		San Mateo County Transit District (San Mateo County Transit Authority) (SamTrans).
		Santa Clara Valley Transportation Authority (VTA).
		Transbay Joint Powers Authority.
	Greater Los Angeles Area (Los Angeles/Long Beach and Anaheim/Santa Ana urban Areas)..	City of Los Angeles Department of Transportation (LADOT)
		Foothill Transit.
		Long Beach Transit (LBT).
		Los Angeles County Metropolitan Transportation Authority (LACMTA).
		City of Montebello (Montebello Bus Lines) (MBL).
		Omnitrans (OMNI).
		Orange County Transportation Authority (OCTA).
		City of Santa Monica (Santa Monica's Big Blue Bus) (Big Blue Bus).
		Southern California Regional Rail Authority (Metrolink).
DC/MD/VA	Greater National Capital Region (National Capital Region and Baltimore urban Areas)..	Arlington County, Virginia (Arlington Transit).
		City of Alexandria (Alexandria Transit Company) (Dash).
		Fairfax County Department of Transportation—Fairfax Connector Bus System.
		Maryland Transit Administration (MTA).
		Montgomery County Department of Transportation (Ride-On Montgomery County Transit).
		Potomac and Rappahannock Transportation Commission.
		Prince George's County Department of Public Works and Transportation (The Bus).
		Virginia Railway Express (VRE).
		Washington Metropolitan Area Transit Authority (WMATA).
GA	Atlanta Area	Georgia Regional Transportation Authority (GRTA, within State Road and Tollway Authority (SRTA)).
Metropolitan Atlanta Rapid Transit Authority (MARTA)..		
IL/IN	Chicago Area	Chicago Transit Authority (CTA).
		Northeast Illinois Regional Commuter Railroad Corporation (Metra/NIRCRC).
		Northern Indiana Commuter Transportation District (NICTD).
		PACE Suburban Bus Company.
MA	Boston Area	Massachusetts Bay Transportation Authority (MBTA).

State	Urban area	Systems
NY/NJ/CT	New York City/Northern New Jersey Area (New York City and Jersey City/Newark urban Areas).	Connecticut Department of Transportation (CDOT). Connecticut Transit (Hartford Division and New Haven Divisions of CTTransit). Metropolitan Transportation Authority (All Agencies). New Jersey Transit Corp. (NJT). New York City Department of Transportation. Port Authority Trans-Hudson Corporation (Port Authority of New York and New Jersey) (PANYNJ) (excluding ferry). Westchester County Department of Transportation Bee-Line System (The Bee-Line System).
PA/NJ	Philadelphia Area	Delaware River Port Authority (DRPA)—Port Authority Transit Corporation (PATCO). Delaware Transit Corporation (DTC). New Jersey Transit Corp. (NJT) (covered under NY). Pennsylvania Department of Transportation. Southeastern Pennsylvania Transportation Authority (SEPTA).

Appendix B to Part 1582—Security-Sensitive Job Functions For Public Transportation and Passenger Railroads

This table identifies security-sensitive job functions for owner/operators regulated under this part. All employees performing security-sensitive functions are ''security-sensitive employees'' for purposes of this rule and must be trained.

Categories	Security-sensitive job functions for public transportation and passenger railroads (PTPR)
A. Operating a vehicle	1. Employees who— a. Operate or control the movements of trains, other rail vehicles, or transit buses. b. Act as train conductor, trainman, brakeman, or utility employee or performs acceptance inspections, couples and uncouples rail cars, applies handbrakes, or similar functions. 2. Employees covered under the Federal hours of service laws as ''train employees.'' *See* 49 U.S.C. 21101(5) and 21103.
B. Inspecting and maintaining vehicles	Employees who— 1. Perform activities related to the diagnosis, inspection, maintenance, adjustment, repair, or overhaul of electrical or mechanical equipment relating to vehicles, including functions performed by mechanics and automotive technicians. 2. Provide cleaning services to vehicles owned, operated, or controlled by an owner/operator regulated under this subchapter.
C. Inspecting or maintaining building or transportation infrastructure	Employees who— 1. Maintain, install, or inspect communication systems and signal equipment related to the delivery of transportation services. 2. Maintain, install, or inspect track and structures, including, but not limited to, bridges, trestles, and tunnels. 3. Provide cleaning services to stations and terminals owned, operated, or controlled by an owner/operator regulated under this subchapter that are accessible to the general public or passengers. 4. Provide maintenance services to stations, terminals, yards, tunnels, bridges, and operation control centers owned, operated, or controlled by an owner/operator regulated under this subchapter. 5. Employees covered under the Federal hours of service laws as ''signal employees.'' *See* 49 U.S.C. 21101(4) and 21104.
D. Controlling dispatch or movement of a vehicle	Employees who— 1. Dispatch, report, transport, receive or deliver orders pertaining to specific vehicles, coordination of transportation schedules, tracking of vehicles and equipment. 2. Manage day-to-day management delivery of transportation services and the prevention of, response to, and redress of service disruptions. 3. Supervise the activities of train crews, car movements, and switching operations in a yard or terminal. 4. Dispatch, direct, or control the movement of trains or buses. 5. Operate or supervise the operations of moveable bridges. 6. Employees covered under the Federal hours of service laws as ''dispatching service employees.'' *See* 49 U.S.C. 21101(2) and 21105.
E. Providing security of the owner/operator's equipment and property	Employees who— 1. Provide for the security of PTPR equipment and property, including acting as a police officer.

Categories	Security-sensitive job functions for public transportation and passenger railroads (PTPR)
	2. Patrol and inspect property of an owner/operator regulated under this subchapter to protect the property, personnel, passengers and/or cargo.
F. Loading or unloading cargo or baggage	Employees who load, or oversee loading of, property tendered by or on behalf of a passenger on or off of a portion of a train that will be inaccessible to the passenger while the train is in operation.
G. Interacting with travelling public (on board a vehicle or within a transportation facility).	Employees who provide services to passengers on-board a train or bus, including collecting tickets or cash for fares, providing information, and other similar services. Including: 1. On-board food or beverage employees. 2. Functions on behalf of an owner/operator regulated under this subchapter that require regular interaction with travelling public within a transportation facility, such as ticket agents.
H. Complying with security programs or measures, including those required by Federal law.	1. Employees who serve as security coordinators designated in § 1570.201 of this subchapter, as well as any designated alternates or secondary security coordinators. 2. Employees who— a. Conduct training and testing of employees when the training or testing is required by TSA's security regulations. b. Manage or direct implementation of security plan requirements.

■ 13. Add part 1584 to read as follows:

PART 1584—HIGHWAY AND MOTOR CARRIER SECURITY

Subpart A—General

Sec.
1584.1 Scope.
1584.3 Terms used in this part.

Subpart B—Security Programs

1584.101 Applicability.
1584.103 [Reserved]
1584.105 [Reserved]
1584.107 [Reserved]
1584.109 [Reserved]
1584.111 [Reserved]
1584.113 Security training program general requirements.
1584.115 Security training and knowledge for security-sensitive employees.

Appendix A to Part 1584—Urban Area Determinations for Over-the-Road Buses

Appendix B to Part 1584—Security-Sensitive Job Functions For Over-the-Road Buses

Authority: 49 U.S.C. 114; Pub. L. 110–53 (121 Stat. 266, Aug. 3, 2007) secs. 1501 (6 U.S.C. 1151), 1531 (6 U.S.C. 1181), and 1534 (6 U.S.C. 1184).

Subpart A—General

§ 1584.1 Scope.

This part includes requirements for persons providing transportation by an over-the-road bus (OTRB). Specific sections in this part provide detailed requirements.

§ 1584.3 Terms used in this part.

In addition to the terms in §§ 1500.3, 1500.5, and 1503.202 of subchapter A and § 1570.3 of subchapter D of this chapter, the following term applies to this part.

Security-sensitive employee means an employee whose responsibilities for the owner/operator include one or more of the security-sensitive job functions identified in Appendix B to this part where the security-sensitive function is performed in the United States or in direct support of the common carriage of persons or property between a place in the United States and any place outside of the United States.

Subpart B—Security Programs

§ 1584.101 Applicability.

The requirements of this subpart apply to each OTRB owner/operator providing fixed-route service that originates, travels through, or ends in a geographic location identified in appendix A to this part.

§ 1584.103 [Reserved]

§ 1584.105 [Reserved]

§ 1584.107 [Reserved]

§ 1584.109 [Reserved]

§ 1584.111 [Reserved]

§ 1584.113 Security training program general requirements.

(a) *Security training program required.* Each owner/operator identified in § 1584.101 of this part is required to adopt and carry out a security training program under this subpart.

(b) *General requirements.* The security training program must include the following information:

(1) Name of owner/operator.

(2) Name, title, telephone number, and email address of the primary individual to be contacted with regard to review of the security training program.

(3) Number, by specific job function category identified in Appendix B to this part, of security-sensitive employees trained or to be trained.

(4) Implementation schedule that identifies a specific date by which initial and recurrent security training required by § 1570.111 of this subchapter will be completed.

(5) Location where training program records will be maintained.

(6) Curriculum or lesson plan, including learning objectives and method of delivery (such as instructor-led or computer-based training) for each course used to meet the requirements of § 1584.115 of this part. TSA may request additional information regarding the curriculum during the review and approval process. If recurrent training under § 1570.111 of this subchapter is not the same as initial training, a curriculum or lesson plan for the recurrent training will need to be submitted and approved by TSA.

(7) Plan for ensuring supervision of untrained security-sensitive employees performing functions identified in Appendix B to this part.

(8) Plan for notifying employees of changes to security measures that could change information provided in previously provided training.

(9) Method(s) for evaluating the effectiveness of the security training program in each area required by § 1584.115 of this part.

(c) *Relation to other training.* (1) Training conducted by owner/operators to comply other requirements or standards may be combined with and used to satisfy elements of the training requirements in this subpart.

(2) If the owner/operator submits a security training program that relies on pre-existing or previous training materials to meet the requirements of subpart B, the program submitted for approval must include an index, organized in the same sequence as the requirements in this subpart.

(d) *Submission and Implementation.* The owner/operator must submit and implement the security training program in accordance with the schedules identified in §§ 1570.109 and 1570.111 of this subchapter.

§ 1584.115 Security training and knowledge for security-sensitive employees.

(a) *Training required for security-sensitive employees.* No owner/operator required to have a security training program under § 1584.101 of this part may use a security-sensitive employee to perform a function identified in Appendix B to this part unless that individual has received training as part of a security training program approved by TSA under 49 CFR part 1570, subpart B, or is under the direct supervision of an employee who has received the training required by this section as applicable to that security-sensitive function.

(b) *Limits on use of untrained employees.* Notwithstanding paragraph (a) of this section, a security-sensitive employee may not perform a security-sensitive function for more than sixty (60) calendar days without receiving security training.

(c) *Prepare.* Each owner/operator must ensure that each of its security-sensitive employees with position- or function-specific responsibilities under the owner/operator's security program have knowledge of how to fulfill those responsibilities in the event of a security threat, breach, or incident to ensure—

(1) Employees with responsibility for transportation security equipment and systems are aware of their responsibilities and can verify the equipment and systems are operating and properly maintained; and

(2) Employees with other duties and responsibilities under the company's security plans and/or programs, including those required by Federal law, know their assignments and the steps or resources needed to fulfill them.

(d) *Observe.* Each owner/operator must ensure that each of its security-sensitive employees has knowledge of the observational skills necessary to recognize—

(1) Suspicious and/or dangerous items (such as substances, packages, or conditions (for example, characteristics of an IED and signs of equipment tampering or sabotage);

(2) Combinations of actions and individual behaviors that appear suspicious and/or dangerous, inappropriate, inconsistent, or out of the ordinary for the employee's work environment, which could indicate a threat to transportation security; and

(3) How a terrorist or someone with malicious intent may attempt to gain sensitive information or take advantage of vulnerabilities.

(e) *Assess.* Each owner/operator must ensure that each of its security-sensitive employees has knowledge necessary to—

(1) Determine whether the item, individual, behavior, or situation requires a response as a potential terrorist threat based on the respective transportation environment; and

(2) Identify appropriate responses based on observations and context.

(f) *Respond.* Each owner/operator must ensure that each of its security-sensitive employees has knowledge of how to—

(1) Appropriately report a security threat, including knowing how and when to report internally to other employees, supervisors, or management, and externally to local, state, or Federal agencies according to the owner/operator's security procedures or other relevant plans;

(2) Interact with the public and first responders at the scene of the threat or incident, including communication with passengers on evacuation and any specific procedures for individuals with disabilities and the elderly; and

(3) Use any applicable self-defense devices or other protective equipment provided to employees by the owner/operator.

Appendix A to Part 1584—Urban Area Determinations for Over-the-Road Buses

State	Urban area	Geographic areas
CA	Anaheim/Los Angeles/Long Beach/Santa Ana Areas.	Los Angeles and Orange Counties.
	San Diego Area	San Diego County.
	San Francisco Bay Area	Alameda, Contra Costa, Marin, San Francisco, and San Mateo Counties.
DC (VA, MD, and WV).	National Capital Region	District of Columbia; Counties of Calvert, Charles, Frederick, Montgomery, and Prince George's, MD; Counties of Arlington, Clarke, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, and Warren County, VA; Cities of Alexandria, Fairfax, Falls Church, Fredericksburg, Manassas, and Manassas Park City, VA; Jefferson County, WV.
IL/IN	Chicago Area	Counties of Cook, DeKalb, DuPage, Grundy, Kane, Kendall, Lake, McHenry, and Will, IL; Counties of Jasper, Lake, Newton, and Porter, IN; Kenosha County, WI.
MA	Boston Area	Counties of Essex, Norfolk, Plymouth, Suffolk, Middlesex, MA; Counties of Rockingham and Strafford, NH.
NY (NJ and PA).	New York City/Jersey City/Newark Area.	Counties of Bronx, Kings, Nassau, New York, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester, NY; Counties of Bergen, Essex, Hudson, Hunterdon, Ocean, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex, and Union, NJ; Pike County, PA.
PA (DE and NJ).	Philadelphia Area/Southern New Jersey Area.	Counties of Burlington, Camden, and Gloucester, NJ; Counties of Bucks, Chester, Delaware, Montgomery, and Philadelphia, PA; New Castle County, DE; Cecil County, MD; Salem County, NJ.
TX	Dallas Fort Worth/Arlington Area	Collin, Dallas, Delta, Denton, Ellis, Hunt, Kaufman, Rockwall, Johnson, Parker, Tarrant, and Wise Counties, TX.
	Houston Area	Austin, Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto, and Waller Counties, TX.

Appendix B to Part 1584—Security-Sensitive Job Functions for Over-the-Road Buses

This table identifies security-sensitive job functions for owner/operators regulated under this part. All employees performing security-sensitive functions are ''security-sensitive employees'' for purposes of this rule and must be trained.

Categories	Security-sensitive job functions for over-the-road buses
A. Operating a vehicle	Employees who have a CDL and operate an OTRB.
B. Inspecting and maintaining vehicles	Employees who— 1. Perform activities related to the diagnosis, inspection, maintenance, adjustment, repair, or overhaul of electrical or mechanical equipment relating to vehicles, including functions performed by mechanics and automotive technicians. 2. Does not include cleaning or janitorial activities.
C. Inspecting or maintaining building or transportation infrastructure.	Employees who— 1. Provide cleaning services to areas of facilities owned, operated, or controlled by an owner/operator regulated under this subchapter that are accessible to the general public or passengers. 2. Provide cleaning services to vehicles owned, operated, or controlled by an owner/operator regulated under this part (does not include vehicle maintenance). 3. Provide general building maintenance services to buildings owned, operated, or controlled by an owner/operator regulated under this part.
D. Controlling dispatch or movement of a vehicle.	Employees who— 1. Dispatch, report, transport, receive or deliver orders pertaining to specific vehicles, coordination of transportation schedules, tracking of vehicles and equipment. 2. Manage day-to-day delivery of transportation services and the prevention of, response to, and redress of disruptions to these services. 3. Perform tasks requiring access to or knowledge of specific route information.
E. Providing security of the owner/operator's equipment and property.	Employees who patrol and inspect property of an owner/operator regulated under this part to protect the property, personnel, passengers and/or cargo.
F. Loading or unloading cargo or baggage	Employees who load, or oversee loading of, property tendered by or on behalf of a passenger on or off of a portion of a bus that will be inaccessible to the passenger while the vehicle is in operation.
G. Interacting with travelling public (on board a vehicle or within a transportation facility).	Employees who— 1. Provide services to passengers on-board a bus, including collecting tickets or cash for fares, providing information, and other similar services. 2. Includes food or beverage employees, tour guides, and functions on behalf of an owner/operator regulated under this part that require regular interaction with travelling public within a transportation facility, such as ticket agents.
H. Complying with security programs or measures, including those required by Federal law.	1. Employees who serve as security coordinators designated in § 1570.201 of this subchapter, as well as any designated alternates or secondary security coordinators. 2. Employees who— a. Conduct training and testing of employees when the training or testing is required by TSA's security regulations. b. Manage or direct implementation of security plan requirements.

Dated: February 28, 2020.

David P. Pekoske,

Administrator.

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