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FEDERAL REGISTER

Vol. 85 Monday,
No. 96 May 18, 2020

Pages 29591–29838

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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Presidential Documents

Title 3—

The President

Memorandum of May 12, 2020

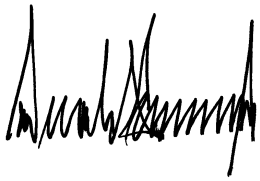
Delegation of Functions and Authorities Under Section 1260J of the National Defense Authorization Act for Fiscal Year 2020

Memorandum for the Secretary of Commerce [and] the Attorney General

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Secretary of Commerce, in consultation with the Attorney General, the functions and authorities vested in the President by section 1260J of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92).

The delegation in this memorandum shall apply to any provision of any future public law that is the same or substantially the same as the provision referenced in this memorandum.

The Secretary of Commerce is authorized and directed to publish this memorandum in the *Federal Register.*



THE WHITE HOUSE,
Washington, May 12, 2020

[FR Doc. 2020–10749
Filed 5–15–20; 8:45 am]
Billing code 3510–07–P

Rules and Regulations

Federal Register

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DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Utilities Service

[Docket Number: RBS–20–BUSINESS–0015]

7 CFR Parts 4279 and 4287

RIN 0570–AA73

Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program

AGENCY: Rural Business-Cooperative Service and Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Business-Cooperative Service (Agency), a Rural Development agency of the United States Department of Agriculture (USDA), hereinafter referred to as (the Agency), is issuing a final rule for the Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program (the Program) or (the 9003 Program), formerly the Biorefinery Assistance Program. This final rule incorporates the statutory definition changes as required in the Agricultural Act of 2018 (2018 Farm Bill) and, with one exception, adopts the interim rule published on June 24, 2015 in the **Federal Register**. This rule also addresses public comments received by the Agency regarding Program changes as published in the Interim final rule on June 24, 2015 in the **Federal Register**.

DATES: Effective May 18, 2020.

FOR FURTHER INFORMATION CONTACT: Aaron Morris, Rural Business-Cooperative Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 3225, Washington, DC 20250–3201; telephone (202) 720–1501.

SUPPLEMENTARY INFORMATION:

I. Background

The Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246), otherwise known as the 2008 Farm Bill, established the Biorefinery Assistance Program (9003 Program) under Title IX, Section 9003, for making loan guarantees to fund the development, construction, and Retrofitting of commercial-scale biorefineries using Eligible technology. The 2008 Farm Bill defined Eligible technologies as: technology that is being adopted in a viable Commercial-scale operation of a Biorefinery that produces an Advanced biofuel; and technology that has been demonstrated to have technical and economic potential for commercial application in a Biorefinery that produces an Advanced biofuel.

The 9003 Program's authority was continued in the Agricultural Act of 2014 (2014 Farm Bill) (Pub. L. 113–79), with several specific changes: (1) Renames the Program as the Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program; (2) revises the purpose statement for the Program to include Renewable chemicals and Biobased product manufacturing; (3) expands the Program to include Biobased product manufacturing facilities; (4) adds definitions for ''Renewable Chemicals'' and ''Biobased Product Manufacturing;'' and (5) Ensures diversity in the types of Projects approved.

Once again, under the Agricultural Act of 2018 (2018 Farm Bill) (Pub. L. 115–334), signed into law on December 20, 2018, the 9003 Program was reauthorized under Title IX and the 2018 Farm Bill also amended the definition of the terms 'biorefinery' and 'eligible technology' for the Program.

Eligible applicants for this Program include: Individuals; entities; Indian Tribes; units of State or Local Government; corporations; Farm cooperatives; Farmer cooperative organizations; Associations of Agricultural Producers; national laboratories; Institutions of higher education; rural electric cooperatives; public power entities; and consortia of any of the foregoing entities.

II. Summary of Comments and Responses

As noted earlier, the Agency invited comments on the interim final rule published on June 24, 2015 in the **Federal Register** (80 FR 36410) on or before August 24, 2015. The Agency received three (3) comments which are summarized as follows:

Issue 1: Two organizations expressed support for the Program as published on June 24, 2015 in the **Federal Register**.

Agency Response: The Agency appreciates the two organizations that responded in support of the Interim final rule which implements the expansion of the Program to include facilities producing primarily renewable chemicals and biobased products and the potential to developing the renewable economy.

Issue 2: One organization wrote that several of these small innovative industrial biotechnology companies are not able to meet the interim final rule deadlines, which include demonstrating 120 days of continuous pilot operation, and cannot obtain an appropriate letter of intent from a lender for their projects within the time constraints set forth in the rule. The commenter strongly recommended that the USDA final rule extend these deadlines, so as to facilitate participation by a broader and more diverse array of innovative industrial biotechnology companies which include pre-revenue and emerging companies.

Agency Response: The Agency believes that evidence of 120 days of steady, continuous production is required to provide the necessary data to make a sound credit decision as well as make a reasoned determination about the project's ability to scale up their production to a commercial scale. Phase 1 applications are accepted year-round and competed on October 1 and April 1 of each fiscal year. Evidence of 120 days of continuous steady state production from an integrated demonstration unit is a Phase 2 application requirement and does not necessarily need to be complete prior to the Phase 1 application deadline. Applicants are encouraged to submit a Letter of Intent prior to submitting a full Phase 1 application. The Letter of Intent is due 30 days prior to the Phase 1 application deadline. The Program is a loan guarantee program and therefore an applicant is required to have a lender in order to submit a complete application, but a Letter of Intent may be submitted without a lender in place.

III. Purpose of the Regulatory Action

This final rulemaking adopts almost all of the changes to 7 CFR part 4279, subpart C, and 7 CFR part 4287, subpart D, as published in the interim final rule on June 24, 2015 in the **Federal Register** which implemented the provisions contained in the 2014 Farm Bill, modified the Program to incorporate administrative improvements based on Agency experience in implementing the Program, and incorporated the applicable guaranteed loan provisions of the Agency's Business and Industry (B&I) Guaranteed Loan program to make the rule a ''stand-alone'' rule. This final rulemaking also incorporates the statutory definition changes as required in the Agricultural Act of 2018 (2018 Farm Bill) as well as an additional credit-driven requirement believed necessary by the Agency for projects incorporating technology that does not have a history of successful utilization in a commercial-scale operation.

IV. Summary of Changes

The changes to the 9003 Program regulation that are now being made are based on new statutory requirements in the 2018 Farm Bill and one non-statutory credit-driven need for the Program.

The 2018 Farm Bill amended the definition for the terms 'biorefinery' and 'eligible technology' for the 9003 Program.

The 2018 Farm Bill defines a biorefinery as a facility including equipment and processes that converts Renewable biomass or an intermediate ingredient or feedstock of Renewable biomass into any one or more, or a combination of Biofuels, Renewable chemicals, or Biobased products and may produce electricity.

The 2018 Farm Bill defines ''Eligible Technology'' as: (1) A technology that is being adopted in a viable Commercial-scale operation of a Biorefinery that produces any one or more, or a combination, of an Advanced biofuel; a Renewable chemical; or a Biobased product; and (2) a technology not described in item (1) that has been demonstrated to have technical and economic potential for commercial application in a biorefinery that produces any one or more, or a combination, of an Advanced biofuel, a Renewable chemical or a Biobased product.

The non-statutory change to the 9003 Program is a shift in timing for the requirement of the applicant to demonstrate 120 days of continuous, steady production from an integrated demonstration unit. Such demonstration which was previously required prior to loan closing will now be required prior to the issuance of a Conditional Commitment, Form RD 4279–3, which is the Agency's notice to the Lender that the loan guarantee it has requested is approved subject to the completion of all conditions and requirements set forth by the Agency and outlined in the attachment to the Conditional Commitment (see 7 CFR 4279.202) Specifically, the change will require the borrower to provide evidence to the Lender and Agency of 120 days of continuous, steady state production from an integrated demonstration unit prior to the issuance of a Conditional Commitment instead of prior to loan closing. The Agency believes this change will decrease the time between the issuance of a Conditional Commitment and loan closing and lessen the credit risk to the Government.

V. Executive Orders/Acts

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Congressional Review Act

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

Executive Order 12372 Intergovernmental Review of Federal Programs

This Program is not subject to the provisions of E.O. 12372, which require intergovernmental consultation with State and local officials.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this rule meets the applicable standards provided in section 3 of the Executive order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted, no retroactive effort will be given to this rule, and, in accordance with Sec. 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. Sec. 912(e)), administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

Unfunded Mandates Reform Act

This final rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Therefore, this final rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Executive Order 13132 Federalism

It has been determined, under E.O. 13132, Federalism, that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in the rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

Regulatory Flexibility Act

The Agency has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have an economically significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Agency certifies that this rule will not have a significant economic impact on a substantial number of small entities. This final rule affects entities that utilize the 9003 Program and any prospective entities that may that may utilize the Program in the future.

National Environmental Policy Act Certification

The Agency Administrator has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The 9003 Program is listed in the Catalog of Federal Domestic Assistance

(CFDA) under Number 10.865. This will be updated with the Program's new name, as changed by the 2014 Farm Bill, the ''Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program.''

All active CFDA programs and the CFDA Catalog can be found at the following website: *https://beta.sam.gov/*. The website also contains a PDF file version of the Catalog that, when printed, has the same layout as the printed document that the Government Publishing Office (GPO) provides. GPO prints and sells the CFDA to interested buyers. For information about purchasing the Catalog of Federal Domestic Assistance from GPO, call the Superintendent of Documents at 202–512–1800 or toll free at 866–512–1800, or access GPO's online bookstore at *https://bookstore.gpo.gov*.

Information Collection and Recordkeeping Requirements

This rule contains no new reporting or recordkeeping burdens under OMB control number 0570–0065 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Civil Rights Impact Analysis

Rural Development has reviewed this rule in accordance with USDA Regulation 4300–4, Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex or disability. After review and analysis of the rule and available data, it has been determined that based on the analysis of the program purpose, application submission and eligibility criteria, issuance of this final rule will not likely neither adversely nor disproportionately impact very low, low and moderate-income populations, minority populations, women, Indian tribes or persons with disability, by virtue of their race, color, national origin, sex, age, disability, or marital or familiar status.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating 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, AD–3027, found online at *https://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: U.S. 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.

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

This final rule will not have any adverse impact on energy supply, distribution or use. A regulatory impact analysis was conducted for the interim final rule (80 FR 36410) which met the requirements for E.O. 13211, which states that an agency undertaking regulatory actions related to energy supply, distribution, or use is to prepare a Statement of Energy Effects. The finding in the analysis for the interim final rule was that the rule would not have any adverse impacts on energy supply, distribution, or use.

Executive Order 12372, Intergovernmental Review of Federal Programs

This Program is not subject to the provisions of E.O. 12372, which require intergovernmental consultation with State and local officials.

Executive Order 13175, Consultation and Coordination With Indian Tribes

This E.O. imposes requirements on Rural Development in the development of regulatory policies that have tribal implications or preempt tribal laws. Rural Development has determined that this rule does not have a substantial direct effect on one or more Indian Tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and the Indian Tribes. Thus, this rule is not subject to the requirements of E.O. 13175.

E-Government Act Compliance

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

List of Subjects for 7 CFR Parts 4279 and 4287

Direct loan programs, Economic development, Energy, Energy efficiency improvements, Grant programs, Guaranteed loan programs, Loan programs—Business and industry, Loan programs—Rural development assistance, Renewable energy systems, Rural areas.

Accordingly, the interim rule amending 7 CFR parts 4279 and 4287 which was published at 80 FR 36410 on June 24, 2015, is adopted as final with the following changes:

PART 4279—GUARANTEED LOANMAKING

■ 1. The authority citation for part 4279 continues to read as follows:

Authority: 5 U.S.C. 301; and 7 U.S.C. 1989.

Subpart C—Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Loans

■ 2. Amend § 4279.202 by revising the definitions of ''Biorefinery'' and ''Eligible technology'' to read as follows:

§ 4279.202 Definitions and abbreviations.

* * * * *

Biorefinery. A facility (including equipment and processes) that converts Renewable biomass or an intermediate ingredient or feedstock of Renewable biomass into any one or more, or a combination, of Biofuels, Renewable chemicals or Biobased products, and may produce electricity.

* * * * *

Eligible technology. The term ''Eligible technology'' means, as determined by the Secretary:

(1) A technology that is being adopted in a viable Commercial-scale operation of a Biorefinery that produces any one or more, or a combination, of an Advanced biofuel; a Renewable chemical; or a Biobased product; and

(2) A technology not described in paragraph (1) of this definition that has been demonstrated to have technical and economic potential for commercial application in a Biorefinery that produces any one or more, or a combination, of an Advanced biofuel, a Renewable chemical or a Biobased product.

* * * * *

■ 3. Amend § 4279.265 by revising paragraph (b)(2) to read as follows:

§ 4279.265 Guarantee application processing.

* * * * *

(b) * * *

(2) The Agency's determination of a Project's technical feasibility will be based on the technical report. In addition, prior to the issuance of the Conditional Commitment for a Project utilizing technology that does not have a history of successful utilization in a Commercial-scale operation of a Biorefinery that produces an Advanced biofuel, Renewable chemical, or Biobased product, evidence demonstrating 120 days of continuous, steady state production from an integrated demonstration unit must be provided by the Borrower to the Lender and the Agency for review and determination of technical feasibility. Authoritative demonstration campaign results must be provided in 30-day intervals. The integrated demonstration unit must prove out the Project's ability to utilize Project-relevant biomass and produce Advanced biofuel at a yield and quality consistent with the design basis of the Project. The Borrower must provide to the Agency, for review and approval, sufficient information on the integrated campaign design so as to ensure operation duration, quality, and quantity specifications are met and incorporated into the final design criteria for the commercial facility.

* * * * *

Bette B. Brand,

Deputy Under Secretary, Rural Development.

[FR Doc. 2020–08078 Filed 5–15–20; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0102; Product Identifier 2019–NM–184–AD; Amendment 39–19912; AD 2020–09–16]

RIN 2120–AA64

Airworthiness Directives; ATR–GIE Avions de Transport Régional Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2000–17–09, AD 2008–04–19 R1, and AD 2015–26–09; and terminating all requirements of AD 2018–18–05; which applied to ATR–GIE Avions de Transport Régional Model ATR42–200, –300, and –320 airplanes. AD 2018–18–05 required updating the maintenance or inspection program, as applicable, to incorporate new or more restrictive maintenance requirements and airworthiness limitations, and terminated the relevant requirements of AD 2000–17–09, AD 2008–04–19 R1, and AD 2015–26–09. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations; as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 22, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 22, 2020.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0102.

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–2020–0102; 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, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3220; email *shahram.daneshmandi@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0256, dated October 17, 2019 (''EASA AD 2019–0256'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all ATR–GIE Avions de Transport Régional Model ATR42–200, –300, and –320 airplanes. EASA AD 2019–0256 supersedes EASA AD 2017–0221R1, dated December 15, 2017 (which corresponds to FAA AD 2018–18–05, Amendment 39–19384 (83 FR 44463, August 31, 2018) (''AD 2018–18–05'')).

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2000–17–09, Amendment 39–11883 (65 FR 53897, September 6, 2000) (''AD 2000–17–09''); AD 2008–04–19 R1, Amendment 39–16069 (74 FR 56713, November 3, 2009) (''AD 2008–04–19 R1''); and AD 2015–26–09, Amendment 39–18357 (81 FR 1483, January 13, 2016) (''AD 2015–26–09''); for all ATR–GIE Avions de Transport Régional Model ATR42–200, –300, and –320 airplanes only. The NPRM also proposed to terminate all requirements of AD 2018–18–05, which specified that accomplishing the revision required by paragraph (g) of that AD terminated all requirements of AD 2000–17–09; AD 2008–04–19 R1; and AD 2015–26–09; for ATR–GIE

Avions de Transport Régional Model ATR42–200, –300, and –320 airplanes only. The NPRM published in the **Federal Register** on February 28, 2020 (85 FR 11876). The NPRM was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The NPRM proposed to revise the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in an EASA AD.

The FAA is issuing this AD to address reduced structural integrity of the airplane. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA received no comments on the NPRM or on the determination of the cost to the public.

Clarification of Paragraph (k) of This AD

Once a maintenance or inspection program is revised as required by paragraph (g) of this AD, paragraph (i) of this AD does not allow for the later use of alternative actions, intervals, or Critical Design Configuration Control Limitations (CDCCLs) unless these alternative actions, intervals, or CDCCLs are approved as specified in the ''Ref. Publications'' section of EASA AD 2019–0256. In paragraph (i) of the proposed AD, the FAA proposed language using the word ''except.'' To make the language consistent with the language in the ''Ref. Publications'' section of EASA AD 2019–0256, the FAA has changed the wording in paragraph (i) of this AD to ''unless they are approved.''

Explanation of Change to the Costs of Compliance Section

In the NPRM, the Costs of Compliance section inadvertently included information for retained actions from AD 2018–18–05. Since this AD does not include any retained actions, the FAA has removed that information.

Conclusion

The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this final rule with the change described previously and minor editorial changes. The FAA has determined that these minor changes:

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

The FAA also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0256 describes new and more restrictive airworthiness limitations for airplane structure and systems. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 33 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

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

Authority for This Rulemaking

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

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

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2000–17–09, Amendment 39–11883 (65 FR 53897, September 6, 2000); AD 2008–04–19 R1, Amendment 39–16069 (74 FR 56713, November 3, 2009); and AD 2015–26–09, Amendment 39–18357 (81 FR 1483, January 13, 2016); and

■ b. Adding the following new AD:

2020–09–16 GIE Avions de Transport Régional: Amendment 39–19912; Docket No. FAA–2020–0102; Product Identifier 2019–NM–184–AD.

(a) Effective Date

This AD is effective June 22, 2020.

(b) Affected ADs

(1) This AD replaces the ADs identified in paragraphs (b)(1)(i) through (iii) of this AD.

(i) AD 2000–17–09, Amendment 39–11883 (65 FR 53897, September 6, 2000) (''AD 2000–17–09'').

(ii) AD 2008–04–19 R1, Amendment 39–16069 (74 FR 56713, November 3, 2009) (''AD 2008–04–19 R1'').

(iii) AD 2015–26–09, Amendment 39–18357 (81 FR 1483, January 13, 2016) (''AD 2015–26–09'').

(2) This AD affects AD 2018–18–05, Amendment 39–19384 (83 FR 44463, August 31, 2018) (''AD 2018–18–05'').

(c) Applicability

This AD applies to all ATR–GIE Avions de Transport Régional Model ATR42–200, –300, and –320 airplanes, certificated in any category.

(d) Subject

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

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address reduced structural integrity of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2019–0256, dated October 17, 2019 (''EASA AD 2019–0256'').

(h) Exceptions to EASA AD 2019–0256

(1) The requirements specified in paragraphs (1) and (3) of EASA AD 2019–0256 do not apply to this AD.

(2) Where paragraph (2) of EASA AD 2019–0256 refers to its effective date, this AD requires using the effective date of this AD.

(3) Paragraph (4) of EASA AD 2019–0256 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the ''limitations, tasks and associated thresholds and intervals'' specified in paragraph (4) of EASA AD 2019–0256 within 90 days after the effective date of this AD.

(4) The initial compliance time for doing the tasks specified in paragraph (4) of EASA AD 2019–0256 is at the applicable ''associated thresholds'' specified in paragraph (4) of EASA AD 2019–0256, or within 90 days after the effective date of this AD, whichever occurs later.

(5) The provisions specified in paragraphs (5) and (6) of EASA AD 2019–0256 do not apply to this AD.

(6) The ''Remarks'' section of EASA AD 2019–0256 does not apply to this AD.

(i) Provisions for Alternative Actions, Intervals, and Critical Design Configuration Control Limitations (CDCCLs)

After the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections), intervals, and CDCCLs are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2019–0256.

(j) Terminating Action for AD 2018–18–05

Accomplishing the maintenance or inspection program revision required by paragraph (g) of this AD terminates the requirements of AD 2018–18–05.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation 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 Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (l) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2019–0256 that contains RC procedures and tests: Except as required by paragraph (k)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(l) Related Information

For more information about this AD, contact Shahram Daneshmandi, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3220; email *shahram.daneshmandi@faa.gov.*

(m) 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 this AD specifies otherwise.

(3) The following service information was approved for IBR on June 22, 2020.

(i) European Union Aviation Safety Agency (EASA) AD 2019–0256, dated October 17, 2019.

(ii) [Reserved]

(4) For information about EASA AD 2019–0256, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(5) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0102.

(6) You may view this material 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 May 8, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–10627 Filed 5–15–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–1072; Product Identifier 2019–NM–181–AD; Amendment 39–19888; AD 2020–06–19]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes. This AD was prompted by reports of nuisance stick shaker activation while the airplane accelerated to cruise speed at the top of climb. This AD was also prompted by an investigation of those reports that revealed that the angle of attack (AOA) (also known as angle of airflow) sensor vanes could not prevent the build-up of ice, causing the AOA sensor vanes to become immobilized, which resulted in nuisance stick shaker activation. This

AD requires a general visual inspection of the AOA sensors for certain AOA sensors, and replacement of affected AOA sensors. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 22, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 3, 2020 (84 FR 71778, December 30, 2019).

ADDRESSES: 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 service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1072.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1072; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jeffrey W. Palmer, Aerospace Engineer, Systems and Equipment Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5351; fax: 562–627–5210; email: *Jeffrey.W.Palmer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes. The NPRM published in the **Federal Register** on January 17, 2020 (85 FR 2914). The NPRM was prompted by reports of nuisance stick shaker activation while the airplane accelerated to cruise speed at the top of climb. The NPRM was also prompted by an investigation of those reports that revealed that the AOA sensor vanes could not prevent the build-up of ice, causing the AOA sensor vanes to become immobilized, which resulted in nuisance stick shaker activation. The NPRM proposed to require a general visual inspection of the AOA sensors for certain AOA sensors, and replacement of affected AOA sensors.

The FAA is issuing this AD to address ice buildup in the AOA sensor faceplate and vane, which may immobilize the AOA sensor vanes, and could result in inaccurate or unreliable AOA sensor data being transmitted to airplane systems and consequent loss of controllability of the airplane.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment. Boeing, Richard Rodriguez, and Shaun Felix indicated support for the NPRM.

Request To Reduce the Compliance Time

An anonymous commenter supported the intent of the NPRM, but the FAA infers that the commenter requests that the FAA reduce the proposed compliance time from 2,750 flight hours or 36 months, whichever occurs first, to 12 months. The commenter stated the time period feels too slow. The commenter also stated repairing a piece of technology from 1963 in 12 months should not be insurmountable. Richard Rodriguez also commented that the compliance time is excessive compared to the 12-month compliance time for other models. The FAA infers the commenter is requesting the compliance time be shortened to 12 months.

The FAA does not agree with the request to shorten the compliance time. After considering all the available information, the FAA has determined that the compliance time, as proposed, represents an appropriate interval of time in which the required actions can be performed in a timely manner within the affected fleet, while still maintaining an adequate level of safety. In developing an appropriate compliance time, the FAA considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of the inspection and applicable replacements. Furthermore, other models affected by this unsafe condition are subject to AD 2019–24–18, Amendment 39–21007 (84 FR 71778, December 30, 2019) (''AD 2019–24–18''), which requires compliance within 36 months or at the applicable time specified in the applicable service information, whichever occurs first. The compliance time in AD 2019–24–18 is consistent with the compliance time in this AD. The FAA has not changed the AD in this regard.

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Service Bulletin 727–34A0247, Revision 1, dated October 1, 2019, which the Director of the Federal Register approved for incorporation by reference as of February 3, 2020 (84 FR 71778, December 30, 2019). 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.

Costs of Compliance

The FAA estimates that this AD affects 1 airplane of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	1 work-hour × $85 per hour = $85	$0	$85	$85.
Replacement	Up to 3 work-hours × $85 per hour = Up to $255.	Up to $54,000	Up to $54,255	Up to $54,255.

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,

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–06–19 The Boeing Company: Amendment 39–19888; Docket No. FAA–2019–1072; Product Identifier 2019–NM–181–AD.

(a) Effective Date

This AD is effective June 22, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes, certificated in any category, variable numbers QB065, QD191, QD192, QD402, QD403, QD407, and QD410.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Unsafe Condition

This AD was prompted by reports of nuisance stick shaker activation while the airplane accelerated to cruise speed at the top of climb. This AD was also prompted by an investigation of those reports that revealed that the angle of attack (AOA) (also known as angle of airflow) sensor vanes could not prevent the build-up of ice, causing the AOA sensor vanes to become immobilized, which resulted in nuisance stick shaker activation. The FAA is issuing this AD to address ice buildup in the AOA sensor faceplate and vane, which may immobilize the AOA sensor vanes, and could result in inaccurate or unreliable AOA sensor data being transmitted to airplane systems and consequent loss of controllability of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraph (h) of this AD: Within 36 months after the effective date of this AD or at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 727–34A0247, Revision 1, dated October 1, 2019, whichever occurs first, do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Alert Service Bulletin 727–34A0247, Revision 1, dated October 1, 2019.

(h) Exceptions to Service Information Specifications

Where Boeing Alert Service Bulletin 727–34A0247, Revision 1, dated October 1, 2019, uses the phrase ''the original issue 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 727–34A0247, dated January 2, 2019.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles 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-LAACO-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, Los Angeles 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) Except as specified by paragraph (h) of this AD: For service information that contains steps that are labeled as Required for Compliance (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 Jeffrey W. Palmer, Aerospace Engineer, Systems and Equipment Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5351; fax: 562–627–5210; email: *Jeffrey.W.Palmer@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (l)(4) and (5) 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 this AD specifies otherwise.

(3) The following service information was approved for IBR on February 3, 2020 (84 FR 71778, December 30, 2019).

(i) Boeing Alert Service Bulletin 727–34A0247, Revision 1, dated October 1, 2019.

(ii) [Reserved]

(4) 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.*

(5) 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.

(6) 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 27, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–10604 Filed 5–15–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0090; Product Identifier 2019–NM–196–AD; Amendment 39–19909; AD 2020–09–13]

RIN 2120–AA64

Airworthiness Directives; 328 Support Services GmbH (Type Certificate Previously Held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all 328 Support Services GmbH Model 328–300 airplanes. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 22, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 22, 2020.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 89990 1000; email: *ADs@easa.europa.eu;* internet: *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0090.

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–2020–0090; 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, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3228; email: *todd.thompson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0271, dated October 30, 2019 (''EASA AD 2019–0271'') (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all 328 Support Services GmbH Model 328–300 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all 328 Support Services GmbH Model 328–300 airplanes. The NPRM published in the **Federal Register** on February 12, 2020 (85 FR 7897). The NPRM was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The NPRM proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in an EASA AD.

The FAA is issuing this AD to address the potential failure of parts, which could lead to reduced control of the airplane; and to address the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this

final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

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

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0271 describes procedures for airworthiness limitations for certification maintenance requirements that include, among other items, safe life limits and fuel tank system limitations. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 21 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

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

Authority for This Rulemaking

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

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

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–09–13 328 Support Services GmbH (Type Certificate previously held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH): Amendment 39–19909; Docket No. FAA–2020–0090; Product Identifier 2019–NM–196–AD.

(a) Effective Date

This AD is effective June 22, 2020.

(b) Affected ADs

This AD affects the ADs identified in paragraphs (b)(1) and (2) of this AD:

(1) AD 2009–01–06 R1, Amendment 39–16082 (74 FR 57411, November 6, 2009) (''AD 2009–01–06 R1'').

(2) AD 2012–01–08, Amendment 39–16920 (77 FR 3583, January 25, 2012) (''AD 2012–01–08'').

(c) Applicability

This AD applies to all 328 Support Services GmbH (Type Certificate previously held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Model 328–300 airplanes, certificated in any category.

(d) Subject

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

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address the potential failure of parts, which could lead to reduced control of the airplane; and to address the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2019–0271, dated October 30, 2019 (''EASA AD 2019–0271'').

(h) Exceptions to EASA AD 2019–0271

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2019–0271 do not apply to this AD.

(2) Where paragraph (3) of EASA AD 2019–0271 specifies a compliance time of ''Within 12 months'' after its effective date to ''revise the approved AMP,'' this AD requires ''revising the existing maintenance or inspection program, as applicable,'' to incorporate the ''limitations, tasks and associated thresholds and intervals,'' specified in paragraph (3) of EASA AD 2019–0271 within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2019–0271 is at the applicable ''associated thresholds'' specified in paragraph (3) of EASA AD 2019–0271, or within 90 days after the effective date of this AD, whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2019–0271 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2019–0271 does not apply to this AD.

(i) Provisions for Alternative Actions, Intervals, and Critical Design Configuration Control Limitation (CDCCLs)

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections), intervals, and CDCCLs are allowed except as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2019–0271.

(j) Terminating Action for Other ADs

(1) Accomplishing the maintenance or inspection program revision required by

paragraph (g) of this AD terminates all requirements of AD 2009–01–06 R1.

(2) Accomplishing the maintenance or inspection program revision required by paragraph (g) of this AD terminates all requirements of AD 2012–01–08 for Model 328–300 airplanes only.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation 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 Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (l) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or 328 Support Services GmbH's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Related Information

For more information about this AD, contact Todd Thompson, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3228; email: *todd.thompson@faa.gov.*

(m) 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 this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2019–0271, dated October 30, 2019.

(ii) [Reserved]

(3) For information about EASA AD 2019–0271, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 89990 6017; email: *ADs@easa.europa.eu;* internet: *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0090.

(5) You may view this material 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 May 6, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–10631 Filed 5–15–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 31309; Amdt. No. 552]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: *Effective date:* 0901 UTC, May 21, 2020.

FOR FURTHER INFORMATION CONTACT: Harry Hodges, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

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 95

Airspace, Navigation (air).

Issued in Washington, DC on April 17, 2020.

Robert C. Carty,

Executive Deputy Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is

amended as follows effective at 0901 UTC, May 21, 2020.

■ 1. The authority citation for part 95 continues to read as follows:

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

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT

[Amendment 552 Effective Date May 21, 2020]

From	To	MEA	MAA
§ 95.3000 Low Altitude RNAV Routes			
§ 95.3285 RNAV Route T285 Is Amended To Read In Part			
LKOTA, SD WP	LESNR, SD WP	4300	17500
LESNR, SD WP	HURON, SD VORTAC	4000	17500
§ 95.3356 RNAV Route T356 Is Added To Read			
*WOOLY, MD FIX	DROSA, MD WP	6000	17500
*6000–MCA	WOOLY, MD FIX, SE BND.		
*3100–MOCA.			
DROSA, MD WP	OBWON, MD WP	6000	17500
*2600–MOCA.			
OBWON, MD WP	SWANN, MD FIX	6000	17500
*1800–MOCA.			
SWANN, MD FIX	GATBY, MD FIX	6000	17500
*6000–MCA	GATBY, MD FIX, SW BND.		
*1500–MOCA.			
GATBY, MD FIX	KERNO, MD FIX	4000	17500
*1400–MOCA.			
KERNO, MD FIX	ODESA, MD FIX	4000	17500
*1500–MOCA.			
ODESA, MD FIX	ELUDE, MD FIX	4000	17500
*4000–MCA	ELUDE, MD FIX, S BND.		
*1800–MOCA.			
§ 95.3358 RNAV Route T358 Is Added To Read			
MARTINSBURG, WV VORTAC	CPTAL, MD WP	5000	17500
*3800–MOCA.			
CPTAL, MD WP	HOGZZ, MD WP	5000	17500
*4300–MOCA.			
HOGZZ, MD WP	MOYRR, MD WP	5000	17500
*3200–MOCA.			
MOYRR, MD WP	DANII, MD WP	6000	17500
*3100–MOCA.			
DANII, MD WP	OBWON, MD WP	6000	17500
*2600–MOCA.			
OBWON, MD WP	SWANN, MD FIX	6000	17500
*1800–MOCA.			
SWANN, MD FIX	GOLDA, MD FIX	1800	17500
*1500–MOCA.			
GOLDA, MD FIX	BROSS, MD FIX	1800	17500
*1500–MOCA.			
BROSS, MD FIX	SMYRNA, DE VORTAC	1800	17500
*1500–MOCA.			
SMYRNA, DE VORTAC	LEEAH, NJ FIX	1800	17500
*1400–MOCA.			
LEEAH, NJ FIX	AVALO, NJ FIX	1800	17500
*1600–MOCA.			
§ 95.4000 High Altitude RNAV Routes			
§ 95.4056 RNAV Route Q56 Is Amended To Read In Part			
CATLN, AL FIX	KBLER, GA WP	#*18000	45000
*18000–GNSS MEA.			
*DME/DME/IRU MEA.			
KBLER, GA WP	KELLN, SC WP	#*18000	45000
*18000–GNSS MEA.			
*DME/DME/IRU MEA.			
§ 95.4065 RNAV Route Q65 Is Amended By Adding			
MGNTY, FL WP	DOFFY, FL WP	#*18000	45000
*18000–GNSS MEA.			

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT—Continued

[Amendment 552 Effective Date May 21, 2020]

From	To	MEA	MAA
*DME/DME/IRU MEA.			
Is Amended To Delete			
KPASA, FL WP *GNSS REQUIRED.	DOFFY, FL WP	*18000	45000
§ 95.4075 RNAV Route Q75 Is Amended By Adding			
GREENSBORO, NC VORTAC *18000–GNSS MEA. *DME/DME/IRU MEA.	BROSK, NC WP	#*18000	45000
BROSK, NC WP *18000–GNSS MEA. *DME/DME/IRU MEA.	DRAIK, VA FIX	#*18000	45000
DRAIK, VA FIX *18000–GNSS MEA. *DME/DME/IRU MEA.	GORDONSVILLE, VA VORTAC	#*18000	45000
GORDONSVILLE, VA VORTAC *20000–GNSS MEA. *DME/DME/IRU MEA.	HAMMZ, VA WP	#*20000	45000
HAMMZ, VA WP *20000–GNSS MEA. *DME/DME/IRU MEA.	TOOBN, MD WP	#*20000	45000
TOOBN, MD WP *20000–GNSS MEA. *DME/DME/IRU MEA.	MURPH, MD FIX	#*20000	45000
MURPH, MD FIX *18000–GNSS MEA. *DME/DME/IRU MEA.	SACRI, MD FIX	#*18000	45000
SACRI, MD FIX *18000–GNSS MEA. *DME/DME/IRU MEA.	STOEN, PA FIX	#*18000	45000
STOEN, PA FIX *18000–GNSS MEA. *DME/DME/IRU MEA.	MODENA, PA VORTAC	#*18000	45000
MODENA, PA VORTAC *18000–GNSS MEA. *DME/DME/IRU MEA.	COPES, PA FIX	#*18000	45000
COPES, PA FIX *18000–GNSS MEA. *DME/DME/IRU MEA.	BIGGY, NJ FIX	#*18000	45000
BIGGY, NJ FIX *18000–GNSS MEA. *DME/DME/IRU MEA.	SOLBERG, NJ VOR/DME	#*18000	45000
SOLBERG, NJ VOR/DME *18000–GNSS MEA. *DME/DME/IRU MEA.	JERSY, NJ FIX	#*18000	45000
JERSY, NJ FIX *18000–GNSS MEA. *DME/DME/IRU MEA.	DUEYS, NY FIX	#*18000	45000
DUEYS, NY FIX *18000–GNSS MEA. *DME/DME/IRU MEA.	BIZEX, NY WP	#*18000	45000
BIZEX, NY WP *18000–GNSS MEA. *DME/DME/IRU MEA.	GREKI, CT FIX	#*18000	45000
GREKI, CT FIX *18000–GNSS MEA. *DME/DME/IRU MEA.	NELIE, CT FIX	#*18000	45000
NELIE, CT FIX *18000–GNSS MEA. *DME/DME/IRU MEA.	SWALO, MA FIX	#*18000	45000
SWALO, MA FIX *18000–GNSS MEA. *DME/DME/IRU MEA.	BOSTON, MA VOR/DME	#*18000	45000
BOSTON, MA VOR/DME *18000–GNSS MEA. *DME/DME/IRU MEA.	COPLY, MA WP	#*18000	45000

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT—Continued

[Amendment 552 Effective Date May 21, 2020]

From	To	MEA	MAA
§ 95.4077 RNAV Route Q77 Is Amended To Read In Part			
WAKKO, FL WP * 18000–GNSS MEA. * DME/DME/IRU MEA.	MJAMS, FL WP	#* 18000	45000
§ 95.4079 RNAV Route Q79 Is Amended To Read In Part			
DOFFY, FL WP * 18000–GNSS MEA. * DME/DME/IRU MEA.	EVANZ, FL WP	#* 18000	45000
EVANZ, FL WP * 18000–GNSS MEA. * DME/DME/IRU MEA.	IISLY, GA WP	#* 18000	45000
IISLY, GA WP * 18000–GNSS MEA. * DME/DME/IRU MEA.	YUESS, GA WP	#* 18000	45000
§ 95.4081 RNAV Route Q81 Is Amended To Read In Part			
FARLU, FL WP * 18000–GNSS MEA. * DME/DME/IRU MEA.	MGNTY, FL WP	#* 18000	45000
MGNTY, FL WP * 18000–GNSS MEA. * DME/DME/IRU MEA.	ENDEW, FL WP	#* 18000	45000
NICKI, FL WP * 18000–GNSS MEA. * DME/DME/IRU MEA.	SNAPY, FL WP	#* 18000	45000
SNAPY, FL WP * 18000–GNSS MEA. * DME/DME/IRU MEA.	BULZI, FL WP	#* 18000	45000
BULZI, FL WP * 18000–GNSS MEA. * DME/DME/IRU MEA.	IPOKE, GA WP	#* 18000	45000
IPOKE, GA WP * 18000–GNSS MEA. * DME/DME/IRU MEA.	HONID, GA WP	#* 18000	45000
§ 95.4085 RNAV Route Q85 Is Amended To Read In Part			
LPERD, FL WP * 18000–GNSS MEA. * DME/DME/IRU MEA.	BEEGE, GA WP	#* 18000	45000
BEEGE, GA WP * 18000–GNSS MEA. * DME/DME/IRU MEA.	GIPPL, GA WP	#* 18000	45000
§ 95.4093 RNAV Route Q93 Is Amended To Read In Part			
GIPPL, GA WP * 18000–GNSS MEA. * DME/DME/IRU MEA.	SUSYQ, GA WP	#* 18000	45000
SUSYQ, GA WP * 18000–GNSS MEA. * DME/DME/IRU MEA.	ISUZO, GA WP	#* 18000	45000
ISUZO, GA WP * 18000–GNSS MEA. * DME/DME/IRU MEA.	GURGE, SC WP	#* 18000	45000
GURGE, SC WP * 18000–GNSS MEA. * DME/DME/IRU MEA.	FISHO, SC WP	#* 18000	45000
§ 95.4099 RNAV Route Q99 Is Amended By Adding			
KPASA, FL WP * 18000–GNSS MEA. * DME/DME/IRU MEA.	DOFFY, FL WP	#* 18000	45000
§ 95.4109 RNAV Route Q109 Is Amended By Adding			
KNOST, OG WP	DEANR, FL WP	#* 18000	45000

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT—Continued

[Amendment 552 Effective Date May 21, 2020]

From	To	MEA	MAA
*18000–GNSS MEA. *DME/DME/IRU MEA.			
DEANR, FL WP	BRUTS, FL WP	#*18000	45000
*18000–GNSS MEA. *DME/DME/IRU MEA.			
BRUTS, FL WP	EVANZ, FL WP	#*18000	45000
*18000–GNSS MEA. *DME/DME/IRU MEA.			
EVANZ, FL WP	CAMJO, FL WP	#*18000	45000
*18000–GNSS MEA. *DME/DME/IRU MEA.			
Is Amended To Delete			
DOFFY, FL WP	CAMJO, FL WP	*18000	45000
*GNSS REQUIRED.			
§ 95.4116 RNAV Route Q116 Is Amended To Read In Part			
MICES, FL WP	DEANR, FL WP	#*18000	45000
*18000–GNSS MEA. *DME/DME/IRU MEA.			
DEANR, FL WP	PATOY, FL WP	#*18000	45000
*18000–GNSS MEA. *DME/DME/IRU MEA.			
§ 95.4118 RNAV Route Q118 Is Amended To Read In Part			
FEMID, FL WP	PEAKY, FL WP	#*18000	45000
*18000–GNSS MEA. *DME/DME/IRU MEA.			
§ 95.4475 RNAV Route Q475 Is Added To Read			
COPLY, MA WP	SCUPP, OA FIX	#*18000	45000
*18000–GNSS MEA. *DME/DME/IRU MEA.			
SCUPP, OA FIX	CANAL, MA FIX	#*18000	45000
*18000–GNSS MEA. *DME/DME/IRU MEA.			
CANAL, MA FIX	U.S. CANADIAN BORDER	*18000	45000
*GNSS REQUIRED.			

From	To	MEA
§ 95.6001 VICTOR Routes—U.S		
§ 95.6005 VOR Federal Airway V5 Is Amended To Read In Part		
CORCE, GA FIX	AWSON, GA FIX	*5400
*4600–MOCA.		
AWSON, GA FIX	*NELLO, GA FIX	**7000
*7000–MCA	NELLO, GA FIX, E BND.	
**5500–MOCA.		
§ 95.6007 VOR Federal Airway V7 Is Amended To Delete		
PETTY, WI FIX	PROOT, WI FIX	#
#UNUSABLE.		
PROOT, WI FIX	FALLS, WI VOR/DME	#
#UNUSABLE.		
FALLS, WI VOR/DME	GREEN BAY, WI VORTAC	3000
§ 95.6011 VOR Federal Airway V11 Is Amended To Read In Part		
CUNNINGHAM, KY VOR/DME	POCKET CITY, IN VORTAC	2600
§ 95.6018 VOR Federal Airway V18 Is Amended To Delete		
VULCAN, AL VORTAC	TRUST, AL FIX	3500
TRUST, AL FIX	TALLADEGA, AL VOR/DME	3700
TALLADEGA, AL VOR/DME	ATLANTA, GA VORTAC	4000

From	To	MEA
ATLANTA, GA VORTAC	CONNI, GA FIX	*3000
*2500–MOCA.		
CONNI, GA FIX	MADDI, GA FIX	*4000
*2300–MOCA.		
MADDI, GA FIX	CORVI, GA FIX	*5000
*2000–MOCA.		
CORVI, GA FIX	RAFFE, GA WP	*6000
*2200–MOCA.		
RAFFE, GA WP	COLLIERS, SC VORTAC	*2500
*2000–MOCA.		
§ 95.6047 VOR Federal Airway V47 Is Amended To Read In Part		
CUNNINGHAM, KY VOR/DME	POCKET CITY, IN VORTAC	2600
§ 95.6049 VOR Federal Airway V49 Is Amended To Read In Part		
VULCAN, AL VORTAC	FOLSO, AL FIX	3100
FOLSO, AL FIX	MASHA, AL FIX.	
*2400–MOCA	N BND	*3000
	S BND	*3100
MASHA, AL FIX	DECATUR, AL VOR/DME	*3000
*2300–MOCA.		
§ 95.6056 VOR Federal Airway V56 Is Amended To Delete		
MERIDIAN, MS VORTAC	KEWANEE, MS VORTAC	2000
KEWANEE, MS VORTAC	MONTGOMERY, AL VORTAC	*5500
*2300–MOCA.		
§ 95.6071 VOR Federal Airway V71 Is Amended To Delete		
O'NEILL, NE VORTAC	WINNER, SD VOR	4000
WINNER, SD VOR	PIERRE, SD VORTAC	4100
§ 95.6097 VOR Federal Airway V97 Is Amended To Read In Part		
BAPPY, GA FIX	*NELLO, GA FIX	5000
*10000–MCA	NELLO, GA FIX, N BND.	
NELLO, GA FIX	MELLS, GA FIX	*10000
*6300–GNSS MEA.		
§ 95.6159 VOR Federal Airway V159 Is Amended To Delete		
VULCAN, AL VORTAC	HAMILTON, AL VORTAC	*2600
*2200–MOCA.		
HAMILTON, AL VORTAC	HOLLY SPRINGS, MS VORTAC	2300
§ 95.6165 VOR Federal Airway V165 Is Amended To Delete		
TULE, CA VOR/DME	DINUB, CA FIX	3500
DINUB, CA FIX	SELMA, CA FIX.	
	NW BND	2500
	SE BND	3500
SELMA, CA FIX	*CLOVIS, CA VORTAC	2000
*4000–MCA CLOVIS, CA VORTAC, N BND.		
CLOVIS, CA VORTAC	*COGOL, CA FIX	
	N BND	6500
	S BND	5000
*8500–MCA COGOL, CA FIX, N BND.		
COGOL, CA FIX	MARRI, CA FIX	#*16000
* 13600–MOCA.		
#MEA IS ESTABLISHED WITH A GAP IN NAVIGATION SIGNAL COVERAGE.		
Is Amended To Read In Part		
TULE, CA VOR/DME	EXTRA, CA FIX	3500
§ 95.6175 VOR Federal Airway V175 Is Amended To Read In Part		
OYENS, IA FIX	WORTHINGTON, MN VOR/DME	*6000
*3600–GNSS MEA.		

From	To	MEA
§ 95.6198 VOR Federal Airway V198 Is Amended To Read In Part		
SEMINOLE, FL VORTAC #GREENVILLE R–270 UNUSABLE USE SEMINOLE R–088.	GREENVILLE, FL VORTAC	#2100
§ 95.6209 VOR Federal Airway V209 Is Amended To Delete		
SEMMES, AL VORTAC *1800–MOCA. *2000–GNSS MEA.	JANES, AL WP	*2300
JANES, AL WP	KEWANEE, MS VORTAC	2300
KEWANEE, MS VORTAC *2300–MOCA.	BROOKWOOD, AL VORTAC	*5000
Is Added To Read		
SEMMES, AL VORTAC *1800–MOCA. *2000–GNSS MEA.	YARBO, AL FIX	*3000
EUTAW, AL FIX 2300–MOCA. 2500–GNSS MEA.	BROOKWOOD, AL VORTAC	*5000
§ 95.6222 VOR Federal Airway V222 Is Amended To Read In Part		
EATON, MS VORTAC	PICAN, MS FIX	
	W BND	2300
	E BND	3000
§ 95.6305 VOR Federal Airway V305 Is Amended To Read In Part		
CUNNINGHAM, KY VOR/DME	POCKET CITY, IN VORTAC	2600
§ 95.6311 VOR Federal Airway V311 Is Amended To Read In Part		
DUBBS, TN FIX *6400–MOCA.	MADOL, GA FIX	*7000
MADOL, GA FIX *8000–MCA *7000–MCA **6400–MOCA.	*NELLO, GA FIX NELLO, GA FIX, N BND. NELLO, GA FIX, E BND.	**8000
NELLO, GA FIX *5500–MOCA.	AWSON, GA FIX	*7000
AWSON, GA FIX *4600–MOCA.	CORCE, GA FIX	*5400
§ 95.6389 VOR Federal Airway V389 Is Amended To Read In Part		
CIMARRON, NM VORTAC *15600–MCA **10700–MOCA.	*FOGLE, NM FIX FOGLE, NM FIX, N BND.	**11600
§ 95.6413 VOR Federal Airway V413 Is Amended To Read In Part		
GOPHER, MN VORTAC	BITLR, WI FIX	3500
§ 95.6415 VOR Federal Airway V415 Is Amended To Read In Part		
ROME, GA VORTAC *6000–MCA	*NELLO, GA FIX NELLO, GA FIX, E BND.	5600
§ 95.6417 VOR Federal Airway V417 Is Amended To Read In Part		
ROME, GA VORTAC *7000–MCA	*NELLO, GA FIX NELLO, GA FIX, E BND.	5600
NELLO, GA FIX *5500–MOCA.	AWSON, GA FIX	*7000
AWSON, GA FIX *4600–MOCA.	CORCE, GA FIX	*5400
§ 95.6436 VOR Federal Airway V436 Is Amended To Read In Part		
WILL ROGERS, OK VORTAC *3000–MOCA.	JABDO, OK FIX	*4500
JABDO, OK FIX	SAPPA, OK FIX	*4000

From	To	MEA
*2400–MOCA.		
§ 95.6510 VOR Federal Airway V510 Is Amended To Read In Part		
GOPHER, MN VORTAC *5500–MCA	*BITLR, WI FIX BITLR, WI FIX, SE BND.	3500
§ 95.6439 AlaskaVOR Federal Airway V439 Is Amended To Read In Part		
KODIAK, AK VOR/DME *4300–MOCA.	BAREL, AK FIX	*6000
§ 95.6411 Hawaii VOR Federal Airway V11 Is Amended To Read In Part		
UPOLU POINT, HI VORTAC	LNBRG, HI FIX	5400
LNBRG, HI FIX	BARBY, HI FIX	5500
BARBY, HI FIX	*SWEEP, HI FIX	5400
*5400–MCA	SWEEP, HI FIX, S BND	.....

Airway Segment		Changeover Points	
From	To	Distance	From
§ 95.8003 VOR Federal Airway Changeover Point V49 Is Amended To Modify Changeover Point			
VULCAN, AL VORTAC	DECATUR, AL VOR/DME	35	VULCAN.
V165 Is Amended To Delete Changeover Point			
CLOVIS, CA VORTAC	MUSTANG, NV VORTAC	94	CLOVIS.
V209 Is Amended To Delete Changeover Point			
SEMMES, AL VORTAC	KEWANEE, MS VORTAC	50	SEMMES.

[FR Doc. 2020–09422 Filed 5–15–20; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744 and 762

[Docket No. 200512–0135]

RIN 0694–AH97

Temporary General License: Extension of Validity

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The U.S. Government has decided to extend through August 13, 2020, the temporary general license to Huawei Technologies Co., Ltd. (Huawei) and one hundred and fourteen of its non-U.S. affiliates on the Entity List. In order to implement this decision, this final rule revises the temporary general license to remove the expiration date of May 15, 2020, and substitutes the date of August 13, 2020. In addition, BIS sought public comments regarding future extensions of the Huawei TGL (85 FR 14428, March 12, 2020) and is in the process of reviewing those comments.

DATES: This rule is effective May 15, 2020, through August 13, 2020. The expiration date of the final rule published on February 18, 2020 (85 FR 8722), is extended until August 13, 2020.

FOR FURTHER INFORMATION CONTACT: Director, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, Phone: (949) 660–0144 or (408) 998–8806 or email your inquiry to: *ECDOEXS@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

As published on May 22, 2019 (84 FR 23468), extended and amended through a final rule published on August 21, 2019 (84 FR 43487), and as currently extended through a final rule published on March 12, 2020 (85 FR 14416), this temporary general license authorizes certain activities, including those necessary for the continued operations of existing networks and equipment as well as the support of existing mobile services, including cybersecurity research critical to maintaining the integrity and reliability of existing and fully operational networks and equipment. Exporters, reexporters, and transferors are required to maintain certifications and other records, to be made available when requested by BIS, regarding their use of the temporary general license.

As published on May 22, 2019 (84 FR 22961), and as revised and clarified by a final rule published on August 21, 2019 (84 FR 43493), any exports, reexports, or in-country transfers of items subject to the EAR to any of the listed Huawei entities as of the effective date they were added to the Entity List continue to require a license, with the exception of transactions explicitly authorized by the temporary general license and eligible for export, reexport, or transfer (in-country) prior to May 16, 2019 without a license or under a license exception. License applications will continue to be reviewed under a presumption of denial, as stated in the Entity List entries for the listed Huawei entities. No persons are relieved of other obligations under the EAR, including but not limited to licensing requirements to the People's Republic of China (PRC or China) or other destinations and the requirements of part 744 of the EAR. The temporary general license also does not authorize any activities or transactions involving Country Group E countries (*i.e.,* Cuba,

Iran, North Korea, Sudan, and Syria) or foreign nationals.

Extension of Validity

At this time, the U.S. Government has decided to extend the temporary general license until August 13, 2020. In order to implement this U.S. Government decision, this final rule revises the temporary general license to remove the date of May 15, 2020 and substitutes the date of August 13, 2020 in three places in Supplement No. 7 to part 744: The introductory text; paragraph (b)(1); and paragraph (c).

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule. As set forth in Section 1768 of ECRA, all delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action that were made, issued, conducted, or allowed to become effective under the Export Administration Act of 1979 (previously, 50 U.S.C. 4601 *et seq.*) (as in effect prior to August 13, 2018 and as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*)) or the Export Administration Regulations, and were in effect as of August 13, 2018, shall continue in effect according to their terms until modified, superseded, set aside, or revoked under the authority of ECRA.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications, and carries a burden estimate of 42.5 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

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

4. Pursuant to section 1762 of ECRA, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

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

List of Subjects

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Reporting and recordkeeping requirements.

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

PART 744—[AMENDED]

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

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 19, 2019, 83 FR 49633 (September 20, 2019); Notice of November 12, 2019, 84 FR 61817 (November 13, 2019).

■ 2. Supplement No. 7 to part 744 is amended by revising the first sentence of the introductory text, paragraph (b)(1), and paragraph (c) introductory text to read as follows:

Supplement No. 7 to Part 744—Temporary General License

Notwithstanding the requirements and other provisions of Supplement No. 4 to this part, which became effective as to Huawei Technologies Co., Ltd. (Huawei), Shenzhen, Guangdong, China on May 16, 2019, and its non-U.S. affiliates listed in Supplement No. 4 to this part on, as applicable, May 16, 2019 or August 19, 2019, the licensing and other requirements in the EAR as of May 15, 2019, are restored in part as of May 20, 2019, and through August 13, 2020, pertaining to exports, reexports, and transfers (in-country) of items subject to the EAR to any of the listed Huawei entities. * * *

* * * * *

(b) * * *

(1) This temporary general license is effective from May 20, 2019, through August 13, 2020.

* * * * *

(c) *Authorized transactions.* This temporary general license allows, from May 20, 2019, through August 13, 2020, the following:

* * * * *

Richard E. Ashooh,

Assistant Secretary for Export Administration.

[FR Doc. 2020–10614 Filed 5–15–20; 8:45 am]

BILLING CODE 3510–33–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 160

RIN 3038–AE91

Privacy of Consumer Financial Information

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is making a correction to one of the Commission's regulations to restore text that was inadvertently deleted in a 2011 amendment to that regulation.

DATES: Effective June 17, 2020.

FOR FURTHER INFORMATION CONTACT: Joshua Sterling, Director, (202) 418–6056, *jsterling@cftc.gov;* Frank Fisanich, Chief Counsel, (202) 418–5949, *ffisanich@cftc.gov; or* Jacob Chachkin, Special Counsel, (202) 418–5496, *jchachkin@cftc.gov,* Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

Section 501 of Title V of the Gramm-Leach-Bliley Act (''Title V'') mandates that certain agencies covered by Title V establish appropriate standards for the financial institutions subject to their jurisdiction relating to administrative, technical and physical safeguards—(1) to insure the security and confidentiality of customer records and information; (2) to protect against any anticipated threats or hazards to the security or integrity of such records; and (3) to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.[1] The Commission and entities subject to its jurisdiction were originally excluded from Title V's coverage.[2] However, section 124 of the Commodity Futures Modernization Act of 2000[3] amended the Commodity Exchange Act (''CEA'') to add section 5g,[4] providing that futures commission merchants (''FCMs''), commodity trading advisors (''CTAs''), commodity pool operators (''CPOs''), and introducing brokers (''IBs'')[5] fall under the requirements of Title V and requiring the Commission to prescribe regulations in furtherance of Title V. Thus, in 2001, the Commission promulgated part 160 of its regulations to establish standards relating to Title V, and, specifically, § 160.30 in relation to section 501's mandate.[6]

Commission regulation 160.30 implements this mandate by requiring every FCM, RFED, CTA, CPO, IB, MSP, or SD that is subject to the jurisdiction of the Commission (''Covered Persons'')[7] to adopt policies and procedures to address administrative, technical and physical safeguards for the protection of customer records and information (the ''General Requirement'').[8] In addition, mirroring section 501 of the GLB Act, the 2001 Rulemaking further required (the ''Detailed Requirements'') that the policies and procedures be reasonably designed to: (i) Insure the security and confidentiality of customer records and information; (ii) protect against any anticipated threats or hazards to the security or integrity of customer records and information; and (iii) protect against unauthorized access to or use of customer records or information that could result in substantial harm or inconvenience to any customer.[9] However, when the 2011 Amendment revised § 160.30 to add SDs and MSPs to the list of entities in § 160.30's introductory sentence (and, thus, subject to it), the Detailed Requirements were inadvertently deleted.[10]

II. Proposal

On November 12, 2019, the Commission published a Notice of Proposed Rulemaking[11] to amend § 160.30 of the Commission's regulations (the ''Proposal''). Specifically, the Commission proposed to restore the inadvertently deleted Detailed Requirements in § 160.30. As discussed above and in the Proposal, the Detailed Requirements mirror the requirements of section 501 of the GLB Act, pursuant to which part 160 of the Commission's regulations was adopted.

The Commission requested comments on the Proposal. The comment period for the Proposal ended on December 12, 2019.

III. Summary of Comments and Final Rule

The Commission received two relevant comments on the Proposal,[12] both of which were from individuals and supportive of the Proposal. The Commission did not receive any comments on the Proposal from Covered Persons.

The Commission is adopting this Final Rule (''Final Rule'') as proposed. Accordingly, the Commission is adopting the amendments to Commission regulation 160.30 as shown in the rule text in this document and for the reasons discussed in the Proposal and reiterated above.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act[13] (''RFA'') requires federal agencies to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, to provide a regulatory flexibility analysis regarding the economic impact on those entities. In the Proposal, the Commission certified that the Proposal would not have a significant economic impact on a substantial number of small entities. The Commission requested comments with respect to the RFA and received no such comments.

As discussed in the Proposal, this Final Rule will restore the inadvertently deleted Detailed Requirements in § 160.30. To the extent that the Final Rule will impact Covered Persons that may be small entities for purposes of the

[1] Section 501, Subtitle A, Title V, Public Law 106–102, 113 Stat. 1338 (1999), as codified at 15 U.S.C. 6801.

[2] 15 U.S.C. 6809(3)(B).

[3] Section 124, Appendix E of Public Law 106–554, 114 Stat. 2763 (2000).

[4] 7 U.S.C. 7b–2.

[5] For the definitions of these intermediary categories, *see* section 1a of the CEA and § 1.3 of the Commission's regulations. 7 U.S.C. 1a and 17 CFR 1.3. Commission regulations referred to herein are found at 17 CFR chapter I.

[6] Privacy of Customer Information, 66 FR 21235 (April 27, 2001) (''2001 Rulemaking''). The Commission later modified its part 160 regulations to apply them to retail foreign exchange dealers (''RFEDs''), swap dealers (''SDs''), and major swap participants (''MSPs''). Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries, 75 FR 55409 (Sept. 10, 2010) for RFEDs, and Privacy of Consumer Financial Information; Conforming Amendments Under Dodd-Frank Act, 76 FR 43874 (July 22, 2011) for SDs and MSPs (''2011 Amendment''). For the definition of RFED, *see* § 5.1(h). 17 CFR 5.1(h). For the definitions of SD and MSP, *see* section 1a of the CEA and § 1.3 of the Commission's regulations. 7 U.S.C. 1a and 17 CFR 1.3.

[7] 17 CFR 160.30. Part 160 does not apply to foreign (non-resident) FCMs, RFEDs, CTAs, CPOs, IBs, MSPs, and SDs that are not registered with the Commission. 17 CFR 160.1. Therefore, they are not ''Covered Persons'' as defined in this release.

[8] 17 CFR 160.30.

[9] *See* 2001 Rulemaking at 21250.

[10] *See* 2011 Amendment at 43879. With respect to § 160.30, the preamble to the 2011 Amendment only discusses amending the introductory sentence of § 160.30 to add SDs and MSPs to the list of CFTC registrants that must comply with that regulation. *See id.* at 43876. Further, the Commission notes that the Detailed Requirements continued to be included in Commission staff guidance on compliance with § 160.30 after the 2011 Amendment. *See* CFTC Staff Advisory No. 14–21 (Feb. 26, 2014) (''§ 160.30 Guidance''). In addition, the Commission notes that restoring the Detailed Requirements will make § 160.30 more consistent with similar rules adopted by the Securities and Exchange Commission (''SEC'') and the Federal Trade Commission (''FTC'') under the GLB Act. *See* 17 CFR 248.30 and 16 CFR 314.3, respectively.

[11] Privacy of Consumer Financial Information, 84 FR 60963 (Nov. 12, 2019).

[12] The Commission also received one comment that was not relevant to the Proposal. All of the comments are available at *https://comments.cftc.gov/PublicComments/CommentList.aspx?id=3047.*

[13] 5 U.S.C. 601 *et seq.*

RFA,[14] the Commission considered whether the Final Rule will have a significant economic impact on such Covered Persons.

In restoring the inadvertently deleted Detailed Requirements the Final Rule will simply set forth, consistent with the § 160.30 Guidance and the GLB Act, what is necessary to satisfy the General Requirement that already applies to Covered Persons. Therefore, the Commission believes that the Final Rule will not have a significant economic impact on a substantial number of small entities, as defined in the RFA.

Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the Final Rule will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'')[15] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (''OMB'') control number.

The Commission has previously received a control number from OMB that includes the collection of information associated with the General Requirement. The title for this collection of information is ''Privacy of Consumer Financial Information, OMB control number 3038–0055''.[16] Collection 3038–0055 is currently in force with its control number having been provided by OMB. Because in restoring the inadvertently deleted Detailed Requirements, the Final Rule simply sets forth, consistent with the § 160.30 Guidance and the GLB Act, what is necessary to satisfy the General Requirement that already applies to Covered Persons, the Commission believes that the Final Rule does not impose any new recordkeeping or information collection requirements, or other collections of information that require approval of OMB under the PRA.

In the Proposal, the Commission invited the public and other Federal agencies to comment on any aspect of the information collection requirements discussed therein. The Commission did not receive any such comments.

C. Cost-Benefit Considerations

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) considerations.

As discussed above, in the Final Rule, the Commission is restoring the inadvertently deleted Detailed Requirements in § 160.30. Below, the Commission discusses the costs and benefits of the Final Rule.[17] The baseline against which the costs and benefits are considered is the current status quo for Covered Persons with respect to their obligation to satisfy the General Requirement under § 160.30.[18] The Commission recognizes that there are inherent costs and benefits to Covered Persons in providing requirements for specific customer privacy policies and procedures, which Congress took into account in codifying the GLB Act.

The inadvertent deletion of the Detailed Requirements in § 160.30 affected entities that were required to comply with the Detailed Requirements prior to the 2011 Amendment as well as the two types of entities (SDs and MSPs) the rule was being revised to include. Due to the inadvertent nature of the deletion of the Detailed Requirements, and that they applied prior to the 2011 Amendment, the Commission expects the number of entities affected by the Final Rule to be negligible, if any. Consequently, the Commission believes that the restoration of the Detailed Requirements in § 160.30, consistent with the § 160.30 Guidance and the GLB Act, does not alter existing benefits and costs. The Commission, however, recognizes that this Final Rule may benefit certain Covered Persons by, consistent with the GLB Act, specifying what types of policies and procedures are necessary to satisfy the General Requirement. In doing so, this Final Rule may reduce any potential confusion and allow Covered Persons to design and maintain their policies and procedures to focus on the specified areas mandated by the GLB Act. In this regard, this Final Rule may allow Covered Persons to more efficiently utilize their resources in developing policies and procedures in compliance with § 160.30. This Final Rule also will, consistent with the GLB Act,[19] result in § 160.30 being more similar to regulations adopted by the SEC and FTC pursuant to the GLB Act and to which certain Covered Persons may be subject.[20]

The Commission recognizes that, as a result of this Final Rule, certain Covered Persons may become subject to more specific requirements under § 160.30 than they are currently. However, given that the General Requirement currently applies to Covered Persons, and the § 160.30 Guidance that remains in effect takes into account the substance of the Detailed Requirements, the Commission believes that the burden of this Final Rule on Covered Persons will not be significant.

[14] The Commission has previously determined that certain entities are not ''small entities'' for purposes of the RFA. *See, e.g.,* 47 FR 18618, 18619 (Apr. 30, 1982) (registered FCMs); 75 FR 55410, 55416 (Sept. 10, 2010) (RFEDs); 77 FR 2613, 2620 (Jan. 19, 2012) (SDs and MSPs). However, the Commission has determined that CPOs exempt pursuant to 17 CFR 4.13(a) are small entities. *See* 46 FR 26004 (May 8, 1981); 47 FR at 18619. The definitions of IB and CTA are also broad enough to potentially encompass ''small entities.'' *See* 48 FR 35248, 35276 (Aug. 3, 1983) (recognizing that the IB definition ''undoubtedly encompasses many business enterprises of variable size''); 47 FR at 18620 (the category of CTAs is ''too broad'' for a general determination regarding their small entity status).

[15] 44 U.S.C. 3501 *et seq.*

[16] *See* OMB Control No. 3038–0055, *http://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=3038-0055#* (last visited Jan. 6, 2020).

[17] The Commission endeavors to assess the expected costs and benefits of its proposed rules in quantitative terms where possible. Where estimation or quantification is not feasible, the Commission provides its discussion in qualitative terms. Given a general lack of relevant data, the Commission's assessment is generally provided in qualitative terms.

[18] The Commission notes that the consideration of costs and benefits below is based on the understanding that the markets function internationally, with many transactions involving United States firms taking place across international boundaries; with some Commission registrants being organized outside of the United States; with some leading industry members typically conducting operations both within and outside the United States; and with industry members commonly following substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the discussion of costs and benefits below refers to the effects of this Final Rule on all activity subject to the amended regulations, whether by virtue of the activity's physical location in the United States or by virtue of the activity's connection with activities in, or effect on, United States commerce under CEA section 2(i), 7 U.S.C. 2(i). In particular, the Commission notes that some Covered Persons are located outside of the United States.

[19] *See* 15 U.S.C. 6804(a)(2).

[20] *See* n.10, *supra.*

1. Section 15(a) Considerations

In light of the foregoing, the CFTC has evaluated the costs and benefits of this Final Rule pursuant to the five considerations identified in section 15(a) of the CEA as follows:

(1) Protection of Market Participants and the Public

This Final Rule's restoration of the Detailed Requirements may protect market participants and the public by ensuring that the policies and procedures required under § 160.30 are reasonably designed to address the specific areas mandated by Congress in the GLB Act.

(2) Efficiency, Competitiveness, and Financial Integrity of Markets

This Final Rule may reduce confusion and allow Covered Persons to design and maintain their policies and procedures to focus on the specified areas mandated by the GLB Act. This may allow Covered Persons to more efficiently utilize their resources in developing policies and procedures in compliance with § 160.30. In addition, consistent with the GLB Act, this Final Rule will further align the consumer privacy regulations of the Commission, FTC, and SEC, which may lower costs for certain Covered Persons.

(3) Price Discovery

The Commission has not identified an impact on price discovery as a result of this Final Rule.

(4) Sound Risk Management

The Commission has not identified an impact on sound risk management as a result of this Final Rule.

(5) Other Public Interest Considerations

Consistent with the GLB Act, this Final Rule will further align the consumer privacy regulations of the Commission, FTC, and SEC.

2. Comments on Cost-Benefit Considerations

The Commission invited public comment on its cost-benefit considerations in the Proposal, including the Section 15(a) factors described above. The Commission received no such comments.

D. Antitrust Considerations

Section 15(b) of the CEA [21] requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of the CEA, as well as the policies and purposes of the CEA, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of the CEA.

The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission requested and did not receive any comments on whether the Proposal implicated any other specific public interest to be protected by the antitrust laws.

The Commission has considered this Final Rule to determine whether it is anticompetitive and has identified no anticompetitive effects. The Commission requested and did not receive any comments on whether the Proposal was anticompetitive and, if it is, what the anticompetitive effects are.

Because the Commission has determined that this Final Rule is not anticompetitive and has no anticompetitive effects and received no comments on its determination, the Commission has not identified any less anticompetitive means of achieving the purposes of the CEA.

List of Subjects in 17 CFR Part 160

Brokers, Consumer protection, Privacy, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 160 as follows:

PART 160—PRIVACY OF CONSUMER FINANCIAL INFORMATION UNDER TITLE V OF THE GRAMM-LEACH-BLILEY ACT

■ 1. The authority citation for part 160 continues to read as follows:

Authority: 7 U.S.C. 7b–2 and 12a(5); 15 U.S.C 6801, *et seq.,* and sec. 1093, Pub. L. 111–203, 124 Stat. 1376.

■ 2. Revise § 160.30 to read as follows:

§ 160.30 Procedures to safeguard customer records and information.

Every futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, major swap participant, and swap dealer subject to the jurisdiction of the Commission must adopt policies and procedures that address administrative, technical and physical safeguards for the protection of customer records and information. These policies and procedures must be reasonably designed to:

(a) Insure the security and confidentiality of customer records and information;

(b) Protect against any anticipated threats or hazards to the security or integrity of customer records and information; and

(c) Protect against unauthorized access to or use of customer records or information that could result in substantial harm or inconvenience to any customer.

Issued in Washington, DC, on April 17, 2020, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix to Privacy of Consumer Financial Information—Commission Voting Summary

On this matter, Chairman Tarbert and Commissioners Quintenz, Behnam, Stump, and Berkovitz voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2020–08552 Filed 5–15–20; 8:45 am]

BILLING CODE 6351–01–P

[21] 7 U.S.C. 19(b).

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 230, 232, 239, 240, 270, and 274

[Release Nos. 33–10765; 34–88358; IC–33814; File No. S7–23–18]

RIN 3235–AK60

Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts

Correction

In rule document 2020–05526, beginning on page 26954 in the issue of Friday, May 1, 2020, make the following correction:

§ 274.11 [Corrected]

■ On page 26256, in § 274.11, after the photo material, insert the following amendatory instructions:

■ 48. Effective January 1, 2022, Form N–4 (referenced in §§ 239.17b and 274.11c) is further amended by removing paragraph (a)(9) of Item 1.

■ 49. Revise Form N–6 (referenced in §§ 239.17c and 274.11d) to read as follows:

Note: The text of Form N–6 will not appear in the Code of Federal Regulations.

[FR Doc. C2–2020–05526 Filed 5–15–20; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket Number: 200507–0129]

RIN 0625–AB19

Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period

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

ACTION: Temporary final rule; extension of effective period.

SUMMARY: In March, the Department of Commerce (Commerce) implemented temporary modifications to its service regulations to enable non-U.S. Government personnel responsible for serving documents in the Enforcement & Compliance's (E&C) antidumping and countervailing duty (AD/CVD) cases to work remotely. Through this extension notice, Commerce extends the duration of these temporary modifications. Accordingly, the temporary modifications will be effective through July 17, 2020, unless extended.

DATES: The expiration date of the temporary final rule published on March 26, 2020 (85 FR 17006), is extended through 17:00 hours EST, July 17, 2020.

FOR FURTHER INFORMATION CONTACT: Evangeline D. Keenan, Director, APO/Dockets Unit, at 202–482–3354.

SUPPLEMENTARY INFORMATION:

Background

On March 26, 2020, E&C published a temporary final rule in the **Federal Register**, temporarily modifying certain requirements for serving documents containing business proprietary information in AD/CVD proceedings administered by E&C until May 19, 2020, unless extended. *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020) (*Temporary Final Rule*). The temporary modifications were implemented to facilitate the effectuation of service through electronic means, with the goal of promoting public health and slowing the spread of COVID–19 while at the same time permitting the continued administration of AD/CVD proceedings. E&C explained that the service requirements in its regulations are often effectuated by hand delivery or by U.S. mail delivery of hard copy documents, which frequently takes place in an office setting. In turn, this could pose a risk to the personnel tasked with serving or accepting service by hand or mail, as well as those around them. Based on these circumstances, E&C announced that it would temporarily deem service of submissions containing business proprietary information (BPI) to be effectuated when the BPI submissions are filed by parties in ACCESS, with certain exceptions. The aforementioned circumstances are still present. Therefore, with the continued goal of promoting public health and slowing the spread of COVID–19 while at the same time permitting the continued administration of AD/CVD proceedings, E&C is extending the date through which the modified service requirements in the *Temporary Final Rule* will be in effect.

Extension

The modified service requirements announced in the *Temporary Final Rule* will remain in effect through 17:00 EST, July 17, 2020, unless extended.

Classification

Administrative Procedure Act

The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking and the opportunity for public participation are waived for good cause because they would be impracticable and contrary to the public interest. (See 5 U.S.C. 553(b)(B)). Interested parties participating in E&C's AD/CVD proceedings are generally required to serve other interested parties with documents they submit to E&C. If notice and comment were to be allowed, parties submitting documents containing BPI information to E&C likely either would be unable to serve other parties in the manners prescribed in E&C's regulations, or potentially would put their health and safety at risk in doing so. COVID–19 was unexpected and this circumstance could not have been foreseen; therefore E&C could not have prepared ahead of time for this set of circumstances. The provision of the Administrative Procedure Act otherwise requiring a 30-day delay in effectiveness is also waived for those same reasons, which constitute good cause. (5 U.S.C. 553(d)(3)).

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this temporary rule is not significant for purposes of Executive Order 12866.

Executive Order 13771

This temporary rule is not expected to be subject to the requirements of Executive Order 13771 because this temporary rule is not significant for purposes of Executive Order 12866.

Paperwork Reduction Act

This temporary rule contains no new collection of information subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

Executive Order 13132

This temporary rule does not contain policies with federalism implications as that term is defined in section 1(a) of Executive Order 13132, dated August 4, 1999 (64 FR 43255 (August 10, 1999)).

Regulatory Flexibility Act

The analytical requirements of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*) are not applicable because no general notice of proposed rulemaking was required for this action. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

Authority: 5 U.S.C. 301; 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.;* and 19 U.S.C. 3538.

Dated: May 7, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–10238 Filed 5–15–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2017–0448]

RIN 1625–AA87

Security Zone; Potomac River, Montgomery County, MD

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is finalizing regulations for a security zone for certain waters of the Potomac River to prevent waterside threats and incidents while persons protected by the United States Secret Service (USSS) are at the Trump National Golf Club at Potomac Falls, VA. This regulation prohibits vessels and people from entering the security zone unless specifically exempt under the provisions in this rule or granted specific permission from the COTP Maryland-National Capital Region or a designated representative. This regulation also governs activities of vessels and persons already in the security zone when it is activated.

DATES: This rule is effective June 17, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2017–0448 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 Mr. Ronald L. Houck, at Sector Maryland-National Capital Region Waterways Management Division, U.S. Coast Guard; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

BNM Broadcast Notice to Mariners
CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
MD–DNR Maryland Department of Natural Resources
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code
USSS United States Secret Service

II. Basis and Purpose, and Regulatory History

The United States Coast Guard is finalizing regulations for a security zone that encompasses certain waters of the Potomac River next to the Trump National Golf Club at Potomac Falls, VA. The Coast Guard published an interim rule, ''Security Zone; Potomac River, Montgomery County, MD'' on July 10, 2017 (82 FR 31719). In accordance with 5 U.S.C. 553(b)(B), the rule was made immediately effective. Although immediately effective, the Coast Guard provided the public with a 30-day post-effective comment period. After reviewing the public input, the Coast Guard published a second interim rule, ''Security Zone; Potomac River, Montgomery County, MD'' on March 21, 2019 (84 FR 10420), which responded to comments received and made modifications to the rule. In accordance with 5 U.S.C. 553(b)(B), the March 2019 interim rule was made immediately effective, but the Coast Guard provided the public with a 90-day post-effective comment period on the modified rule. During the comment period on the March 2019 interim rule, which ended June 19, 2019, we received six comments.

III. Legal Authority and Need for Rule

Under the Ports and Waterways Safety Act, the Coast Guard has authority to establish water or waterfront safety zones, or other measures, for limited, controlled, or conditional access and activity when necessary for the protection of any vessel, structure, waters, or shore area, 46 U.S.C. 70011(b)(3). This rule safeguards the lives of persons protected by the Secret Service, and of the general public, by enhancing the safety and security of navigable waters of the United States during heightened security events at the Trump National Golf Club at Potomac Falls, Virginia. The Coast Guard will activate the security zone when requested by the USSS for the protection of USSS protectees when they are at the Trump National Golf Club. The USSS provides protection to individuals either pursuant to 18 U.S.C. 3056 or pursuant to a Presidential memorandum. The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034, as delegated by Department of Homeland Security Delegation no. 0170.1, section II, paragraph 70, from the Secretary of DHS to the Commandant of the U.S. Coast Guard, and further redelegated by 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5 to the Captains of the Port.

III. Discussion of Comments

As noted above, we received six submissions in response to our second interim rule, published March 21, 2019. The comments are available for public inspection at *www.regulations.gov* under docket USCG–2017–0448.

The comments raised a total of nine questions or concerns that we address below.

1. Can the Coast Guard clarify that transits that occur from Violette's Lock to Seneca Falls and the George Washington Canal do not occur within the security zone, and therefore, are not subject to the security zone requirements in the 2019 IFR?

Persons and vessels transiting from Violett's Lock to Seneca Falls and the George Washington Canal are outside the security zone and are not subject to the transit restrictions imposed by the security zone at any time, including when the security zone is being enforced. The March 2019 interim rule incorrectly indicated in a comment response that these waterway users would need to transit through the security zone. The regulatory text itself was correct; the error was in the preamble language.

2. Could the Coast Guard create a 50-yard restricted area on the Virginia side for slow-moving waterway traffic?

The Coast Guard established the security zone at the request of, and in coordination with, the USSS. The design of the security zone is needed to support security measures required during heightened security events at the Trump National Golf Club while USSS protectees are present. As discussed in the March 2019 rule, the Coast guard manages waterborne security risk by maintaining positive control of entry into the zone and keeping a minimum stand-off distance from the Virginia shoreline for all vessels. A corridor on the Virginia side would not allow this positive control of the area being protected.

3. The rule is burdensome to older, slower recreational paddlers, and may discourage them from using the waterway.

The COTP will provide sufficient notice of the security zone's activation and enforcement period for persons to schedule, coordinate and adjust their transit schedules. If paddlers are on the water within the zone when activated, the Coast Guard will allow these paddlers adequate time to proceed safely out of the zone at a reasonable rate of speed. But, no paddlers will be allowed to loiter within the zone.

4. Can the transit zone be located outside of the security zone?

The Coast Guard, with USSS, has determined that given the width of the waterway at this location, the width of the security zone, from shore to shore, is required at the request of the USSS. When the security zone is activated, a transit lane will be provided along the Maryland shoreline that will allow river traffic to transit after permission is granted by the COTP Maryland-National Capital Region or a designated representative in consultation with the USSS.

5. What does getting permission from the COTP entail?

Persons and vessel operators intending to enter or transit the security zone (including the transit lane) while the zone is being enforced must obtain authorization from the COTP or designated representative. To obtain authorization, persons and vessel operators must contact the COTP or designated representative by phone at 410–576–2675, on marine band radio VHF–FM channel 16 (156.8 MHz), or by visually or verbally hailing the on-scene law enforcement vessel enforcing the zone. Access to the security zone during enforcement will be determined by the COTP or designated representative on a case-by-case basis. The Coast Guard does not issue authorizations to enter the zone in the form of permits. The Coast Guard does not provide authorization to enter the security zone in advance.

6. Will the Government continue to consider how this particular security

zone (and future zones) impact the First Amendment rights of citizens?

As stated in our March 2019 interim final rule, the Coast Guard agrees that First Amendment considerations must be evaluated during the rulemaking process for actions taken by the Coast Guard. The Coast Guard believes that this zone is narrowly tailored and minimizes intrusion into the rights of protestors while providing necessary security measures for persons protected by the USSS. As stated in the ''Protest Activities'' section of the Regulatory Analysis portion of both the July 2017 interim final rule, the March 2019 interim final rule, and this current action, the Coast Guard respects the First Amendment rights of protestors. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels. The Coast Guard's authority is limited to actions within our jurisdiction.

7. Enforcement personnel should be appropriately and continuously trained on the security zone's boundaries and regulations.

To ensure proper application of the regulation, the Coast Guard holds pre-mission briefings prior to each activation of the zone that discuss the regulation, including visual landmarks demarcating the zone's boundaries that personnel should use when enforcing the zone. In addition to the pre-mission briefing, enforcement personnel are provided a written informational bulletin prior to each activation. The Coast Guard will continue to coordinate enforcement efforts with the other government agencies assisting with enforcement.

8. Notice should be posted on federal land at Violette's Lock, Riley's Lock and at Algonkian Park when the security zone is in effect, with the estimated time that security zone enforcement will end, and a reminder of the phone number to which the public can call to check the enforcement status.

As stated in the March 2019 interim rule, for security and logistical reasons the Coast Guard can only provide minimal advance notice of activation. The COTP Maryland-National Capital Region will notify waterway users and the boating community of activation of the security zone via Broadcast Notice to Mariners (BNM), an information release at the website: *www.news.uscg.mil/Baltimore/* and by a recorded message at telephone number (410) 576–2675. As the commenter stated in their comment, during recent activations of the security zone, law enforcement personnel have been assigned to the boat ramp at Riley's Lock to inform members of the public that the security zone is in effect. But, it is not feasible to have law enforcement officials present at all launch sites each time the security zone is activated.

9. Will there be additional regulations put into place by Government agencies that further restrict the public's use of land or water in an effort to support the vacation and recreation activities of high-level government officials.

The Coast Guard's authority is limited to actions within our jurisdiction. The USSS is tasked with providing the highest level of security for certain individuals, and has requested the Coast Guard's assistance in this location. The need for and level of security does not change based on the activities of protected individuals. In the March 2019 interim rule, and affirmed in this final rule, the Coast Guard shortened the size of the security zone and added the transit lane along the Maryland shore to provide an opportunity for the public to enjoy the river while persons protected by the USSS participate safely in their chosen activities.

IV. Discussion of the Rule

The Coast Guard is adopting the text of the rule from the March 2019 IR with one change. The Coast Guard is amending the text of the rule to reflect that the USSS provides protection to individuals pursuant to a Presidential memorandum in addition to those persons listed at 18 U.S.C. 3056. This rule affirms the security zone to include all navigable waters of the Potomac River, from shoreline to shoreline, within an area bounded on the west by a line connecting the following points: latitude 39°03′44.7″ N, longitude 077°21′47″ W, thence north to latitude 39°04′03″ N, longitude 077°21′47″ W, and bounded on the east by a line connecting the following points: latitude 39°04′04″ N, longitude 077°19′58″ W, thence south to latitude 39°03′41.35″ N, longitude 077°20′05.30″ W. This rule provides an area within the security zone along the Maryland shoreline, designated the ''Transit lane,'' including a definition and the restrictions that apply within the lane to waterway users. However, permission for waterways users to operate within this lane will be determined by the COTP, or designated representative. The public can learn the status of the security zone via an information release for the public via website *www.news.uscg.mil/Baltimore/* and a recorded message at telephone number (410) 576–2675.

Entry into the security zone is prohibited while the zone is in force, unless public use of the transit lane is specifically authorized by the COTP Maryland-National Capital Region or a designated representative. Except for public vessels, this rule will require all vessels in the designated security zone to immediately depart the security zone. Federal, State, and local agencies may assist the Coast Guard in the enforcement of this rule. The duration of the zone is intended to ensure the security of persons protected by the USSS while at Trump National Golf Club. The COTP Maryland-National Capital Region will notify waterway users and the boating community of the security zone, via BNM, an information release at the website: *www.news.uscg.mil/Baltimore/* and a recorded message at telephone number (410) 576–2675.

V. Regulatory Analyses

The Coast Guard developed this rule after considering numerous statutes and Executive orders related to rulemaking. The Coast Guard summarizes its analyses based on a number of these statutes and Executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 [1] 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 [2] 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 following reasons: (1) The public may move through the area along the Maryland shoreline using the dedicated transit lane during the enforcement of the security zone with permission from the COTP or COTP's designated representative, (2) the security zone will be enforced only as required by the USSS and for only the period of time necessary, and (3) the

[1] *https://www.federalregister.gov/documents/2011/01/21/2011-1385/improving-regulation-and-regulatory-review.*

[2] *https://www.federalregister.gov/documents/2017/02/03/2017-02451/reducing-regulation-and-controlling-regulatory-costs.*

COTP Maryland-National Capital Region will notify waterway users and the boating community of the security zone via BNM, an information release at the website: *www.news.uscg.mil/Baltimore/* and a recorded message at telephone number (410) 576–2675.

A regulatory evaluation and Regulatory Flexibility Analysis follows and provides an evaluation of the economic impacts associated with this rule. In this final rule, the Coast Guard affirms the revisions to the security zone which were made in the 2019 interim rule. This final rule also affirms the geographic boundaries for the security zone which were published in the interim final rule of March 21, 2019. These boundaries reflect changes from the boundaries in the interim final rule of July 10, 2017. The following table provides a summary of the rule's costs and qualitative benefits.

TABLE 1—SUMMARY OF THE RULE'S IMPACTS

Category	Summary
Potentially Affected Population	Operators of summer camps; operators of kayak and watercraft instruction schools; recreational boaters including kayakers, water ski users, stand up paddle boarders (SUPs); fishermen; waterfowl hunters; non-profit organizations; exercisers, owners of residences near the area, political protesters as well as federal agencies such as the Coast Guard and the USSS The rule also may indirectly impact some federal agencies. State [3] and local law enforcement and recreational/park authorities in the area may have interests.
Costs	Does not impose additional direct costs on the public or to the Coast Guard.
Unquantified Benefits	* Reinforces an established Security Zone. * Helps secure area to meet objectives of the USSS.

Affected Population

The Coast Guard does not collect data on the vessels and individuals that use this area of the Potomac River. Based on comments to the Coast Guard's original interim final rule (dated July 10, 2017), the Coast Guard estimates that this rule affects recreational boaters including kayakers, personal water craft (PWCs) operators,[4] and stand up paddle boarders (SUPs); persons using the area for exercise activities; fishermen; commercial vessel operators; and political protesters. This final rule impacts the Coast Guard and the U.S. Secret Service (USSS) directly. No governmental jurisdictions at the State, Tribal or municipal level will be impacted directly by this final rule.

Exact numbers are not available, but the Coast Guard estimates the total size of the population affected by this final rule to be in the hundreds. The Coast Guard attempted to collect further data by using the U.S. Geological Survey's satellite technology. The technology was not detailed enough to do a count of individuals such as swimmers or inner tube users. Likewise, the technology was not precise enough to tally vessels as small as a kayak or SUP. The comments suggested the number these vessels ranged from ''a dozen'' to ''thousands.'' The most often cited of these estimates was ''hundreds.'' We received no comments on affected population in response to the March 21, 2019, interim final rule.

The Coast Guard also sought an estimate from its personnel who manage enforcement of the security zone. The Coast Guard does not normally collect data on the number of vessels and individuals that use this area. Onsite personnel estimated up to six recreational vessels and up to 25 kayakers transiting during the typical enforcement of the security zone.

Costs

This final rule affirms the existing security zone established by the March 2019 interim rule (84 FR 10420, March 21, 2019). The security zone covers waters of the Potomac River next to Trump National Golf Club at Potomac Falls, VA, and prevents waterside threats and incidents while persons protected by the USSS are at the club. It continues to prohibit vessels and people from entering the security zone unless specifically exempt under the provisions in this rule or granted specific permission from the COTP Maryland-National Capital Region or designated representative. This final rule also governs activities of vessels and persons already in the security zone when activated. This rule will not require any entity to take action beyond what was already required under the 2019 interim final rule. As a result, this final rule does not impose additional direct costs on the public or to the Coast Guard. A description of the rule's provisions follows.

Section 165.557(a) establishes the definitions. These definitions do not add direct cost to the public or Government. The definition of ''vessel'' establishes the applicability of these regulations to a multitude of watercraft including but not limited to kayaks, stand up paddleboards (SUPs) and inner tubes. Therefore, the rule will apply to users of these types of vessels.

Section 165.557(b) describes where the security zone is located. Actions that are necessitated when a security zone is declared are specified in existing regulations. Under 33 CFR 165.7(a), when the establishment of these limited access areas occurs, notification may be made by marine broadcasts, local notice to mariners, local news media, distribution in leaflet form, and on-scene oral notice, as well as publication in the **Federal Register**. Entering or remaining in the security zone is prohibited unless authorized by the COTP or a designated representative in consultation with the USSS when the security zone is being enforced. Section 165.557(d) requires that the COTP provide notice of enforcement of the security zone by Broadcast Notice to Mariners, information release at the website, and pre-recorded message at telephone number, as well as on-scene notice.

The Coast Guard received a comment during the March 21, 2019, interim final rule's comment period on training. A commenter [5] requested USCG conduct training for personnel. The Coast Guard conducts pre-mission briefings prior to each activation of the zone. In addition to the pre-mission briefing, enforcement personnel are provided a written informational bulletin prior to each activation.[6] The pre-mission briefings

[3] The Potomac River falls in the State of Maryland. Maryland law enforcement personnel and vessels (*http://dnr.maryland.gov/nrp/Pages/default.aspx*) of the Maryland Natural Resources Police (MNRP) have participated in past security zone enforcements. A CG officer will deploy on a MNRP boat during an enforcement.

[4] Predominately this includes jet ski users.

[5] *https://www.regulations.gov/document?D=USCG-2017-0448-0645.*

[6] This paperwork task is exempt from the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) because the material is produced by Federal personnel and distributed to Federal personnel.

are conducted by a Coast Guard officer (O–3) and are attended by Coast Guard personnel ranking from E–4 to O–3, and may also be attended voluntarily by local law enforcement and USSS personnel. This pre-mission briefing may occur as part of other briefing tasks.

The final rule may result in indirect costs to the public in the form of opportunity costs for lost leisure time to access to the restricted area of the Potomac River. Onsite Coast Guard personnel have reported that no queue of recreational or commercial vessels has occurred with previous enactments of the security zone. For this reason, the Coast Guard has not computed a cost of the final rule for this issue.

With regard to the other effects of the final rule's provisions, the final rule does result in actions being taken by the Coast Guard and USSS directly, but it does not result in any new costs or burdens. The impact that this final rule will have on these two Federal agencies is considered part of their mission and responsibility, and thus part of their current responsibilities to the public and other Federal entities.

Benefits

This security zone is necessary to prevent waterside threats and incidents for events held at Trump National Golf Clubhouse when persons protected by the USSS are at the club.

No comments on the benefits of the rulemaking were received in response to the March 21, 2019, interim final rule.

Regulatory Alternatives Considered

The Coast Guard considered whether any alternative could accomplish the stated objectives and minimize any significant economic impact on small entities. In developing this final rule, the Coast Guard considered the following alternatives:

(1) Issue a rule that would not require any vessel to get permission from the Coast Guard prior to entering the transit lane, with or without changes to the zone's boundaries described in the July 10, 2017, interim final rule.

(2) Issue a rule that would not require human-powered vessels to get permission from the Coast Guard prior to entering the transit lane, with or without changes to the zone's boundaries described in the July 10, 2017, interim final rule.

(3) Return boundaries to the July 10, 2017, interim final rule.

Alternative 1: Issue a rule that would not require any vessel to get permission from the Coast Guard prior to entering the transit lane, with or without changes to the zone's boundaries described in the July 10, 2017, interim final rule.

The Coast Guard considered issuing a rulemaking that did not require any vessel to obtain permission from the COTP or the designated representative prior to entering the transit lane. But, the Coast Guard rejected this option because this approach would undermine the security measures this rule intends to provide. This option would have allowed persons with harmful intent immediate access to the Trump National Golf Club shoreline while USSS protectees were present. Instead, the Coast Guard chose to continue to allow vessels to use the transit lane as conditions permit and with approval from the COTP or designated representative. This helps the Coast Guard manage waterborne security risk by maintaining positive control of entry into the zone and keeping a minimum stand-off distance from the Virginia shoreline for all vessels.

Alternative 2: Issue a rule that would not require human-powered vessels to get permission from the Coast Guard prior to entering the transit lane, with or without changes to the zone's boundaries described in the July 10, 2017, interim final rule.

The Coast Guard considered amending the security zone to require only powered vessels to get permission from the COTP or the designated representative prior to entering the transit lane. Under this option, human-powered vessels such as kayaks, canoes, and paddleboards would not need permission from the COTP or designated representative before entering the transit lane. We rejected this option because this approach would have undermined the security measures this final rule intends to provide. An exemption for paddle craft would allow persons with harmful intent immediate access to the Trump National Golf Club shoreline while USSS protectees were present. Instead, the Coast Guard will continue maintaining a shoreline-to-shoreline security zone activated when USSS protectees are present and will continue to allow vessels to use the transit lane as conditions permit. This helps the Coast Guard manage waterborne security risk by maintaining positive control of entry into the zone and keeping a minimum stand-off distance from the Virginia shoreline for all vessels.

Alternative 3: Return boundaries to the July 10, 2017, interim final rule.

The Coast Guard considered issuing a rule which would have used the boundaries as promulgated in the interim final rule of July 10, 2017. The boundaries of the 2017 interim final rule are wider than the boundaries of the 2019 interim final rule and this final rule. This alternative would have excluded a provision which was favored by the public[7] and is part of the preferred alternative (*i.e.,* the 2019 IFR and this final rule). The alternative would have restricted a larger area of the river and would have had a greater impact on the public. This alternative would not provide any increased security over the preferred alternative adopted in this final rule. For these reasons, the Coast Guard chose to adopt the less restrictive 2019 interim final rule.

The preferred alternative (this final rule) affirms the establishment of a security zone with a transit lane to accommodate the public, in the same configuration that was established by the 2019 interim rule. This final rule also affirms the communication methods the Coast Guard will use to inform the public about the rule's enforcement.

B. Impact on Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we considered whether this final rule will have a significant economic impact on a substantial number of small entities. 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 fewer than 50,000 people.

As described in the ''Regulatory Planning and Review'' section, the Coast Guard expects this final rule to result no direct costs to any entities, including small entities. There are potential indirect costs for some entities. The affected population for the indirect costs consists of private individuals who own recreational vessels or who engage in recreational activities in this area of the Potomac River, commercial entities and nonprofits which have activities or operate vessels in this area of the Potomac and governmental entities.

Although some owners or operators of vessels intending to transit the security zone 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. No governmental

[7] Commenters (USCG–2017–0448–0059, USCG–2017–0448–0038, USCG–2017–0448–0008, USCG–2017–0448–0067, USCG–2017–0448–0050, USCG–2017–0448–0144, USCG–2017–0448–0099, USCG–2017–0448–0104, USCG–2017–0448–0172, USCG–2017–0448–0183) supported a transit lane; albeit it may have not been referred to as such in their comments.

jurisdictions at the State, Tribal or municipal level will be impacted directly by this final rule. Thus, the compliance with this final rule does not represent a significant economic impact on small entities.

The Coast Guard received no comments on its small entities analysis in the March 21, 2019, interim final rule.

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

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 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 Tribal governments, on the relationship between the Federal Government and Tribal governments, or on the distribution of power and responsibilities between the Federal Government and Tribal governments. If you believe this rule has implications for federalism or Tribal relationships, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

The Coast Guard has 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 has 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 security zone that prohibits entry on specified waters of the Potomac River during frequently occurring heightened security events. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

For the reasons stated in the preamble, the Coast Guard amends 33 U.S.C. 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. Revise § 165.557 to read as follows:

§ 165.557 Security Zone; Potomac River, Montgomery County, MD.

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

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his or her behalf.

Designated representative means a Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to enforce the security zone described in paragraph (b)(1) of this section.

Public vessel has the same meaning as that term is defined under 46 U.S.C. 2101.

(b) *Location.* Coordinates used in this section are based on datum NAD 83.

(1) *Security zone.* The following area is a security zone: All navigable waters of the Potomac River, from shoreline to shoreline, within an area bounded on the west by a line connecting the following points: Latitude 39°03′44.7″ N, longitude 077°21′47″ W, thence north to latitude 39°04′03″ N, longitude 077°21′47″ W, and bounded on the east by a line connecting the following points: Latitude 39°04′04″ N, longitude 077°19′58″ W, thence south to latitude 39°03′41.35″ N, longitude 077°20′05.30″ W.

(2) *Transit lane.* All waters within the Potomac River, contiguous with the Maryland shoreline and extending out into the Potomac River approximately 250 yards, within an area bounded by a line connecting the following points: Beginning at the Maryland shoreline at latitude 39°04′03″ N, longitude 077°21′47″ W, thence south to latitude 39°03′55.3″ N, longitude 077°21′47″ W, thence east to latitude 39°03′56.8″ N, longitude 077°20′00.3″ W, thence north to the Maryland shoreline at latitude 39°04′04″ N, longitude 077°19′58″ W, thence back along the shoreline to the originating point.

(c) *Regulations.* The general security zone regulations found in § 165.33 apply to the security zone created by this section.

(1) Except for public vessels, entry into or remaining in the security zone described in paragraph (b)(1) of this section is prohibited unless authorized by the COTP or designated representative when the aforementioned security zone is being enforced. At the start of each enforcement, all persons and vessels within the security zone must depart the zone immediately or obtain authorization from the COTP or designated representative to remain within the zone. All vessels authorized to remain in the zone shall proceed as directed by the COTP or designated representative.

(2) Persons and vessel operators who intend to enter or transit the security zone while the zone is being enforced must obtain authorization from the

COTP or designated representative. Access to the zone will be determined by the COTP or designated representative on a case-by-case basis when the zone is enforced. Persons and vessel operators requesting permission to enter or transit the security zone may contact the COTP or designated representative at telephone number 410–576–2675, on marine band radio VHF–FM channel 16 (156.8 MHz), or by visually or verbally hailing the on-scene law enforcement vessel enforcing the zone. On-scene Coast Guard personnel enforcing this section can be contacted on marine band radio, VHF–FM channel 16 (156.8 MHz). The operator of a vessel shall proceed as directed upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local law enforcement agency vessel, by siren, radio, flashing light, or other means. When authorized by the COTP or designated representative to enter the security zone all persons and vessels must comply with the instructions of the COTP or designated representative and proceed at the minimum speed necessary to maintain a safe course while within the security zone.

(3) The transit lane, described in paragraph (b)(2) of this section, is the only part of the security zone through which persons and vessels may travel. Before entering the transit lane, persons or vessels must have authorization as described in paragraph (c)(2) of this section. All persons and vessels shall operate at bare steerage or no-wake speed while transiting through the lane, and must not loiter, stop, or anchor, unless authorized or otherwise instructed by the COTP or a designated representative.

(4) The U.S. Coast Guard may secure the entire security zone, including transit lane, if deemed necessary to address security threats or concerns.

(5) The U.S. Coast Guard may be assisted by Federal, State, and local law enforcement agencies in the patrol and enforcement of the security zone described in paragraph (b)(1) of this section.

(d) *Enforcement.* The Coast Guard activates the security zone when requested by the U.S. Secret Service for the protection of individuals who qualify for protection under 18 U.S.C 3056(a) or Presidential memorandum. The COTP will provide the public with notice of enforcement of security zone by Broadcast Notice to Mariners (BNM), information release at the website: *www.news.uscg.mil/Baltimore/* and via a recorded message at telephone number (410) 576–2675 as well as on-scene notice by designated representative or other appropriate means in accordance with § 165.7.

Dated: April 27, 2020.

Joseph B. Loring,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2020–10152 Filed 5–15–20; 8:45 am]

BILLING CODE 9110–04–P

AMERICAN BATTLE MONUMENTS COMMISSION

36 CFR Part 404

RIN 3263–AA01

ABMC FOIA Regulation

AGENCY: American Battle Monuments Commission.

ACTION: Final rule.

SUMMARY: This final rule amends the American Battle Monuments Commission's (ABMC) regulations under the Freedom of Information Act (FOIA). The procedures and guidelines have been revised for compliance with FOIA to incorporate changes required by the FOIA Improvement Act of 2016 and applicable Department of Justice Office of Information Policy guidance.

DATES: This rule is effective May 18, 2020.

FOR FURTHER INFORMATION CONTACT: Edwin L. Fountain, General Counsel, American Battle Monuments Commission, 2300 Clarendon Boulevard, Suite 500, Arlington, VA 22201, *fountaine@abmc.gov,* 703–696–6907.

SUPPLEMENTARY INFORMATION: The authority for this rulemaking is Section 3 of the FOIA Improvement Act of 2016, Public Law 114–185, 5 U.S.C. 552 note, which requires agencies to issue regulations on procedures for the disclosure of records under FOIA in accordance with that Act. On February 18, 2020 (85 FR 8783), the American Battle Monuments Commission published a notice of proposed rulemaking (NPRM) to update and revise ABMC's procedures and guidelines for compliance with FOIA. The Agency invited comments through March 19, 2020. Interested persons were afforded the opportunity to participate in the rulemaking process through submission of written comments to the proposed rule during the open comment period. No comments were received by the Agency.

Changes Proposed by ABMC in This Rulemaking

This action updates and revises ABMC's procedures and guidelines for compliance with FOIA. The revisions to the rule:

- Update the description of and contact information for ABMC and the ABMC FOIA Office.
- Require ABMC to make available for public inspection in an electronic format records that have been requested three or more times.
- Set forth verification of identity requirements for requesters making a request for records about himself or another individual.
- Outline procedures for consultation, referral, and coordination with other agencies when appropriate.
- Update procedures and time periods for appeals of denials of requests.
- Notify requesters of their right to seek dispute resolution services from the Office of Government Information Services.

Regulatory Procedures

Executive Order 12866, Regulatory Planning and Review, and Executive Order 13563, Improving Regulation and Regulatory Review

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, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule benefits the public and the United States Government by providing clear procedures for members of the public, contractors, and employees to follow with regard to the ABMC privacy program. This rule is not a significant regulatory action under E.O. 12866.

Executive Order 13771, Reducing Regulations and Controlling Regulatory Costs

This rule is not expected to be subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because this rule is not significant under E.O. 12866.

Unfunded Mandates Reform Act

This rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments.

Public Law 96–354, Regulatory Flexibility Act

The ABMC certifies this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. Ch. 6) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require ABMC to prepare a regulatory flexibility analysis.

Executive Order 13132, Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. This rule will not have a substantial effect on the States; the relationship between the National Government and the States; or the distribution of power and responsibilities among the various levels of Government.

Public Law 96–511, Paperwork Reduction Act

It has been determined that this rule does not impose reporting or record keeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Dated: April 23, 2020.

Robert J. Dalessandro,

Deputy Secretary, ABMC.

List of Subjects in 36 CFR Part 404

Freedom of information.

■ For the reasons stated in the preamble, ABMC revises 36 CFR part 404 to read as follows:

Title 36: Parks, Forests, and Public Property

PART 404—PROCEDURES AND GUIDELINES FOR COMPLIANCE WITH THE FREEDOM OF INFORMATION ACT

Sec.
404.1 General.
404.2 Authority and functions.
404.3 Organization.
404.4 Access to information.
404.5 Inspection and copying.
404.6 Definitions.
404.7 Fees to be charged—general.
404.8 Fees to be charged—categories of requesters.
404.9 Miscellaneous fee provisions.
404.10 Waiver or reduction of charges.

Authority: Pub. L. 114–185, 130 Stat. 538 (5 U.S.C. 552 note).

§ 404.1 General.

The information in this part is furnished for the guidance of the public and in compliance with the requirements of the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended. Nothing in this part shall be construed to entitle any person to any service or to the disclosure of any record to which such person is not entitled under the FOIA. The rules in this part should be read in conjunction with the text of the FOIA and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget (''OMB Guidelines'').

§ 404.2 Authority and functions.

The general functions of the American Battle Monuments Commission (ABMC or Commission), as provided by statute, 36 U.S.C. 2101 *et seq.,* are to build and maintain suitable memorials commemorating the service of American Armed Forces and to maintain permanent American military cemeteries in foreign countries.

§ 404.3 Organization.

(a) *Personnel.* (1) The Commission is composed of not more than 11 members appointed by the President.

(2) The day to day operation of the Commission is under the direction of a Secretary appointed by the President.

(3) Principal officials subordinate to the Secretary include the Deputy Secretary, Chief Operating Officer, Chief of Staff, Executive Officer, Chief Financial Officer, Chief of Human Resources and Administration, Chief Information Officer, Director of Cemetery Operations, Executive Engineer, General Counsel, and Public Affairs Officer.

(4) The Commission also creates temporary offices when tasked with major additional responsibilities not of a permanent nature.

(b) *Locations.* (1) The principal office of the American Battle Monuments Commission is located at 2300 Clarendon Boulevard, Suite 500, Arlington, VA 22201, (703) 696–6900.

(2) The American Battle Monuments Commission maintains an overseas field office in Paris, France, and cemetery offices at 25 locations in Belgium, France, Italy, Luxembourg, Mexico, the Netherlands, Panama, the Philippines, Tunisia, and the United Kingdom.

§ 404.4 Access to information.

(a) *Contact information.* (1) Individuals wishing to file a request under the Freedom of Information Act (FOIA) should address their request in writing to the FOIA Office, American Battle Monuments Commission, 2300 Clarendon Boulevard, Suite 500, Arlington, VA 22201, or to *FOIA@abmc.gov*, or via *https://www.foia.gov.*

(2) The American Battle Monuments Commission makes available information pertaining to Commission matters within the scope of 5 U.S.C. 552(a)(2), including records that have been requested three or more times, by publishing them electronically at the ABMC home page at *https://www.abmc.gov/foia.* Additional information may be found on the National FOIA Portal at *https://www.foia.gov*. Note: The *ABMC.gov* site provides all of the information the Commission has regarding burials at its cemeteries. ABMC does not have service records, casualty lists, or information on burials within the United States.

(b) *Requests.* (1) Requesters must provide contact information, such as their phone number, email address, and/or mailing address, to assist ABMC in communicating with them and providing released records.

(2)(i) Requests for records must reasonably describe the records sought. Requesters must describe the records sought in sufficient detail to enable agency personnel to locate them with a reasonable amount of effort. To the extent possible, requesters should include specific information that may help ABMC identify the requested records, such as the date, title or name, author, recipient, subject matter, case number, file designation, or reference number. Before submitting their requests, requesters may contact the ABMC FOIA Assistant or FOIA Public Liaison to discuss the records they seek and to receive assistance in describing the records.

(ii) If a request does not reasonably describe the records sought, response to the request may be delayed. If, after receiving a request, ABMC determines that the request does not reasonably describe the records sought, ABMC must inform the requester what additional information is needed or why the request is otherwise insufficient. Requesters who are attempting to reformulate or modify such a request may discuss their request with the FOIA Assistant or FOIA Public Liaison.

(3) Requests may specify the preferred form or format (including electronic formats) for the records sought. ABMC will accommodate the request if the record is readily reproducible in that form or format.

(c) *Responses to requests.* (1) The ABMC FOIA Office is responsible for responding to FOIA requests. Upon receipt of any perfected request for records, the FOIA Office will determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) of the date the request is received in the FOIA Office whether it is appropriate to

grant the request and will immediately provide written notification to the person making the request.

(2) ABMC responds to requests in the order of receipt, using multitrack processing. Tracks include simple, and complex, based on whether unusual circumstances apply (see paragraph (d) of this section), the volume of potential records, the need for consultation or referral, and the amount of work or time needed to process the request.

(3) ABMC will acknowledge requests with a tracking number, summary of the request, estimated completion dates, track information, the opportunity to narrow or modify the scope, and contact information for the FOIA Public Liaison.

(4) In determining which records are responsive to a request, ABMC ordinarily will include only records in its possession as of the date that it begins its search. If any other date is used, ABMC must inform the requester of that date.

(d) *Extending time limits.* If the ABMC FOIA Office determines that unusual circumstances apply to the processing of a request, and provides timely written notice to the requester, ABMC may extend the time limits prescribed in paragraphs (c) and (h) of this section for not more than 10 days (excepting Saturdays, Sundays, or legal public holidays). Where unusual circumstances merit an extension of more than 10 working days, ABMC will provide the requester with an opportunity to modify the request or arrange an alternative time period for processing the original or modified request.

(1) As used in this paragraph (d), but only to the extent reasonably necessary to the proper processing of the particular request, the term *unusual circumstances* means:

(i) The need to search for and collect the requested records from establishments that are separated from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(ii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency which have a substantial subject matter interest therein.

(2) Extensions will be by written notice to the persons making the request. The notice of extension will set forth the reasons for the extension and the date the determination is expected, and will notify the requester of the right to seek assistance from ABMC's FOIA Public Liaison to resolve any disputes between the requester and ABMC, or to seek dispute resolution services from the Office of Government Information Services.

(3) Before issuing a written notice extending time limits, the agency shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request.

(4) When ABMC reasonably believes that a requester, or a group of requestors acting in concert, has submitted requests that constitute a single request, involving clearly related matters, ABMC may aggregate those requests for purposes of this paragraph (d). One element to be considered in determining whether a belief would be reasonable is the time period over which the requests have occurred.

(5) If ABMC fails to comply with the extended time limit, it may not charge search fees (or for requesters with preferred fee status, may not charge duplication fees), except if unusual circumstances apply and more than 5,000 pages are necessary to respond to the request, ABMC may charge search fees (or, for requesters in preferred fee status, may charge duplication fees) *if* timely written notice has been made to the requester and ABMC has discussed with the requester (or made not less than 3 good-faith attempts to do so) how the requester could effectively limit the scope of the request.

(6) If a court determines that exceptional circumstances exist, ABMC's failure to comply with a time limit shall be excused for the length of time provided by the court order. Refusal by the person to reasonably modify the request or arrange such an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist.

(e) *Consultation, referral, and classified information.* When reviewing records located in response to a request, ABMC will determine whether another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under the FOIA. As to any such record, the ABMC must proceed in one of the following ways:

(1) *Consultation.* When ABMC records contain within them information of interest to another agency, ABMC should typically consult with that other agency prior to making a release determination.

(2) *Referral.* When an ABMC record originated with a different agency or contains significant information that originated with a different agency, or when ABMC believes that a different agency is best able to determine whether to disclose a record, ABMC typically should refer the responsibility for responding to the request regarding that record to that agency. When ABMC refers any part of the responsibility for responding to a request to another agency, it must document and maintain a copy of the record, and notify the requester of the referral, informing the requester of the name of the agency and FOIA contact information.

(3) *Classified information.* On receipt of any request involving classified information, ABMC must determine whether the information is currently and properly classified in accordance with applicable classification rules. ABMC must refer the responsibility for responding to the request regarding that information to the agency that classified the information, or that should consider the information for classification.

(f) *Expedited processing.* (1) Requests and appeals will be taken out of order and given expedited treatment whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, beyond the public's right to know about Government activity generally, if made by a person primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the Government's integrity which affect public confidence.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. A request must include a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing.

(3) Within 10 days of receipt of a request for expedited processing, ABMC will decide whether to grant it and will notify the requester of the decision. If a request for expedited treatment is granted, the request will be given priority and will be processed as soon as practicable. If a request for expedited

processing is denied, any appeal of that decision will be acted on expeditiously.

(g) *Grants and denials of requests.* (1) Once ABMC determines it will grant a request in full or in part, it shall notify the requester in writing. ABMC must also inform the requester of any fees charged under § 404.10 and must disclose the requested records to the requester promptly upon payment of any applicable fees. ABMC must inform the requester of the availability of its FOIA Public Liaison to offer assistance.

(2) ABMC may provide interim releases for voluminous requests.

(3) If ABMC determines that a full disclosure of a requested record is not possible, it will consider whether partial disclosure of information is possible. Records disclosed in part will be marked clearly to show the amount of information deleted and the exemption under which the deletion was made, unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted will also be indicated on the record, if technically feasible.

(4) If the request is denied, in part or in full, the written notification to the requester shall include the reasons for the denial and the estimated volume withheld (unless indicated via markings, or if providing such an estimate would harm an interest protected by an exemption). The notification must inform the requester of:

(i) The requester's right to seek assistance from ABMC's FOIA Public Liaison;

(ii) The requester's right to lodge an appeal with ABMC within 90 days after the date of the denial; and

(iii) The requester's right to seek dispute resolution services from the Office of Government Information Services (OGIS).

(h) *Appeals.* Appeals shall be set forth in writing within 90 days of receipt of a denial and addressed to the FOIA Office at the address specified in paragraph (a) of this section. The appeal should clearly identify the agency determination that is being appealed and the assigned request number. To facilitate handling, the requester should mark both the appeal letter and envelope, or subject line of the electronic transmission, ''Freedom of Information Act Appeal.'' The appeal shall include a statement explaining the basis for the appeal. Appeals will be adjudicated by the ABMC Secretary, or his designee, and the adjudication will be set forth in writing within 20 days of receipt of the appeal in the ABMC FOIA Office (excepting Saturdays, Sundays, and legal public holidays). If, on appeal, the denial is upheld in whole or in part, the written determination will also contain a notification of the provisions for judicial review and contact information for OGIS dispute resolution services. An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

§ 404.5 Inspection and copying.

When a request for information has been approved pursuant to § 404.4, the person making the request may make an appointment to inspect or copy the materials requested during regular business hours by writing or telephoning the FOIA Officer at the address or telephone number listed in § 404.4(b). Such materials may be copied and reasonable facilities will be made available for that purpose. Copies of individual pages of such materials will be made available at the price per page specified in § 404.7(d); however, the right is reserved to limit to a reasonable quantity the copies of such materials which may be made available in this manner when copies also are offered for sale by the Superintendent of Documents.

§ 404.6 Definitions.

For the purpose of this part:

(a) All the terms defined in the Freedom of Information Act apply.

(b) The term *direct costs* means those expenditures that ABMC actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(c) The term *search* means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. ABMC employees should ensure that searching for material is done in the most efficient and least expensive manner so as to minimize costs for both the agency and the requester. For example, employees should not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. Search should be distinguished, moreover, from review of material in order to determine whether the material is exempt from disclosure (see paragraph (f) of this section).

(d) The term *duplication* means the making of a copy of a document, or of the information contained in it, necessary to respond to a FOIA request. Such copies can take the form of paper, microform, audio-visual materials, or electronic records (*e.g.,* magnetic tape or disk), among others. The requester's specified preference of form or format of disclosure will be honored if the record is readily reproducible in that format.

(e) The term *review* refers to the process of examining documents located in response to a request to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, *e.g.,* doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(f) The term *commercial use request* refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, ABMC must determine the use to which a requester will put the documents requested. Moreover, where an ABMC employee has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the employee should seek additional clarification before assigning the request to a specific category.

(g) The term *educational institution* refers to a school that operates a program of scholarly research. A requester in this fee category must show that the request is made in connection with his or her role at the educational institution. Agencies may seek verification from the requester that the request is in furtherance of scholarly research and agencies will advise requesters of their placement in this category.

(h) The term *non-commercial scientific institution* refers to an institution that is not operated on a commercial basis (as that term is referenced in paragraph (g) of this section), and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(i) The term *representative of the news media* refers to any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast news to the public at large, and publishers of periodicals that disseminate ''news'' and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the internet. ''Freelance'' journalists who demonstrate a solid basis for expecting publication through a news media entity will be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, agencies can also consider a requester's past publication record in making this determination. Agencies will advise requesters of their placement in this category. A request for records supporting the news-dissemination function of the requester will not be considered to be for a commercial use.

§ 404.7 Fees to be charged—general.

ABMC shall charge fees that recoup the full allowable direct costs it incurs. ABMC will collect all applicable fees before sending copies of records to the requester. Moreover, it shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA. ABMC may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records.

(a) *Manual searches for records.* ABMC will charge at the salary rate(s) (*i.e.,* basic pay plus 16 percent) of the employee(s) making the search.

(b) *Computer searches for records.* ABMC will charge at the salary rate(s) (*i.e.,* basic pay plus 16 percent) of the employee(s) making the search. Before assessing fees associated with creating a new computer program, ABMC will ensure that requester is first notified and agrees to pay such fees, pursuant to paragraph (g)(3) of this section.

(c) *Review of records.* Only requesters who are seeking documents for commercial use may be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the initial review; *i.e.,* the review undertaken the first time ABMC analyzes the applicability of a specific exemption to a particular record or portion of a record. Records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review is assessable.

(d) *Duplication of records.* Records will be duplicated at a rate of $.10 per page. For copies prepared by computer, such as tapes or printouts, ABMC shall charge the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction or duplication, ABMC will charge the actual direct costs of producing the document(s). If ABMC estimates that duplication charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(e) *Other charges.* (1) When it elects to charge them, ABMC will recover the full costs of providing services such as certifying that records are true copies or sending records by special methods such as express mail.

(2) For requests that require the retrieval of records stored by an agency at a Federal records center operated by the National Archives and Records Administration (NARA), ABMC will charge additional costs in accordance with the Transactional Billing Rate Schedule established by NARA.

(f) *Payment of fees.* Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasury of the United States and mailed to the FOIA Officer, American Battle Monuments Commission, 2300 Clarendon Blvd., Suite 500, Arlington, VA 22201. A receipt for fees paid will be given upon request.

(g) *Restrictions on assessing fees.* With the exception of requesters seeking documents for a commercial use, ABMC will provide the first 100 pages of duplication and the first 2 hours of search time without charge. Moreover, ABMC will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(1) The elements to be considered in determining the cost of collecting a fee are the administrative costs of receiving and recording a requester's remittance, and processing the fee for deposit in the Treasury Department's special account.

(2) For purposes of the restrictions on assessment of fees in this paragraph (g), the word *pages* refers to paper copies of 8½ × 11 or 11 × 14. Thus, requesters are not entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout, does meet the terms of the restriction.

(3) Similarly, the term *search time* in this paragraph (g) has as its basis, manual search. To apply this term to searches made by computer, ABMC will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of search equals the equivalent dollar amount of two hours of the salary of the person performing the search, *i.e.,* the operator, ABMC will begin assessing charges.

§ 404.8 Fees to be charged—categories of requesters.

For purposes of assessing fees, the FOIA establishes four categories of requesters: Commercial use requesters, educational and non-commercial scientific institution requesters; news media requesters, and all other requesters.

(a) *Commercial use requesters.* When ABMC receives a request for documents for commercial use, it will assess charges that recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial use requesters are not entitled to 2 hours of free search time nor 100 free pages of reproduction of documents.

(b) *Educational and noncommercial scientific institution requesters.* Requesters in this category who meet the criteria in § 404.6(g) or (h) are entitled to two free hours of search time and the first 100 pages of duplication without charge. To be eligible for inclusion in this category, a requester must show that the request is authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(c) *Requesters who are representatives of the news media.* Requesters in this category who meet the criteria in § 404.6(i) are entitled to two free hours

of search time and the first 100 pages of duplication without charge. To be eligible for inclusion in this category, a requester must show that the records are not sought for a commercial use, but are sought in furtherance of the news dissemination function of the requester.

(d) *All other requesters.* ABMC shall charge requesters who do not fit into any of the categories in paragraphs (a) through (c) of this section fees that recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first 2 hours of search time shall be furnished without charge.

§ 404.9 Miscellaneous fee provisions.

(a) *Charging interest—notice and rate.* ABMC may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. The fact that the fee has been received by ABMC within the 30-day grace period, even if not processed, will suffice to stay the accrual of interest. Interest will be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing.

(b) *Charges for unsuccessful search.* ABMC may assess charges for time spent searching, even if it fails to locate the records or if records located are determined to be exempt from disclosure. If ABMC estimates that search charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(c) *Aggregating requests.* A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When ABMC reasonably believes that a requester, or a group of requestors acting in concert, has submitted requests that constitute a single request, involving clearly related matters, ABMC may aggregate those requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period over which the requests have occurred.

(d) *Advance payments.* ABMC may not require a requester to make an advance payment, *i.e.,* payment before work is commenced or continued on a request, unless:

(1) ABMC estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. Then, ABMC will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee charged in a timely fashion (*i.e.,* within 30 days of the date of the billing). Then, ABMC may require the requester to pay the full amount owed plus any applicable interest as provided in paragraph (a) of this seciton or demonstrate that he or she has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

(3) When ABMC acts under paragraph (d)(1) or (2) of this section, the administrative time limits prescribed in the FOIA, 5 U.S.C. 552(a)(6) (*i.e.,* 20 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits), will begin only after ABMC has received fee payments described in paragraphs (d)(1) and (2) of this section.

(e) *Effect of the Debt Collection Act.* ABMC will comply with provisions of the Debt Collection Act of 1982 (Pub. L. 97–365), including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage repayment.

(f) *Tolling.* If the requester has indicated a willingness to pay some designated amount of fees, but the ABMC estimates that the total fee will exceed that amount, ABMC will toll the processing of the request when it notifies the requester of the estimated fees in excess of the amount the requester has indicated a willingness to pay. The agency will inquire whether the requester wishes to revise the amount of fees the requester is willing to pay or modify the request. Once the requester responds, the time to respond will resume from where it was at the date of the notification.

(g) *Reducing costs.* At any time a request may contact the ABMC FOIA Public Liaison or other FOIA professional to assist in reformulating a request to meet the requester's needs at a lower cost.

§ 404.10 Waiver or reduction of charges.

Requesters may seek a waiver of fees by submitting a written application demonstrating how disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

(a) ABMC will waive its fees in whole or in part when it determines, based on all available information, that the following factors are satisfied:

(1) Disclosure of the requested information will shed light on identifiable operations or activities of the Federal Government with a connection that is direct and clear, not remote or attenuated.

(2) The disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. ABMC will consider the requester's expertise in the subject area as well as the requester's ability and intention to effectively convey information to the public. ABMC will presume that a representative of the news media satisfies this consideration.

(3) The disclosure is not primarily in the commercial interest of the requester. Requesters will be given an opportunity to provide explanatory information regarding this consideration. ABMC ordinarily will presume that when a news media requester has satisfied factors in paragraphs (a)(1) and (2) of this section, the request is not primarily in the commercial interest of the requester.

(b) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver must be granted for those records.

(c) Requests for a waiver or reduction of fees should be made when the request is first submitted to the agency and should address the criteria referenced in paragraph (a) of this section. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester must pay any costs incurred up to the date the fee waiver request was received.

[FR Doc. 2020–09097 Filed 5–15–20; 8:45 am]

BILLING CODE 6120–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2019–0674; FRL–10007–94–Region 2]

Approval and Promulgation of Implementation Plans; New Jersey; Negative Declaration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of New Jersey for purposes of making a negative declaration regarding the October 2016 Oil and Natural Gas Control Techniques Guidelines (2016 Oil and Gas CTG). This action is being taken in accordance with the requirements of the Clean Air Act.

DATES: This final rule is effective on June 17, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA–R02–OAR–2019–0674. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Omar Hammad, Environmental Protection Agency, Region 2 Office, 290 Broadway, New York, New York 10007–1866, at (212) 637–3347, or by email at *Hammad.Omar@epa.gov.*

SUPPLEMENTARY INFORMATION: The **SUPPLEMENTARY INFORMATION** section is arranged as follows:

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I. What is the background for the action?
II. What comments were received in response to the EPA's proposed action?
III. What action is the EPA taking?
IV. Statutory and Executive Order Reviews

I. What is the background for this action?

On May 13, 2019, the New Jersey Department of Environmental Protection (NJDEP) submitted to the EPA, a State Implementation Plan (SIP) revision consisting of a negative declaration for the 2016 Oil and Gas CTG.

Per the 2016 Oil and Gas CTG, the oil and natural gas industry includes oil and natural gas operations involved in the extraction and production of crude oil and natural gas, as well as the processing, transmission, storage, and distribution of natural gas. For oil, the industry includes all operations from the well to the point of custody transfer at a petroleum refinery. For natural gas, the industry includes all operations from the well to the customer.

The NJDEP cross referenced the source operations covered in the 2016 Oil and Gas CTG and its applicability to New Jersey. New Jersey asserts that there are no sources within its respective State that would be subject to the 2016 Oil and Gas CTG. New Jersey asserts that it is not anticipated that crude oil or natural gas extraction will be occurring in New Jersey for the foreseeable future.

On January 22, 2020 (85 FR 3556), the EPA published a notice of proposed rulemaking that proposed to approve the State of New Jersey's May 13, 2019 SIP submittal, for purposes of making a negative declaration that no sources exist in the State of New Jersey that would be subject to the 2016 Oil and Gas CTG. The reader is referred to EPA's January 22, 2020, proposed action for more detailed background and EPA's evaluation of New Jersey's SIP revision submittal.

II. What comments were received in response to the EPA's proposed action?

In response to the EPA's January 22, 2020, proposed rulemaking on New Jersey's SIP revision submittal, the EPA is providing responses to the comments that were received. The specific comments may be viewed under Docket ID Number EPA–R02–OAR–2019–0674 on the *http://www.regulations.gov* website.

Comment: This negative declaration would leave New Jersey at least temporarily exempt from the October 2016 Oil and Natural Gas Control Techniques Guidelines in a future scenario of discovering oil and/or natural gas within the confines of New Jersey.

Response: EPA has historically allowed states to submit a negative declaration for a particular CTG category if the state finds that no sources exist in the state which would be subject to that CTG. EPA has addressed the idea of negative declarations numerous times and for various NAAQS including in the General Preamble to the 1990 Amendments,[1] the 2006 RACT Q&A Memo,[2] and the 2008 Ozone Implementation Rule.[3] In each of these documents, EPA asserted that if no sources exist in the nonattainment area for a particular CTG category, the state would be allowed to submit a negative declaration SIP revision.

Nothing in the Clean Air Act (CAA) or EPA's implementing rules or guidance suggests that states must have a SIP approved regulation for a category of CTG sources that does not exist in the state. Should a new source of the type covered by the existing CTG be constructed in a state after approval of a negative declaration, EPA expects the state to develop a regulation and submit it to EPA for approval into the SIP in accordance with the relevant timing provided for by the CAA. At this time, because New Jersey does not have any sources subject to the 2016 Oil and Gas CTG, no regulation is required to be developed and submitted to EPA for SIP approval.

Comment: If EPA has or is in the process of withdrawing the CTG then EPA shouldn't be requiring states to spend valuable time and resources on this non-applicable ''requirement''. EPA should remove this CTG and disapprove New Jersey's SIP as unnecessary as well as any other state's SIP attempting to address this 2016 CTG.

Response: This SIP submittal addresses a final document that EPA announced on October 27, 2016, in the **Federal Register** (81 FR 74798) ''Release of Final Control Techniques Guidelines for the Oil and Natural Gas Industry.'' This CTG is still in place. There is no final action that withdraws this requirement. The State is addressing their obligations in response to the final CTG with this submittal.

Comment: ''It does not make sense for the state of New Jersey . . . to be looking to get rid of more of the rules and regulations. This seems like we are going backwards, away from the goal of making New Jersey a cleaner state . . . I feel that the EPA should be taking a closer look into the regulations the state of New Jersey is trying to get around.''

Response: This action does not remove any rules or regulations from the New Jersey SIP. The negative

[1] ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' (57 FR 13498 at 13512 (April 16, 1992)).

[2] ''RACT Qs & As—Reasonably Available Control Technology (RACT): Questions and Answers'' Memorandum from William T. Harnett, May 18, 2006.

[3] ''Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements,'' (80 FR 12263 at 12278 (March 6, 2015)).

declaration simply asserts that no sources exist in the State of New Jersey that are subject to the 2016 Oil and Gas CTG. The EPA has reviewed New Jersey's submittal and agrees with the State's evaluation.

III. What action is the EPA taking?

On May 13, 2019, the New Jersey Department of Environmental Protection (NJDEP) submitted to the EPA a SIP revision consisting of a negative declaration for the 2016 Oil and Gas CTG.

The EPA is approving the revision to the SIP submitted by the State to address the 2016 Oil and Gas CTG for the Ozone Transport Region and nonattainment RACT requirements for both the 2008 and 2015 ozone National Ambient Air Quality Standards and is approving their negative declaration that no sources exist in the State of New Jersey that would be subject to the 2016 Oil and Gas CTG.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the 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 proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993), and 13563 (76 FR 382, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempt 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, this rulemaking action, pertaining to New Jersey's Negative Declaration SIP submission, would not be 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 any 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: April 21, 2020.

Peter Lopez,

Regional Administrator, Region 2.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart FF—New Jersey

■ 2. In § 52.1582, add paragraph (q) to read as follows:

§ 52.1582 Control strategy and regulations: Ozone.

* * * * *

(q) *Negative declarations.* The State of New Jersey has certified to the satisfaction of the EPA that no sources are located in the State which are covered by the following Control Techniques Guidelines:

(1) Oil and Natural Gas Industry (October 2016).

(2) [Reserved]

[FR Doc. 2020–08862 Filed 5–15–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2019–0220; FRL–10008–77–Region 1]

Air Plan Approval; Massachusetts; Negative Declaration for the Oil and Gas Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. The revision provides Massachusetts' determination, via a negative declaration, that there are no facilities within its borders subject to EPA's 2016 Control Technique Guideline (CTG) for the oil and gas industry. The intended effect of this action is to approve this item into the Massachusetts SIP. This action is being taken in accordance with the Clean Air Act (CAA).

DATES: This direct final rule will be effective July 17, 2020, unless EPA receives adverse comments by June 17, 2020. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2019–0220 at *https://www.regulations.gov,* or via email to *garcia.ariel@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, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be

accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact 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 *https://www.epa.gov/dockets/commenting-epa-dockets.* Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Ariel Garcia, Environmental Protection Specialist, Air and Radiation Division (Mail Code 05–2), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109–3912; (617) 918–1660. *garcia.ariel@epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. Background
II. Summary of SIP Revision and EPA Analysis
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I. Background

On October 27, 2016, EPA published in the **Federal Register** the ''Final Control Techniques Guidelines for the Oil and Natural Gas Industry.'' See 81 FR 74798. The CTG provided information to state, local, and tribal air agencies to assist them in determining reasonably available control technology (RACT) for volatile organic compounds (VOC) emissions from select oil and natural gas industry emission sources. CAA section 182(b)(2)(A) requires that for ozone nonattainment areas classified as Moderate or above, states must revise their SIPs to include provisions to implement RACT for each category of VOC sources covered by a CTG document. CAA section 184(b)(1)(B) extends the RACT obligation to all areas of states within the Ozone Transport Region (OTR). Pursuant to CAA section 184(a), Massachusetts is a member state of the OTR. States subject to RACT requirements are required to adopt controls that are at least as stringent as those found within the CTG either via the adoption of regulations, or by issuance of single source Orders or Permits that outline what the source is required to do to meet RACT. If no source for a particular CTG exists within a state, the state must submit as a SIP revision a negative declaration documenting this fact.

II. Summary of SIP Revision and EPA Analysis

Negative Declaration for the 2016 Oil and Natural Gas Industry CTG

On October 18, 2018, Massachusetts submitted a SIP revision to address its RACT requirements set forth by the CAA for the 2008 and 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS). As part of that October 18, 2018 SIP revision, Massachusetts submitted a negative declaration for the 2016 Oil and Natural Gas Industry CTG. The term ''negative declaration'' means that the state has explored whether any facilities subject to the applicability requirements of the CTG exist within the state and concluded that there are no such sources within its borders. This is consistent with EPA's understanding of where sources subject to the Oil and Natural Gas Industry CTG are located, and so we are approving Massachusetts' negative declaration into the SIP. Other aspects of Massachusetts' October 18, 2018 SIP submittal, pertaining to all other RACT requirements, are not addressed in this direct final rulemaking and will be addressed in a separate rulemaking.

III. Final Action

We are approving a negative declaration for EPA's 2016 CTG entitled ''Control Techniques Guidelines for the Oil and Natural Gas Industry'' into the Massachusetts SIP.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective July 17, 2020 without further notice unless the Agency receives relevant adverse comments by June 17, 2020.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 17, 2020 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

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

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

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 17, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: April 21, 2020.

Dennis Deziel,

Regional Administrator, EPA Region 1.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart W—Massachusetts

■ 2. In § 52.1120, amend the table in paragraph (e) by adding the entry for ''Negative declaration for the 2016 Control Techniques Guideline for the Oil and Natural Gas Industry'' at the end of the table, to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(e) * * *

MASSACHUSETTS NON REGULATORY

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date [3]	Explanations
*	*	*	*	*
Negative declaration for the 2016 Control Techniques Guidelines for the Oil and Natural Gas Industry.	Statewide	10/18/2018	5/18/2020, [Insert **Federal Register** citation].	Negative declaration.

[3] To determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

[FR Doc. 2020–09072 Filed 5–15–20; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0368; FRL–10006–98]

Methyl Mercaptan; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of methyl mercaptan in or on all food commodities when methyl mercaptan is used as a gopher repellent in irrigation lines in accordance with label directions and good agricultural practices. Acqua Concepts, Inc. (d/b/a Ag Water Chemical) submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the

need to establish a maximum permissible level for residues of methyl mercaptan under FFDCA.

DATES: This regulation is effective May 18, 2020. Objections and requests for hearings must be received on or before July 17, 2020 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2019–0368, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. 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 OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2019–0368 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before July 17, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2019–0368, 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 CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *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.*

II. Background

In the **Federal Register** of August 2, 2019 (84 FR 37818) (FRL–9996–78), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance exemption petition (PP 8F8713) by Acqua Concepts, Inc. (d/b/a Ag Water Chemical), 2665 S. Chestnut, Fresno, CA 93725. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of the gopher repellent methyl mercaptan in or on all food commodities that use irrigation lines treated with methyl mercaptan. That notice referenced a summary of the petition prepared by the petitioner Acqua Concepts, Inc. (d/b/a Ag Water Chemical) and available in the docket via *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Final Rule

A. EPA's Safety Determination

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement of a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C) and (D), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance or tolerance exemption and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . .'' Additionally, FFDCA section 408(b)(2)(D) requires that EPA consider ''available information concerning the cumulative effects of [a particular pesticide's] . . . residues and other substances that have a common mechanism of toxicity.''

EPA evaluated the available toxicology and exposure data on methyl mercaptan and considered their validity, completeness, and reliability, as well as the relationship of this information to human risk. EPA also considered available information concerning the variability of the sensitivities of major identifiable

subgroups of consumers, including infants and children.

Methyl mercaptan, also known as methanethiol, is a naturally occurring compound. In its ambient state, it is a colorless gas that smells like rotten cabbage. At lower temperatures, it can also be expressed as a liquid. Methyl mercaptan is naturally found in the blood and brain of humans and other animals, as well as in plant tissues. It is excreted from the human and animal body in feces. It also occurs naturally in certain foods, such as vegetables and some nuts and cheeses, and, as such, is often consumed by humans.

Methyl mercaptan has several commercial uses. Due to its strong odor, it is commonly employed as a leak detector in natural gas lines. Methyl mercaptan is also used in the production of plastics to moderate the growth of free radical polymers. Most notably, methyl mercaptan is used as a Food and Drug Administration-approved food additive to impart an umami flavor and to act as an adjuvant (21 CFR 172.515).

As a new biochemical pesticide, methyl mercaptan is intended for use as a gopher repellent in irrigation/chemigation lines (subterranean, surface drip, and micro irrigation systems). The repellent mode of action is due to its noxious, putrid odor. Methyl mercaptan is intended to be applied in trace amounts through irrigation/chemigation lines (subterranean, surface drip, and micro irrigation systems). No direct application to food is expected, but it is possible that some trace amounts of the active ingredient may be taken up into the plant.

Overall, methyl mercaptan is considered to be of low toxicity relative to its proposed pesticidal use. Based on the available information and the fact that humans have been exposed to methyl mercaptan in food and nonfood products, the compound is considered to have a history of safe natural exposure. With specific regard to human oral toxicity, EPA notes that the human digestive system is designed to accommodate methyl mercaptan in its digestive processes. Notably, significant levels of methyl mercaptan (in excess of 1,000 ppm) are naturally produced by microflora within the human intestine. Even so, only trivial amounts are absorbed into the body because methyl mercaptan is readily oxidized in the human colon.

Although the available data indicate moderate acute inhalation toxicity, EPA does not expect any consumer exposures due to the proposed use pattern in irrigation systems. In the 90-day inhalation toxicity study, no adverse effects were identified.

With regard to potential exposure from the use of methyl mercaptan as a pesticidal active ingredient, EPA determined that expected exposures will be minimal and dietary hazards negligible. Foremost, EPA does not anticipate any significant dietary exposure due to the physical properties of methyl mercaptan. One, methyl mercaptan, which presents as a gas at ambient temperatures, is highly volatile and dissipates rapidly in the atmosphere. Two, methyl mercaptan is readily biodegradable in the soil.

Based primarily on negligible exposure levels and additionally on the active ingredient's volatility (short half-life), its biodegradability, its capacity to be metabolized by humans, its history of safe consumption in both naturally occuring foods (such as nuts and cheeses) and foods containing methyl mercaptan as a food additive, and its use as a food-grade compound in pesticide products, the remaining toxicology data requirements were waived and no points of departure were identified that would necessitate a quantitative dietary assessment of methyl mercaptan.

Therefore, due to the low toxicological profile of available methyl mercaptan, its long history of safe exposure, and the minimal dietary exposure anticipated from its use as an active ingredient, EPA determined that the pesticidal use of methyl mercaptan (as a gopher repellent) poses no significant dietary risk.

As part of its risk assessment for methyl mercaptan, EPA further considered the potential risks of residential exposures, aggregate exposures, and cumulative risk. Based on methyl mercaptan's low toxicity, anticipated negligible dietary exposure, and history of safe use in consumer products, no risks of concern have been identified relative to residential (non-occupational) pesticidal uses or any aggregate of exposures to products containing methyl mercaptan. At this time, no residential uses of methyl mercaptan are proposed. Similarly, no risks of concern were identified for cumulative exposures to methyl mercaptan, since no common mechanism of toxicity was identified for either methyl mercaptan or its metabolites.

Therefore, based on the expectation of negligible exposures and low toxicity, EPA determined that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to methyl mercaptan.

A summary of the data upon which EPA relied and its risk assessment based on those data can be found within the document entitled ''Federal Food, Drug, and Cosmetic Act (FFDCA) Safety Determination for Methyl Mercaptan.'' This document, as well as other relevant information, is available in the docket for this action as described under **ADDRESSES**.

Based on its safety determination, EPA is establishing an exemption from the requirement of a tolerance for residues of methyl mercaptan in or on all food commodities when methyl mercaptan is used as a gopher repellent in irrigation lines in accordance with label directions and good agricultural practices.

B. Analytical Enforcement Methodology

The analytical method ''ASTM D 5504–12 using a gas chromatograph equipped with a sulfur chemiluminescence detector (SCD)'' is available to EPA for the detection and measurement of the pesticide residues.

IV. Statutory and Executive Order Reviews

This action establishes an exemption from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to EPA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as

the tolerance exemption in this action, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes. As a result, this action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, EPA determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, EPA determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require EPA's consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (15 U.S.C. 272 note).

V. Congressional Review Act (CRA)

Under the CRA (5 U.S.C. 801 *et seq.*), EPA will submit a rule report to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 2, 2020.

Richard Keigwin,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Add § 180.1375 to subpart D to read as follows:

§ 180.1375 Methyl mercaptan; exemption from the requirement of a tolerance.

Residues of methyl mercaptan are exempt from the requirement of a tolerance in or on all food commodities, when methyl mercaptan is used as a gopher repellent in irrigation lines in accordance with label directions and good agricultural practices.

[FR Doc. 2020–08964 Filed 5–15–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0074; FRL–10007–09]

Fluridone; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fluridone in or on avocados, mandarins, pomegranates, pistachios, and the stone fruit group (crop group 12). SePRO Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 18, 2020. Objections and requests for hearings must be received on or before July 17, 2020, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2019–0074, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. 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 OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2019–0074 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before July 17, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior

notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2019–0074, 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 CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *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.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of February 11, 2020 (85 FR 7708) (FRL–10005–02), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8F8710) by SePRO Corporation, 11550 North Meridian Street, Suite 600, Carmel, IN 46032. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the herbicide fluridone in or on avocados, mandarins, pomegranates, pistachios, and the stone fruit group (crop group 12) at 0.1 parts per million (ppm). That document referenced a summary of the petition prepared by SePRO Corporation, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA is establishing the requested tolerances with slight variations to reflect the correct commodity definitions.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for fluridone including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with fluridone follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The liver and kidneys were identified as the primary target organs based on a multitude of organ specific effects noted across the toxicity database. All model species exhibited indications of liver toxicity that were often accompanied by body weight effects. No signs of neurotoxicity were identified in the rest of the toxicity database. Toxicity from repeated dose dermal exposures was limited to irritation effects on the skin (erythema, desquamation, epidermal fissures). No evidence of immunotoxicity, mutagenicity, or carcinogenicity were noted in the toxicity database. Fluridone did not demonstrate mutagenic behavior either in vitro or in vivo nor did exposure result in an increased incidence of tumors. The EPA concluded that fluridone should be classified as ''not likely'' to be a human carcinogen.

Specific information on the studies received and the nature of the adverse effects caused by fluridone as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document Fluridone. Human Health Risk Assessment for the Section 3 Registration on: Avocado, Mandarin (Tangerine), Pistachio, Pomegranate, and Stone Fruit (Crop Group 12–12) in docket ID number EPA–HQ–OPP–2019–0074.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for fluridone used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of February 17, 2016 (81 FR 7982) (FRL–9941–69).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fluridone, EPA considered exposure under the petitioned-for tolerances as well as all existing fluridone tolerances in 40 CFR 180. EPA assessed dietary exposures from fluridone in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single

exposure. Such effects were identified for fluridone. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). This dietary survey was conducted from 2003 to 2008. 100 percent crop treated (PCT), tolerance-level residues, and default processing factors were assumed for this assessment.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA NHANES/WWEIA. This dietary survey was conducted from 2003 to 2008. 100 PCT, tolerance-level residues, and default processing factors were assumed.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that fluridone does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for fluridone. Tolerance-level residues and/or 100% CT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for fluridone in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of fluridone. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the Tier 1 Rice Model v2.0, the estimated drinking water concentrations (EDWCs) of fluridone for acute exposures are estimated to be 150 parts per billion (ppb) for surface water and 45 ppb for ground water. For chronic exposures for non-cancer assessments are estimated to be 107 ppb for surface water and 43 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 150 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 107 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Fluridone is currently registered for the following uses that could result in residential exposures: From use on ponds (including a homeowner use), lakes, reservoirs, and rivers. EPA assessed residential exposure using the following assumptions: Adult applicators may be exposed (dermal and inhalation) while applying the pesticide to residential ponds. Residential handler exposure is expected to be short-term in duration only. Intermediate-term and chronic exposures are not likely because of the intermittent nature of applications by homeowners. There is also potential for residential post-application exposure (dermal, inhalation and incidental ingestion) for adults and children (3 to <6 years old) swimming in treated water. Residential post-application exposure is expected to be short-term in duration only. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' EPA has not found fluridone to share a common mechanism of toxicity with any other substances, and fluridone does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that fluridone does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There was no evidence of qualitative susceptibility in fetuses in the rat and rabbit developmental study. Equivocal susceptibility was observed in the young from the F2 population in the reproductive study during the lactation phase (based decreased body weight); however, body weight of the F2 offspring returned to control levels after the lactation period and no evidence of susceptibility was observed in the F3 offspring.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. More information on that decision can be found at *http://www.regulations.gov* in document Fluridone. Human Health Risk Assessment for the Section 3 Registration on: Avocado, Mandarin (Tangerine), Pistachio, Pomegranate, and Stone Fruit (Crop Group 12–12) in docket ID number EPA–HQ–OPP–2019–0074.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to fluridone will occupy 2.3% of the aPAD for all infants (<1-year-old), the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded

that chronic exposure to fluridone from food and water will utilize 7% of the cPAD for children aged 1 to 2 the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of fluridone is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Fluridone is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to fluridone. Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 1,300 for adults and 1,600 for children. Because EPA's level of concern for fluridone is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). An intermediate-term adverse effect was identified; however, fluridone is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for fluridone.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, fluridone is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to fluridone residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high performance liquid chromatography (HPLC) method (originally submitted as method AM–AA–CA–RO52–AA–755)) is available to enforce the tolerance expression.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for fluridone.

V. Conclusion

Therefore, tolerances are established for residues of fluridone, in or on avocado, tangerine, pomegranate, pistachio, and the fruit, stone, group 12–12 at 0.1 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal**

Register. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 13, 2020.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Amend § 180.420 by:

■ a. Adding alphabetically entries for ''Avocado''; ''Fruit, stone, group 12–12''; ''Pistachio''; ''Pomegranate''; and ''Tangerine'' in the table in paragraph (a)(2); and

■ b. Removing the entries ''Avocado''; and ''Fruit, stone, group 12'' in the table in paragraph (d).

The additions read as follows:

§ 180.420 Fluridone; tolerances for residues.

(a) * * *

(2) * * *

Commodity	Parts per million
Avocado	0.1
* * * * *	
Fruit, stone, group 12–12	0.1
* * * * *	
Pistachio	0.1
Pomegranate	0.1
* * * * *	
Tangerine	0.1

* * * * *

[FR Doc. 2020–08963 Filed 5–15–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 160 and 164

Enforcement Discretion Regarding COVID–19 Community-Based Testing Sites (CBTS) During the COVID–19 Nationwide Public Health Emergency

AGENCY: Office of the Secretary, HHS.

ACTION: Notification of enforcement discretion.

SUMMARY: This notification is to inform the public that the Department of Health and Human Services (HHS) is exercising its discretion in how it applies the Privacy, Security, and Breach Notification Rules under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). As a matter of enforcement discretion, the HHS Office for Civil Rights (OCR) will not impose penalties for noncompliance with the regulatory requirements under the HIPAA Rules against covered health care providers or their business associates in connection with the good faith participation in the operation of a COVID–19 Community-Based Testing Site (CBTS) during the COVID–19 nationwide public health emergency.

DATES: The notification of enforcement discretion was effective on April 9, 2020, and had a retroactive effect to March 13, 2020, and will remain in effect until the Secretary of HHS declares that the public health emergency no longer exists, or upon the expiration date of the declared public health emergency, including any extensions, (as determined by 42 U.S.C. 247d),[1] whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Rachel Seeger at (202) 619–0403 or (800) 537–7697 (TDD).

SUPPLEMENTARY INFORMATION: HHS is informing the public that it is exercising its discretion in how it applies the Privacy, Security, and Breach Notification Rules under the Health Insurance Portability and Accountability Act of 1996 (HIPAA)[2] during the nationwide public health emergency declared by the Secretary of HHS.[3]

I. Background

The Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services (HHS) is responsible for enforcing certain regulations issued under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the Health Information Technology for Economic and Clinical Health (HITECH) Act, to protect the privacy and security of protected health information (PHI), namely the HIPAA Privacy, Security, and Breach Notification Rules (HIPAA Rules).

During the COVID–19 national emergency,[4] which also constitutes a nationwide public health emergency,[5] certain covered health care providers, including some large pharmacy chains, and their business associates may choose to participate in the operation of COVID–19 specimen collection and testing sites (Community-Based Testing Sites, or CBTS). For purposes of this notification, a CBTS includes mobile, drive-through, or walk-up sites that only provide COVID–19 specimen collection or testing services to the public.

OCR will exercise its enforcement discretion and will not impose penalties for noncompliance with regulatory requirements under the HIPAA Rules against covered health care providers and their business associates in connection with the good faith participation in the operation of a CBTS during the COVID–19 nationwide public health emergency as described below.

II. Who/what is covered by this notification?

This notification applies to all HIPAA covered health care providers and their business associates when such entities are, in good faith, participating in the operation of a CBTS. The operation of a CBTS includes all activities that support the collection of specimens from individuals for COVID–19 testing.

III. Covered Health Care Providers and Their Business Associates Should Implement Reasonable Safeguards

OCR encourages covered health care providers participating in the good faith operation of a CBTS to implement reasonable safeguards to protect the privacy and security of individuals' PHI. Reasonable safeguards include the following:

• Using and disclosing only the minimum PHI necessary except when disclosing PHI for treatment.

[1] Public Health Emergency Declaration issued by HHS Secretary, pursuant to Section 319 of the Public Health Service Act, on January 31, 2020, with retroactive effective date of January 27, 2020. For more information, see *https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx.*

[2] Due to the public health emergency posed by COVID–19, the HHS Office for Civil Rights (OCR) is exercising its enforcement discretion under the conditions outlined herein. We believe that this guidance is a statement of agency policy not subject to the notice and comment requirements of the Administrative Procedure Act (APA). 5 U.S.C. 553(b)(3)(A). OCR additionally finds that, even if this guidance were subject to the public participation provisions of the APA, prior notice and comment for this guidance is impracticable, and there is good cause to issue this guidance without prior public comment and without a delayed effective date. 5 U.S.C. 553(b)(3)(B) & (d)(3).

[3] *https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx.*

[4] Presidential Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak (Mar 13, 2020), available at *https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/.*

[5] Secretary of HHS Alex M. Azar, Determination that a Public Health Emergency Exists (Jan. 31, 2020), available at *https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx.*

• Setting up canopies or similar opaque barriers at a CBTS to provide some privacy to individuals during the collection of samples.

• Controlling foot and car traffic to create adequate distancing at the point of service to minimize the ability of persons to see or overhear screening interactions at a CBTS. (A six foot distance would serve this purpose as well as supporting recommended social distancing measures to minimize the risk of spreading COVID–19.)

• Establishing a ''buffer zone'' to prevent members of the media or public from observing or filming individuals who approach a CBTS, and posting signs prohibiting filming.

• Using secure technology at a CBTS to record and transmit electronic PHI.

• Posting a Notice of Privacy Practices (NPP), or information about how to find the NPP online, if applicable, in a place that is readily viewable by individuals who approach a CBTS.

Although covered health care providers and business associates are encouraged to implement these reasonable safeguards at a CBTS, OCR will not impose penalties for violations of the HIPAA Privacy, Security, and Breach Notification Rules that occur in connection with the good faith operation of a CBTS.

IV. Who/what is not covered by this notification?

This notification does not apply to health plans or health care clearinghouses when they are performing health plan and clearinghouse functions. To the extent that an entity performs both plan and provider functions, the Notification applies to the entity *only* in its role as a covered health care provider and only to the extent that it participates in a CBTS.

This notification also does not apply to covered health care providers or their business associates when such entities are performing non-CBTS related activities, including the handling of PHI outside of the operation of a CBTS. Potential HIPAA penalties still apply to all other HIPAA-covered operations of the covered health care provider or business associate, unless otherwise stated by OCR.[6]

For example:

• A pharmacy that participates in the operation of a CBTS in the parking lot of its retail facility could be subject to a civil money penalty for HIPAA violations that occur inside its retail facility at that location that are unrelated to the CBTS.

• A covered clinical laboratory that has workforce members working on site at a CBTS could be subject to a civil money penalty for HIPAA violations that occur at the laboratory itself.

• A covered health care provider that experiences a breach of PHI in its existing electronic health record system, which includes PHI gathered from the operation of a CBTS, could be subject to a civil money penalty for violations of the HIPAA Breach Notification Rule if it fails to notify all individuals affected by the breach (including individuals whose PHI was created or received from the operation of a CBTS).

V. Collection of Information Requirements

This notification of enforcement discretion creates no legal obligations and no legal rights. Because this document imposes no information collection requirements, it need not be reviewed by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: April 14, 2020.

Roger T. Severino

Director, Office for Civil Rights Department of Health and Human Services.

[FR Doc. 2020–09099 Filed 5–15–20; 8:45 am]

BILLING CODE 4153–01–P

[6] OCR's Notifications of Enforcement Discretion and other materials relating to the COVID–19 public health emergency are available at *https://www.hhs.gov/hipaa/for-professionals/special-topics/hipaa-covid19/index.html.*

FEDERAL MARITIME COMMISSION

46 CFR Part 545

[Docket No. 19–05]

RIN 3072–AC76

Interpretive Rule on Demurrage and Detention Under the Shipping Act

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is clarifying its interpretation of the Shipping Act prohibition against failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property with respect to demurrage and detention. Specifically, the Commission is providing guidance as to what it may consider in assessing whether a demurrage or detention practice is unjust or unreasonable.

DATES: This final rule is effective May 18, 2020.

FOR FURTHER INFORMATION CONTACT: Rachel E. Dickon, Secretary; Phone: (202) 523–5725; Email: *secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

On September 17, 2019, the Commission published proposed guidance, in the form of an interpretive rule, about factors it may consider when assessing the reasonableness of demurrage and detention practices and regulations under 46 U.S.C. 41102(c) [1] and 46 CFR 545.4(d).[2] The rule followed years of complaints from U.S. importers, exporters, transportation intermediaries, and drayage truckers that ocean carrier and marine terminal operator demurrage and detention practices unfairly penalized shippers, intermediaries, and truckers for circumstances outside their control.[3] These complaints led the Commission to open a Fact Finding Investigation that substantiated many of these concerns. Based on the investigation and previous experience with demurrage and detention issues, the Commission developed guidance and sought comment in a Notice of Proposed Rulemaking (NPRM).[4] The interpretive rule was intended to reflect three general principles:

1. Importers, exporters, intermediaries, and truckers should not be penalized by demurrage and detention practices when circumstances are such that they cannot retrieve containers from, or return containers to, marine terminals because under those circumstances the charges cannot serve their incentive function.

2. Importers should be notified when their cargo is actually available for retrieval.

3. Demurrage and detention policies should be accessible, clear, and, to the extent possible, use consistent terminology.[5]

[1] Section 41102(c) represents the recodification of section 10(d)(1) of the Shipping Act of 1984. Some authorities cited herein refer to section 41102(c) while others refer to section 10(d)(1). For ease of reading, we will generally refer to section 41102(c) in analyzing these authorities.

[2] Notice of Proposed Rulemaking: Interpretive Rule on Demurrage and Detention Under the Shipping Act, 84 FR 48850 (Sept. 17, 2019).

[3] The term ''ocean carrier'' in this document refers to ocean common carriers subject to 46 U.S.C. 41102(c). *See* 46 U.S.C. 40102(18). Although the rule focuses on the practices of ocean carriers, *i.e.,* vessel-operating common carriers, and marine terminal operators as defined in the Shipping Act, section 41102(c) also applies to ocean transportation intermediaries, and some entities, specifically, non-vessel operating common carriers, are both ''common carriers'' and ''ocean transportation intermediaries.'' 46 U.S.C. 40102(17), (20).

[4] 84 FR at 48850–56.

[5] *See* 84 FR at 48851–53; *Fact Finding Investigation No. 28 Final Report* at 32 ((Dec. 3, 2018) (Final Report), *https://www2.fmc.gov/readingroom/docs/FF%20No.%2028/FF-28_FR.pdf.*

The NPRM attempted to provide guidance on these principles while making sure that the proposed interpretive rule was flexible enough to account for the variety of marine terminal operations nationwide and to allow for innovative commercial solutions to commercial problems.

Consequently, instead of prescribing practices that ocean carriers and marine terminal operators must adopt or avoid, the Commission's proposed rule was a non-exclusive list of factors that the Commission may consider when assessing the reasonableness of demurrage and detention practices under 46 U.S.C. 41102(c) and 46 CFR 545.4(d). Each section 41102(c) case would continue to be decided on its particular facts, and the rule would not foreclose parties from raising, or the Commission from considering, factors beyond those listed in the rule.

The Commission received just over one hundred comments to the NPRM, the vast majority of which supported the Commission's rule. In particular, American importers, exporters, intermediaries, and truckers urged that the Commission adopt it, and, in many instances, implored the Commission to do more. Ocean carriers and their marine terminal operator partners opposed the proposed guidance on legal and policy grounds.

Having considered the comments, the Commission adopts the rule as set forth in the NPRM, with a few minor changes. In particular, the Commission is revising the regulatory text to: (1) Adopt a policy regarding demurrage and detention practices and government inspections; and (2) to make clear that the rule does not preclude the Commission from considering additional factors outside those specifically listed.[6] Importantly, the rule is not intended to, and cannot, solve every demurrage and detention problem or quell all disputes. Rather, it reflects the Commission's finding that all segments of the industry will benefit from advance notice of how the Commission will approach the ''reasonableness'' inquiry under section 41102(c). The Commission continues to believe that such guidance will promote fluidity in the U.S. freight delivery system by ensuring that demurrage and detention serve their purpose of incentivizing cargo and equipment velocity, and that the interpretive rule will also mitigate confusion, reduce and streamline disputes, and enhance competition and innovation in business operations and policies.

II. NPRM and Summary of Comments

A. Background

Although the rule is derived from Commission's Fact Finding Investigation No. 28, that investigation itself was just the Commission's latest attempt to reconcile shipper and trucker complaints about ocean carrier and marine terminal operator demurrage and detention practices with the latter groups' insistence that the transportation system was working well and that Commission action was unnecessary.

The Commission's recent focus on demurrage and detention began in 2014, when the Commission hosted four regional port forums regarding congestion in the international ocean supply system.[7] These forums were catalyzed in part by severe winter weather and the expiration of the labor agreement covering most West Coast port workers. Although demurrage and detention were not the focus of the forums, shipper and trucker discontent with free time, demurrage, and detention practices was ''palpable.''[8]

In response, Commission staff issued a report, subsequently published by the Commission in 2015, that compiled shipper concerns about demurrage and detention, examined potential private-sector approaches to addressing those concerns, and surveyed possible ways the Commission could serve as a catalyst for those efforts.[9] Among other things, the report noted that: (1) It appeared that ocean carriers, rather than marine terminal operators, generally control demurrage and detention practices; and (2) there was little uniformity in demurrage and detention terminology or the circumstances under which ocean carriers would waive, refund, or otherwise mitigate demurrage and detention, making comparisons across the industry difficult.[10] The report also noted ''shippers' perceptions that demurrage charges are not serving to speed the movement of cargo, the purpose for which those charges had originally been intended.''[11]

Aggrieved shippers, intermediaries, and truckers took action in 2016 by petitioning the Commission to adopt a rule specifying certain circumstances under which it would be unreasonable for ocean carriers or marine terminal operators to collect demurrage or detention.[12] The petitioners were chiefly concerned that although demurrage and detention are intended to incentivize efficient cargo retrieval and container return, ''these charges did not abate consistently even though shippers, consignees, and drayage providers had no control over the events that cause[d] the ports to be inaccessible and prevented them from retrieving their cargo or returning equipment.''[13] Petitioners argued that not only were current ocean carrier and marine terminal demurrage and detention practices unjust and unreasonable, but permitting ocean carriers and marine terminal operators to levy these charges even when cargo and equipment could not be retrieved or returned weakened any incentive for them to address port congestion and their own operational inefficiencies.[14] The Commission received numerous comments on the petition and held two days of public hearings.

In light of the petition, comments, and testimony, on March 5, 2018, the Commission launched a non-adjudicatory fact finding investigation into ''current conditions and practices of vessel operating common carriers and marine terminal operators, and U.S. demurrage, detention, and per diem charges.''[15] In so doing, the Commission acknowledged the petitioners' concerns, highlighted the nationwide scope of the Commission's jurisdiction and the variety of demurrage and detention practices across the country, and recognized that

[6] The Commission is also making minor changes in the final rule, described in more detail below. The Commission has also made technical formatting changes to the paragraph levels in the final regulatory text.

[7] *See* Fed. Mar. Comm'n, 2014 Port Forums, *https://www.fmc.gov/about-the-fmc/2014-public-port-forums/;* Fed. Mar. Comm'n, *Report, Rules, Rates, and Practices Relating to Detention, Demurrage, and Free Time for Containerized Imports and Exports Moving Through Selected United States Ports* at 3 (April 3, 2015) (FMC Demurrage Report), *https://www.fmc.gov/wp-content/uploads/2019/04/reportdemurrage.pdf.*

[8] Fed. Mar. Comm'n, *Report, U.S. Container Port Congestion & Related International Supply Chain Issues: Causes, Consequences & Challenges* at 75 (July 2015) (FMC Congestion Report), *https://www.fmc.gov/wp-content/uploads/2019/04/PortForumReport_FINALwebAll.pdf.*

[9] FMC Demurrage Report at 1.

[10] FMC Demurrage Report at 2,4, 32.

[11] FMC Demurrage Report at 44.

[12] Coalition for Fair Port Practices Petition for Rulemaking, FMC No. P4–16, Ex. A (Dec. 7, 2016) (Pet. P4–16). Petitioners' rule would ''essentially revive rules that the Commission had in place for the port of New York for over 40 years.'' *Id.* at 32.

[13] Pet. P4–16 at 3.

[14] Pet. P4–16 at 4–5 (''But the incentive placed upon ocean common carriers and marine terminal operators to address port congestion is weakened if they can levy demurrage, detention, and per diem charges against parties who have no influence over the operations and conditions that prevent shippers, consignees, and drayage providers from promptly picking up cargo and returning equipment.'').

[15] *Conditions and Practices Related to Detention, Demurrage, and Free Time in Int'l Oceanborne Commerce,* 1 F.M.C.2d 1 (FMC 2018) (Order of Investigation), *https://www2.fmc.gov/readingroom/docs/FF%20No.%2028/ff-28_ord2.pdf/.*

''[t]he international ocean liner trade has changed dramatically over the last fifty years, driven in large part by the advent of containerization.'' [16] The Commission named Commissioner Rebecca F. Dye the Fact Finding Officer and charged her with developing a record on five subjects related to demurrage and detention: (a) Comparative commercial conditions and practices in the United States vis-à-vis other maritime nations; (b) tender of cargo; (c) billing practices; (d) practices regarding delays caused by intervening events; and (e) dispute resolution practices.[17] The Commission stated it would use the resulting record and Fact Finding Officer's recommendation to determine its policies with respect to demurrage and detention.[18]

The Fact Finding Investigation lasted 17 months and involved written discovery, field interviews, and group discussions with industry leaders.[19] The investigation revealed a situation marked by: (1) Increasing demurrage and detention charges even after controlling for weather and labor events; (2) complexity; and (3) a lack of clarity and consistency regarding demurrage and detention practices, policies, and terminology.[20] On December 3, 2018, the Fact Finding Officer found that:

- Demurrage and detention are valuable charges when applied in ways that incentivize cargo interests to move cargo promptly from ports and marine terminals;
- All international supply chain actors could benefit from transparent, consistent, and reasonable demurrage and detention practices, which would improve throughput velocity at U.S. ports, allow for more efficient use of business assets, and result in administrative savings; and
- Focusing port and marine terminal operations on notice of actual cargo availability would achieve the goals of demurrage and detention practices and improve the performance of the international commercial supply chain.[21]

The Fact Finding Officer further found that the U.S. international ocean freight delivery system, and American economy, would benefit from:

- Transparent, standardized language for demurrage and detention practices;
- Clear, simplified, and accessible demurrage and detention billing practices and dispute resolution processes;
- Explicit guidance regarding the types of evidence relevant to resolving demurrage and detention disputes;
- Consistent notice to cargo interests of container availability; and
- An FMC Shipper Advisory Board.[22]

The Fact Finding Officer ultimately recommended that the Commission: (a) Implement the guidance from the investigation's Final Report in an interpretive rule; (b) establish a Shipper Advisory Board; and (c) continue to support the FFO's work with stakeholders in Memphis.[23] As to the first recommendation, the Fact Finding Officer emphasized the ''longstanding principle that practices imposed by tariffs, which are implied contracts by law, must be tailored to meet their intended purpose.'' [24] Accordingly, the Fact Finding Officer explained, ''when incentives such as demurrage and detention no longer function because shippers are prevented from picking up cargo or returning containers within time allotted,'' absent extenuating circumstances, ''charges should be suspended.'' [25] The Fact Finding Officer also recommended that the Commission make clear in its proposed guidance that it may consider other factors in the ''reasonableness inquiry'' under section 41102(c), including the ''existence, accessibility, and transparency of demurrage and detention policies, including dispute resolution policies (and related concepts such as clear bills and evidence guidelines), and clarified language.'' [26]

B. Notice of Proposed Rulemaking and Comments

The Commission adopted the Fact Finding Officer's recommendation on September 6, 2019, and on September 13, 2019, issued its proposed guidance in an NPRM.[27] The proposed rule took the form of a non-exclusive list of factors that the Commission may consider when assessing the reasonableness of demurrage and detention regulations and practices under 46 U.S.C. 41102(c).[28] Consistent with Commission caselaw on section 41102(c), the chief consideration was whether ocean carrier and marine terminal operator practices are tailored to meet their intended purposes.[29] In the case of demurrage and detention, the rule stated, this means considering the extent to which demurrage and detention serve their purposes as financial incentives to promote freight fluidity.[30] The rule also set forth illustrations of how the Commission might apply this principle, and additional considerations the Commission might weigh, in various contexts, *e.g.,* empty container return.[31] The Commission discussed government inspections in the NPRM but deferred issuing guidance with respect to that issue until it received industry comment.

The industry responded to the NPRM with over one hundred comments.[32] Most commenters supported the proposed guidance.[33] This support came primarily from importers, exporters, transportation intermediaries, and truckers, large and small, and their trade associations, from across the United States. To the extent their comments departed from the rule, it was to ask the Commission to do more: To be more prescriptive and require ocean carriers to take certain actions and refrain from others, to apply the proposed guidance to more situations and contexts than described expressly in the NPRM, and to consider more

[16] *Id.* at 2.

[17] *Id.* at 2–3.

[18] *Id.* at 2.

[19] In the first phase of the investigation, the Fact Finding Officer (FFO) obtained information and documents from twenty-three ocean carriers and forty-four marine terminal operators and operating ports, as well as importers, exporters, truckers, and intermediaries. Final Report at 7–8. In the investigation's second phase, the FFO met in-person and telephonically with representatives from a cross section of the industry, including over twenty-five ports and marine terminal operators. *Id.* at 11. In the third phase, the FFO met with stakeholders in groups to discuss the feasibility of implementing some of the recommendations from the first two investigatory phases. Letter from Rebecca F. Dye, Commissioner, to Michael A. Khouri, Chairman, Daniel B. Maffei, Commissioner, Louis E. Sola, Commissioner, Federal Maritime Commission (Aug. 27, 2019) (FF28 Letter).

[20] *Fact Finding Investigation No. 28 Interim Report* at 5–14 (Sept. 4, 2018) (Interim Report), *https://www2.fmc.gov/readingroom/docs/FF%20No.%2028/FF28_int_rpt2.pdf/;* Final Report at 25, 29–30.

[21] Final Report at 32.

[22] Final Report at 32.

[23] FF28 Letter at 1.

[24] FF28 Letter at 1.

[25] FF28 letter at 2.

[26] FF28 Letter at 2.

[27] *See* Fed. Mar. Comm'n, *Commission Approves Dye's Final Recommendations on Detention and Demurrage* (Sept. 6, 2019), *https://www.fmc.gov/commission-approves-dyes-final-recommendations-on-detention-and-demurrage/;* Fed. Mar. Comm'n, *Proposed Interpretive Rule on Demurrage and Detention Issued* (Sept. 13, 2019), *https://www.fmc.gov/proposed-interpretive-rule-on-demurrage-and-detention-issued/.*

[28] 84 FR at 48855–48856.

[29] 84 FR at 48852.

[30] 84 FR at 48855.

[31] 84 FR at 48855–48856.

[32] In promulgating this final rule and as discussed below, the Commission has considered all comments filed on or before the comment deadline of October 31, 2019, as well as all comments filed between November 1, 2019 and March 31, 2020. Although we received additional comments in April 2020, it was not possible to consider these comments given the drafting schedule for the final rule.

[33] Approximately 60 commenters expressly supported the proposed guidance, and another 20 commenters supported the proposed guidance implicitly or in part.

circumstances as justifying mitigation of demurrage and detention.

In contrast, ocean carriers, marine terminal operators, chassis lessors, and cooperative working agreements of ocean carriers and marine terminal operators [34] opposed the rule. Also opposing the rule were trade associations such as the World Shipping Council (WSC), a trade group representing the interests of approximately 90 percent of the global liner vessel capacity, whose members include companies such as China COSCO Shipping Corporation, Mediterranean Shipping Company, and A.P. Møller-Maersk.[35] They argued that the Commission lacks the authority to issue the rule, and that the rule is unnecessary, costly, burdensome, and unfair to ocean carriers and marine terminal operators.

III. Discussion of Particular Issues

A. General Legal Challenges to Rule

Ocean carrier and marine terminal operators raise a number of legal objections to the rule, many of which are based on misinterpretations of the guidance.[36] WSC describes the rule as ''prescrib[ing] sweeping new standards that would make ocean carriers financially responsible for circumstances beyond their control'' and ''impose significant regulatory costs on carriers in order to comply with those standards.'' [37] Similarly, the National Association of Waterfront Employers (NAWE) contends that the rule ''would require wholesale changes in the way ocean carriers and marine terminal operators do business.'' [38] And the Pacific Merchant Shipping Association (PMSA) insists that the NPRM's ''rigid standards of reasonableness'' ''seek[ ] to mandate a 'perfect world.' '' [39]

These characterizations bear little resemblance to the proposed rule.[40] The rule consists of a *non-exclusive* list of *factors* for the Commission to consider when determining whether demurrage and detention practices are ''just and reasonable'' under 46 U.S.C. 41102(c).[41] And aside from the general incentive principle, which the proposed rule indicated the Commission *will* consider,[42] the particular applications of that principle and other factors listed are things the Commission *may* consider. The Commission also sought in the preamble of the NPRM to give a sense of how those factors might weigh in particular contexts [43] and gave some examples of the attributes of demurrage and detention practices that might, in the abstract, weigh favorably or unfavorably in the analysis.[44]

The Commission emphasized that although the factors in the proposed rule would guide its analysis, ''each section 41102(c) case would continue to be decided on the particular facts of the case.'' [45] The application of the ''incentive principle,'' the Commission reiterated, would ''vary depending on the facts of a given case.'' [46] Moreover, the Commission specified that the illustrations of how the factors might apply in the NPRM were subject to ''extenuating circumstances.'' [47] In other words, the Commission would consider any additional or countervailing arguments or evidence raised by the parties in a particular case.

It appears from ocean carrier and marine terminal operator comments, however, that some may have misunderstood the nature of the proposed rule. Consequently, the final rule includes a new paragraph confirming that nothing in the rule precludes the Commission from considering other factors, arguments, and evidence in addition to the ones specified.

1. APA Considerations

Turning to the ocean carriers and marine terminal operators' specific legal objections, these commenters first argue that despite the Commission characterizing the proposed rule as guidance and interpretive, it is actually a legislative rule subject to all the Administrative Procedure Act's (APA) rulemaking requirements.[48] Because the Commission did not comply with these requirements, they argue, the rule violates the APA.

The APA's notice-and-comment requirements apply to legislative rules, not ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.'' [49] A legislative rule is ''[a]n agency action that purports to impose legally binding obligations or prohibitions on regulated parties—and that would be the basis for an enforcement action for violations of those obligations or requirements.'' [50] Interpretive rules and policy statements, in contrast, are explanatory in nature; they do not impose new obligations.[51] The key consideration is whether the rule has ''legal effect,'' which courts assess by asking:

(1) Whether in the absence of the rule there would not be an adequate legislative basis for enforcement action or other agency action to confer benefits or ensure the performance of

[34] The Ocean Carrier Equipment Management Association (OCEMA) (FMC Agreement No. 011284), the Port of New York and New Jersey Sustainable Services Agreement (PONYNJSSA) (FMC Agreement No. 201175), and the West Coast MTO Agreement (WCMTOA) (FMC Agreement No. 201143) are cooperative working agreements filed with the Commission under the Shipping Act.

[35] *http://www.worldshipping.org/about-the-council/member-corporations.*

[36] The Institute of International Container Lessors' (IICL) argument that ''the FMC had no jurisdiction to permit the chassis management limited liability corporations that were formed by the ocean carriers to become parties to FMC agreements with resultant antitrust immunity'' is beyond the scope of this rulemaking.

[37] WSC at 2; *see also id.* at 4 (describing rule as a ''blanket rule'').

[38] NAWE at 8. NAWE represents marine terminal operators. *Id.* at 1.

[39] PMSA at 1, 4. PMSA is an association of marine terminal operators and ocean carriers. *Id.* at 1.

[40] WSC implicitly concedes that the rule does not set forth requirements by using the adverb ''effectively'' when portraying what it believes the guidance would do. *See* WSC at 10 (''The NPRM effectively prohibits . . . .''); *id.* at 11 (''the NPRM effectively requires . . .''); *cf.* (''This new interpretation of reasonableness would essentially require . . . .'').

[41] 84 FR at 48851, 48855–56; *see also* FF28 Letter at 2 (noting that interpretive rule includes factors that the Commission may consider as contributing to the reasonableness inquiry).

[42] 84 FR at 48855–56. As noted in the NPRM, the ''incentive principle'' is simply another way of stating the preexisting test for reasonableness under section 41102(c): Whether a regulation or practice is ''tailored to meet its intended purpose.'' Id. at 48852 (quoting *Distribution Servs. Ltd.* v. *Trans-Pac. Freight Conference of Japan and Its Member Lines,* 24 S.R.R. 714, 722 (FMC 1988)).

[43] *E.g.,* 84 FR at 48852; *see also id.* 48853 (''The more notice is calculated to apprise cargo interests that cargo is available for retrieval, the more this factor favors a finding of reasonableness.''); *id.* (''The more these factors align with the goal of moving cargo off terminal property, the less likely demurrage practices would be found unreasonable.'').

[44] 84 FR at 48852 (listing ''[e]xamples of demurrage practices that are expressly linked to container availability and which the Commission would weigh positively in the reasonableness analysis''); *id.* at 48853 (''Imposing detention in situations of uncommunicated or untimely communicated changes in container return location also weighs on the side of unreasonableness, as might doing so when there have been uncommunicated or untimely communicated notice of terminal closures for empties.''); *id.* (''[D]emurrage practices that link the start of free time to notice that a container is available weigh in favor of reasonableness. . . . .''); *id.* at 48854 (listing attributes of dispute resolution policies that will weigh in favor of reasonableness).

[45] 84 FR at 48851.

[46] 84 FR at 48852.

[47] 84 FR at 48855 (''Absent extenuating circumstances, practices and regulations that provide for imposition of detention when it does not serve its incentivizing purposes, such as when empty containers cannot be returned, are likely to be found unreasonable.''); *id.* at 48853 (framing guidance as ''[a]bsent extenuating circumstances'').

[48] WSC at 6.

[49] 5 U.S.C. 553(b).

[50] *Nat'l Mining Ass'n* v. *McCarthy,* 758 F.3d 243, 251 (D.C. Cir. 2014).

[51] *Id.* at 252. Although the Commission refers to its guidance as an interpretive rule, whether it is an ''interpretive rule'' or ''general statement of policy'' within the meaning of the APA is not relevant to WSC's argument that the rule is legislative.

duties, (2) whether the agency has published the rule in the Code of Federal Regulations, (3) whether the agency has explicitly invoked its general legislative authority, or (4) whether the rule effectively amends a prior legislative rule. If the answer to any of these questions is affirmative, we have a legislative, not an interpretive rule.[52]

None of the factors support treating the Commission's non-exclusive list of considerations as a legislative rule. WSC argues that the rule meets the first prong because it ''without question proposes new, enforceable obligations on carriers with respect to detention practices.'' [53] According to WSC, the rule and NPRM would require substantial changes in how carriers operate, and ''the proposed rule would create new grounds for reparations actions.'' [54]

The rule does not, however, have ''legal effect'' within the meaning of the *American Mining* test. The rule could not be the basis for a Commission enforcement action or a private party reparation action. There are no ''requirements'' or mandates or dictates in the rule for an ocean carrier to violate. In other words, one cannot bring an action based on the rule alone—the basis for any legal action would be section 41102(c). Similarly, the rule does not subject regulated entities to any new legal authority. They were already subject to section 41102(c)'s requirement that their practices be ''just and reasonable.'' Further, the NPRM makes clear that each demurrage and detention case under section 41102(c) would be decided on its own facts, and the Commission is adding a provision to the final rule to expressly reflect that the Commission may consider additional factors, arguments, and evidence presented in individual cases. A set of factors issued as guidance does not constitute a legislative rule.[55]

Moreover, that the industry might rely on the guidance in the Commission's rule, and that ocean carriers and marine terminal operators might feel ''pressure to voluntarily conform'' does not make the rule legislative.[56] The Commission is issuing guidance in part to mitigate confusion about how the Commission may apply section 41102(c) with respect to demurrage and detention.[57] Providing advance notice ''facilitates long range planning within the regulated industry, and allows the public a chance to contemplate an agency's views before those views are applied to particular factual circumstances.'' [58] Commission guidance will not only help ocean carriers and marine terminal operators avoid section 41102(c) liability, but it will also raise awareness of shipper, intermediary, and trucker obligations. The ''mere fact'' that an interpretive rule could have a ''substantial impact does not transform it into a legislative rule.'' [59]

Additionally, the rule is not legislative because the Commission published the NPRM in the **Federal Register** and because the final rule will be codified in the Code of Federal Regulations (CFR). While publication in the CFR is a factor courts look at, it is based on a presumption, [60] and publication or its absence is nothing more than a ''snippet of evidence of agency intent''; it is not determinative.[61] The Commission customarily publishes non-legislative rules in the CFR in a part titled ''Interpretations and Statements of Policy.'' [62] For instance, the Commission published an interpretive rule regarding section 41102(c) in the CFR as recently as December 2018.[63] Here, the Commission reasoned that publication in the **Federal Register** and CFR was not only consistent with its normal practice, but would promote public notice of the guidance.[64]

The Commission's guidance also does not qualify as a legislative rule under the final two *American Mining* criteria. The Commission did not invoke its general legislative authority to issue its interpretive rule. The Commission's authority to issue interpretive rules and policy statements derives from the APA.[65] The only reference to the Commission's general rulemaking authority under 46 U.S.C. 305 in the NPRM copies the preexisting authority citation for part 545 of the Commission's regulations.[66] And the Commission's rule does not amend any prior legislative rule.

Because the Commission's guidance is not a legislative rule, APA requirements applicable solely to legislative rules are inapplicable here. That said, commenters' APA-related arguments are unpersuasive. The primary distinction under the APA between legislative rules on one hand and interpretive rules and statements of policy on the other is that the former require notice and comment while the latter do not.[67] While not required to engage in notice-and-comment rulemaking, the Commission nonetheless provided notice and requested comment on the proposed rule in this case, and ocean carriers, marine terminal operators, importers, exporters, intermediaries, and truckers also had the opportunity to weigh in on possible Commission action during the Fact Finding No. 28 investigation.

WSC argues that the Commission failed in the NPRM to discuss the record in detail or link the evidentiary record to the ''reasonableness'' standard under section 41102(c).[68] But the principles in the interpretive rule flow directly from information the Commission received during the Fact Finding No. 28 investigation and described in the Fact Finding reports, which the Commission cited in the NPRM. The Commission focused on the ''incentive principle'' because section 41102(c) requires that regulations and practices be tailored to meet their intended purpose,[69] and because fact finding participants repeatedly told the Commission that demurrage and detention were incentive

[52] *Am. Mining Cong.* v. *Mine Safety & Health Admin.,* 995 F.2d 1106, 1112 (D.C. Cir. 1993).

[53] WSC at 4.

[54] WSC at 5.

[55] *Cf. Inv. Co. Inst.* v. *CFTC,* 720 F.3d 370, 381 (D.C. Cir. 2013) (noting that guidance in form of a seven-factor test was not subject to the APA's notice-and-comment provision).

[56] *Sec. Indus. & Fin. Mkts. Ass'n* v. *CFTC,* 67 F. Supp. 3d 373, 422 (D.D.C. 2014). In determining that the agency issuance was a policy statement as opposed to a legislative rule, the court reasoned that ''[p]ractical consequences, such as the threat of having to defend itself in an administrative hearing should the agency actually decide to pursue enforcement pursuant to the policies within the Cross-Border Action are insufficient to bring an agency's conduct under [the Court's] purview.'' *Id.* (internal quotation marks omitted).

[57] 84 FR at 48851.

[58] *Sec. Indus.,* 67 F. Supp. 3d at 422 (internal quotation marks and citations omitted).

[59] *Cent. Texas Tel. Coop.* v. *FCC,* 402 F.3d 205, 214 (D.C. Cir. 2005).

[60] *Am. Mining Cong.,* 995 F.2d at 1109 (''Second, an agency presumably intends a rule to be legislative if it has the rule published in the Code of Federal Regulations . . . .).

[61] *Health Ins. Ass'n of Am.* v. *Shalala,* 23 F.3d 412, 423 (D.C. Cir. 1994).

[62] 46 CFR part 545.

[63] Final Rule: Interpretive Rule, Shipping Act of 1984, 83 FR 64478 (Dec. 17, 2018).

[64] *Cf. Am. Mining Cong.,* 995 F.2d at 1112 (''The protection that Congress sought to secure by requiring notice and comment for legislative rules is not advanced by reading the exemption for 'interpretive rule' so narrowly as to drive agencies into pure ad hocery—an ad hocery, moreover, that affords less notice, or less convenient notice, to affected parties.'').

[65] *See Splane* v. *W.,* 216 F.3d 1058, 1066 (Fed. Cir. 2000) (''[A]n agency's statutory authority to issue interpretive rules is implicit in sections 552(a)(1) and 553 of title 5.''). Because the source of the Commission's authority to issue guidance is the APA and 46 U.S.C. 41102(c), the National Federation of Independent Business's argument that 46 U.S.C. 305 does not grant the Commission power to prescribe regulations to implement section 41102(c) is unpersuasive. Nat'l Fed. Ind. Business at 2–3. Moreover, as described in further detail in Part III.A.2, *infra,* the Commission has the authority to prescribe regulations under section 41102(c). The commenter also correctly points out that the Commission could achieve results similar to the rule via adjudication. *Id.* at 3. The choice whether to proceed via adjudication or rulemaking, however, ''lies primarily in the informed discretion of the administrative agency.'' *SEC* v. *Chenery Corp.,* 332 U.S. 194, 203 (1947).

[66] 84 FR at 48855.

[67] 5 U.S.C. 553.

[68] WSC at 6–8.

[69] *Distribution Servs.,* 24 S.R.R. at 722.

charges.[70] The Commission's guidance emphasizes cargo availability and notice thereof because ocean carrier and marine terminal operators generally agreed that their carrier obligations were related to the concepts of reasonable notice of cargo availability and reasonable opportunity to retrieve cargo, and because the ''issue most frequently discussed during Phase Two was notice of container availability and the relationship between container availability and demurrage free time.[71] The Commission's guidance focused on the existence, clarity, content, and accessibility of demurrage and detention dispute resolution and billing practices, and demurrage and detention terminology, because the Commission's review of ocean carrier and marine terminal operator records (some of which are public, *e.g.,* tariffs) and discovery responses showed that the practices were rife with complexity, inconsistency, lack of transparency, and variability.[72]

WSC's objection appears to be that the Commission did not cite or discuss the specific documents it reviewed during the Fact Finding Investigation. The Commission does not, however, typically make public its investigatory records in such proceedings.[73] Additionally, most ocean carriers and marine terminal operators requested confidentiality for the responses and documents they submitted to the Commission during Phase One of the investigation. The Commission assumes that WSC is not suggesting that the Commission should ignore those requests for confidentiality.

Several ocean carrier and marine terminal operator commenters also argue that the Commission's rule would depart from Commission precedent without adequate explanation.[74] The rule, however, with a few exceptions explained in more detail below, is consistent with the Commission's approach to applying section 41102(c) and its predecessors (*i.e.,* section 17 of the Shipping Act of 1916). Further, the commenters provide no support for their suggestion that the Commission cannot change agency precedent via an interpretive rule.[75] Commission precedent is not ''binding'' on the Commission—the Commission can change course in a subsequent case.[76] NAWE has not explained why Commission could not also change course via an interpretive rule,[77] especially when the Commission recently did so in a 2018 interpretive rule that ocean carriers and MTOs supported.[78]

Many of these same commenters further contend that the interpretive rule would shift the burden of proof in section 41102(c) cases in violation of the APA.[79] But nothing in the rule changes the burden of proof. Under the APA and Commission regulations, ''the proponent of a rule or order has the burden of proof.'' [80] This burden of persuasion does not shift, even if the burden of producing evidence does in some cases.[81] In a section 41102(c) case, the complainant has the burden of persuading the Commission that a practice or regulation is unjust or unreasonable, and if that burden is met, the burden of refuting that conclusion is on the respondent.[82] In all instances, the complainant bears the ultimate burden of proving unreasonableness.[83]

The rule does not change that framework. A complainant would still have the burden of proving all the elements of a section 41102(c) claim under 46 CFR 545.4, including proving by a preponderance of the evidence that the demurrage or detention practice or regulation at issue is ''unjust or unreasonable.'' It is true that the rule might help a complainant prove that element by giving guidance about what sort of arguments and evidence the Commission is likely to find relevant. Setting forth factors that the Commission might consider in a case, however, does not shift the burden of proof.[84]

2. Statutory Authority

Another objection raised by commenters is that the Commission lacks authority under the Shipping Act to issue the interpretive rule.[85] Commenters point out that section 17 of the Shipping Act of 1916, the predecessor of section 41102(c), stated that not only must regulated entities establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property, but also the Commission, upon finding that any such regulation or practice is unjust or unreasonable, may determine, prescribe, and order enforced a just and reasonable regulation or practice.[86] The Shipping Act of 1984, however, replaced this language with: ''No common carrier, ocean freight forwarder, or marine terminal operator may fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.'' [87] According to commenters, by removing the second sentence of section 17 of the 1916 Act'' from its 1984 equivalent, Congress ''eliminated the Commission's

[70] Final Report at 12 (''Importantly, almost every Phase Two respondent characterized demurrage as an incentive, to get containers out of the terminal.''); Interim Report at 2–3.

[71] Interim Report at 9; Final Report at 18.

[72] Interim Report at 5–6, 10–11, 12, 14; *see also* Final Report at 11–18.

[73] *See, e.g.,* Order of Investigation (authorizing the fact finding officer to hold public or nonpublic sessions); 46 CFR 502.291.

[74] Am. Ass'n of Port Authorities at 2; NAWE at 5–6; OCEMA at 5; PMSA at 8–9; WCMTOA at 7, 8, 12; WSC at 8, 13.

[75] NAWE at 6 n.2 (asserting that ''the NPRM raises additional legal issues in that it seeks to change binding precedent through a non-binding, interpretative rule'').

[76] *See Gen. Am. Transp. Corp.* v. *ICC,* 872 F.2d 1048, 1060 (D.C. Cir. 1989) (''It seems to us presumptively reasonable that a controlling principle announced in one adjudication may be modified in a subsequent adjudication . . . .''); *id.* (''As we have said before, 'adjudicatory decisions do not harden into ''rules'' which cannot be altered or reversed except by rulemaking simply because they are longstanding.' '') (quoting *Chisholm* v. *FCC,* 538 F.2d 349, 365 (D.C. Cir. 1976)).

[77] *Cf. Health Ins. Ass'n,* 23 F.3d at 424–25 (noting that disincentivizing the issuance of interpretive rules would lead to the ''ironic result'' that ''the entities affected by the agency's interpretations would be left more in the dark than before, for clues to the agency's reading of the relevant texts would emerge only on an ad hoc basis'').

[78] *See* Final Rule: Interpretive Rule, Shipping Act of 1984, 83 FR 64478, 64478 (Dec. 17, 2018); NPRM: Interpretive Rule, Shipping Act of 1984, 83 FR 45367, 45367–68 (Sept. 7, 2018).

[79] NAWE at 6 (''Here, the NPRM would have the effect of shifting the burden of proof from a complaining shipper, receiver or motor carrier to the marine terminal operator, which would be required to overcome the presumption of unreasonableness effectively established by the NPRM and demonstrate the reasonableness of assessing the charge in that situation.''); Am. Ass'n of Port Authorities at 2; OCEMA at 2–3; WCMTOA at 5 n.2.

[80] 5 U.S.C. 556(d); 46 CFR 502.203.

[81] *Maher Terminals, LLC* v. *Port Auth. of N.Y. & N.J.,* FMC Case No. 08–03, 2014 FMC LEXIS 35, at *41–*43 (FMC 2014), *remanded on other grounds, Maher Terminals, LLC* v. *Fed. Mar. Comm'n,* 816 F.3d 888 (D.C. Cir. 2016).

[82] *Maher Terminals,* 2014 FMC LEXIS at *35 (citing *River Parishes Co.* v. *Ormet Primary Aluminum Corp.,* 28 S.R.R. 751, 765 (FMC 1999)); *Exclusive Tug Arrangements in Port Canaveral, Fla.,* 29 S.R.R. 1199, 1222 (ALJ 2003).

[83] *Id.* at *42.

[84] In *Maher Terminals, LLC* v. *Port Auth. of NY. & N.J.,* for instance, the Commission listed a number of factors it would consider in determining whether a respondent granted an unreasonable preference, and in so doing it did not change the burden of proof. FMC Case No. 08–03, 2016 FMC LEXIS 61 *9–*11 (FMC Oct. 26, 2016).

[85] NAWE at 3–4 (''Because the NPRM would have the effect of specifying those regulations and practices which are reasonable and those which are not, it is beyond the scope of the Commission's authority under the Shipping Act and would be unlawful.''); WSC at 10–11.

[86] Shipping Act, 1916, Public Law 64–260, 17, 39 Stat. 728, 734–35 (1916).

[87] Shipping Act of 1984, Public Law 98–237, 10(d)(1), 98 Stat. 67, 89 (1984). This is substantially similar to how the statute appears today. 46 U.S.C. 41102(c).

authority to determine, prescribe and order enforcement of a just and reasonable regulation or practice.'' [88]

This argument misses the mark, however, because the rule does not determine, prescribe, or order enforcement of a reasonable practice; that is, it does not prescribe specific practices that regulated entities must adopt.[89] The Commission avoided doing so because it did not want to inhibit stakeholders from developing new and better practices. Consequently, even if the differences between section 17 of the 1916 Act and section 41102(c) removed some Commission authority, the present rule is not implicated.

In addition, although the Commission has not elected to issue a legislative rule in this case, the Commission disagrees with the contention that it lacks the authority to issue rules prohibiting practices or regulations determined to be unjust or unreasonable. The Commission has broad general rulemaking authority under 46 U.S.C. 305, which provides that the Commission ''may prescribe regulations to carry out its duties and powers.'' [90] The Commission has relied on this authority and section 41102(c) to issue regulations prohibiting certain practices determined to be unjust and unreasonable,[91] and the D.C. Circuit has affirmed this authority.[92]

3. Shipping Act Purposes

A few marine terminal operator and ocean carrier commenters further claim that the rule is inconsistent with the purposes of the Shipping Act because it represents ''extreme government intrusion into the market'' and discriminates against ocean carriers and marine terminal operators by placing all risk on them.[93] The purposes of the Shipping Act are to:

- Establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs;
- Provide an efficient and economic transportation system in the ocean commerce of the United States that is, insofar as possible, in harmony with, and responsive to, international shipping practices;
- Encourage the development of an economically sound and efficient liner fleet of vessels of the United States capable of meeting national security needs; and

Promote the growth and development of United States exports through competitive and efficient ocean transportation and by placing a greater reliance on the marketplace.[94]

The Commission fails to see how issuing an interpretive rule while declining calls for more prescriptive regulation,[95] represents ''extreme government intrusion.'' It is unclear based on the comments whether there is *anything* the Commission could do regarding demurrage and detention that ocean carriers and marine terminal operations would not object to as overly intrusive regulation.[96] That one purpose of the Shipping Act is to minimize government intervention does not mean that the Commission may abandon its duty to prevent unreasonable practices under section 41102(c).

Nor is the interpretive rule discriminatory within the meaning of the Shipping Act. There is nothing discriminatory about the Commission describing factors that would help ensure that ocean carriers and marine terminal operators comply with their preexisting duty under section 41102(c) to ensure their practices are reasonably tailored to match their purposes. Further, the ''discrimination'' the Shipping Act is concerned with is discrimination by ocean carriers and marine terminal operators against shippers and others in the industry, not so-called discrimination by the Commission against the entities it oversees.[97] This general purpose aligns with the more specific mandate in section 41102(c) that the Commission determine the reasonableness of certain carrier and marine terminal operator practices. In sum, it is consistent with the purposes of the Shipping Act for the Commission to address the concerns of American importers, exporters, intermediaries, and truckers.

4. Executive Orders

Two commenters assert that the Commission's interpretive rule violates various executive orders. First, NAWE argues that ''[b]y specifying the behavior or manner of compliance that regulated entities should adopt rather than performance objectives, the NPRM violates Executive Order 12866.'' [98] Executive Order 12866, titled ''Regulatory Planning and Review,'' was issued in 1993. It sets forth several ''principles of regulation,'' one of which is that ''[e]ach agency shall identify and assess alternative forms of regulation and shall, to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt.'' [99] According to NAWE, the ''effect of the NPRM is to require regulated entities to engage in specific behavior,'' contrary to the executive order.[100]

The Commission's guidance is not inconsistent with Executive Order 12866. As in initial matter, the order does not apply to the Commission. It expressly excludes from its scope

[88] NAWE at 4.

[89] Put differently, the Commission is not saying ''regulated entities must do X;'' it is saying ''here are factors the Commission may apply when determining whether Y practices are unreasonable.''

[90] This section represents a recodification of two similarly worded provisions, section 201(c) of the Merchant Marine Act of 1936, Public Law 74–835, and section 17(a) of the Shipping Act of 1984. *See* H.R. Rep. No. 109–170, at 28 (2005)

[91] *See, e.g.,* NPRM: Filing of Tariffs by Marine Terminal Operators Exculpatory Provisions, 51 FR 15655 (Apr. 25, 1986) (''Tariff provisions that exculpate or otherwise relieve marine terminal operators from liability for their own negligence, or that would impose upon others the obligation to indemnify or save harmless the terminals from liability for their own negligence, are, as a rule, unjust and unreasonable and, therefore, contrary to the provisions of section 17 of the Shipping Act, 1916 and section 10(d)(1) of the Shipping Act of 1984.''); NPRM: Exemption of Certain Marine Terminal Services Arrangements, 56 FR 22384, 22387–22388 (May 15, 1991) (concluding that the differences between section 17 of the 1916 Act and section 10(d)(1) of the 1984 Act did not preclude the Commission from requiring filing of marine terminal operator tariffs, and relying on section 10(d)(1) and section 17 of the 1984 Act as authority to continue those requirements); *See also* 46 CFR 515.32(d); 46 CFR 515.41(c); 46 CFR 525.2(a)(1).

[92] *See Nat'l Customs Brokers & Forwarders Ass'n* v. *United States,* 883 F.2d 93, 98–101 (D.C. Cir. 1989); *id.* at 100 (''We uphold the FMC's constant rule on the ground that the Commission, in the reasonable exercise of its rulemaking authority, may interpret section 10(d)(1) to prohibit forwarder discrimination in the charges billed to customers.'').

[93] NAWE at 9–10; WSC at 11–12; Ports Am. At 2–3.

[94] 46 U.S.C. 40101.

[95] *E.g.,* Pet. P4–16, Ex. A.

[96] *E.g.* WCMTOA at 3 (''Any proposed change to the current model introduces risk that cargo dwell times on the terminals will increase, effectively reducing terminal throughput capacity causing increased non-compensated costs to MTOs''); WSC at 12–13 (''Those charges and the way each line build[s] them and use[s] them creates real competition among carriers and should not be regulated because these would distort those factors in the marketplace.'') (citing testimony of Paolo Magnani, an ocean carrier executive).

[97] ''The primary purpose of the shipping laws administered by the FMC is to protect the shipping industry's customers, not members of the industry,'' *Boston Shipping Ass'n* v. *Fed. Mar. Comm'n,* 706 F.2d 1231, 1238 (1st Cir. 1983), and the Act ''exists in large measure to protect shippers and other persons from unreasonable or discriminatory carrier practices,''*50 Mile Container Rules*'' *Implementation by Ocean Common Carriers Serving U.S. Atl. & Gulf Coast Ports,* 24 S.R.R. 411, 457–58 (FMC 1987). *See also Credit Practices of Sea-Land Service, Inc.,* 25 S.R.R. 1308, 1313 (FMC 1990) (''The Commission most recently recognized this policy in stating that '[t]he prevention of *economic* discrimination is at the heart of the regulatory scheme established by Congress in the 1984 Act.' '') (emphasis added).

[98] NAWE at 6.

[99] Exec. Order No. 12866, § 1(b)(8), 51 FR 51735, at 51736 (Oct. 4, 1993).

[100] NAWE at 7–8.

''independent regulatory agencies'' such as the Commission.[101] Further, as explained above, the rule is not specifying behavior that regulated entities must adopt; it is describing a non-exclusive list of factors the Commission will consider in evaluating the reasonableness of demurrage and detention practices.

Additionally, in light of NAWE's arguments that the proposed rule is too prescriptive, the Commission is perplexed by NAWE's assertion that the Commission should instead specify ''performance objectives,'' a much more intrusive undertaking. That is, rather than its traditional approach to section 41102(c), NAWE would apparently prefer the Commission set, and assess compliance with, performance metrics. Examples of such metrics commonly used to assess cargo fluidity include container dwell time, truck turn time, and gate moves. Some commenters would welcome that approach.[102] But others have approached performance objectives with caution.[103]

The other executive order mentioned by commenters is Executive Order 13777, titled ''Enforcing the Regulatory Reform Agenda.'' [104] Issued in 2017, this Executive Order's purpose was to ''lower regulatory burdens on the American people by implementing and enforcing regulatory reform.'' [105] WSC asserts that the ''NPRM's imposition of additional regulatory costs and burdens is in direct contrast with the Executive Order.'' [106]

Executive Order 13777, like Executive Order 12866, is not binding on the Commission.[107] The Commission has, however, voluntarily undertaken regulatory reform efforts consistent with the spirt of the order.[108] There is no evidence that the rule on demurrage and detention is outdated, unnecessary, or otherwise interferes with regulatory reform initiatives and policies. The Commission's interpretive rule is consistent with the goals of regulatory reform and Congress's mandate that the Commission protect U.S. shippers and their agents from unreasonable practices.

5. Filed Rate Doctrine

A few commenters question whether statements in the NPRM that the Commission may consider whether demurrage or detention practices provide for mitigation of charges when cargo cannot be retrieved, or containers returned, can be reconciled with the ''filed rate doctrine.'' The ''filed rate doctrine'' ''provides that any entity required to file tariffs governing the rates, terms, and conditions of service must adhere strictly to those terms.'' [109] Commenters argue that the rule might require ocean carriers to deviate from their tariffs in contravention of this doctrine.[110]

This issue involves reconciling two different prohibitions in the Shipping Act. The Shipping Act incorporates the filed rate doctrine by prohibiting common carriers from providing service in the liner trade that is ''not in accordance with the rates, charges, classifications, rules, and practices contained in a'' published tariff.[111] The Shipping Act also, however, prohibits common carriers from failing ''to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.'' [112] If a practice (or the absence of a practice) in a tariff is ''unreasonable'' under the latter prohibition, it is no defense to rely on the former. ''The [filed rate] doctrine is meant to preserve the integrity of filed tariff laws, not to provide carriers with an irrebuttable excuse for alleged violations of the Act.'' [113]

Nor does the Shipping Act necessarily require common carriers to apply all tariffed charges without exception. Section 41104 requires that ocean carriers provide service in accordance with their rules and practices. Those rules and practices can provide ocean carriers with the flexibility to mitigate charges (by waiver, refund, or free time extension) in appropriate cases. During the Fact Finding Investigation, ''[m]ost VOCCs and MTOS stated that they have a policy for extending free time or waiving or otherwise mitigating demurrage and detention caused by circumstances outside of the control of cargo interests or truckers,'' and several provided tariffs reflecting such policies.[114] Similarly, the Commission has permitted deviations from tariff rates when parties settle bona fide disputes.[115] While there is some tension between the filed rate doctrine and encouraging regulated entities to mitigate demurrage and detention under certain circumstances, the Commission is equipped to distinguish legitimate resolution of demurrage and detention disputes from sham settlements and illegal rebates.

B. General Policy Comments to Rule

The commenters also raised several policy issues relating to the rule in general rather than specific sections. These comments fall into several general categories: (a) The desirability of

[101] Exec. Order No. 12866 § 3(b), 51 FR at 51737; 44 U.S.C. 3502(5).

[102] Nat'l Retail Sys. at 1 (requesting ''KPI's for terminal operators to be agreed upon with the import community (drayage) terminal operators''); Transways Motor Express at 1 (''Free time should be extended on all cargo at a terminal when service levels (turn times/congestion) fall below an acceptable level''); Transworld Logistics & Shipping Servs. (''As far as ports go it[']s important each terminal be certified with a capacity like in any other industry, this capacity should be based on the standard of efficiency and the turnaround time.'').

[103] The Final Report of the Commission's Supply Chain Innovation Initiative noted that the Initiative excluded two subjects ''infrastructure investment and port performance metrics.'' Commissioner Rebecca F. Dye, *Supply Chain Innovation Initiative Final Report* at 16 (Dec. 5, 2017), *https://www.fmc.gov/wp-content/uploads/2019/03/SCITFinalReport-reduced.pdf.* The Final Report pointed out that the Commission ''did not want to duplicate or impede efforts by local port performance task forces to address supply chain bottlenecks or to second-guess the decisions of port officials.'' *Id.* at 2

[104] Exec. Order No. 13777, 82 FR 12285 (Mar. 1, 2017).

[105] *Id.* at 12285.

[106] WSC at 12 n.3.

[107] Fed. Mar. Comm'n, *FMC Regulatory Reform, https://www.fmc.gov/regulatory-reform/,* (last visited Apr. 5, 2020) (noting that ''as an independent regulatory agency the FMC is not required to comply with the recent regulatory reform executive orders'').

[108] *Id.;* Notice of Inquiry: Regulatory Reform Initiative, 85 FR 25221 (June 1, 2017).

[109] *Muzorori* v. *Can. State Africa Lines, Inc.,* 2016 FMC LEXIS 45 at *71 n.62 (FMC July 14, 2016) (Khouri, Commissioner, dissenting).

[110] IICL at 9–10 (''Failure of a carrier to collect its tariff charges could be viewed as a violation of the Shipping Act . . . .What circumstances would allow a carrier to waive some or all of the charges required to be paid under applicable rules?); Int'l Logistics at 1 (''I do not think it is fair to say the ocean lines are responsible for the problems associated with billing port storage and container per diem when they are required by your tariff requirements to bill everyone according to their published tariff.''); *cf.* National Customs Brokers and Forwarders Association of America (NCBFAA) at 15 (''Carriers often decline mitigation citing FMC regulations that necessitate that they must apply all tariffed charges without exception, which is of course not a reasonable construction of the Shipping Act's requirements.'').

[111] 46 U.S.C. 41104(a)(2)(A).

[112] 46 U.S.C. 41102(c).

[113] *Total Fitness Equipment, Inc.* v. *Worldlink Logistics, Inc.,* 1998 FMC LEXIS 18 *26–27 (FMC Dec. 10, 1998); *id.* at *26 (''The filed rate doctrine does not function as a carte blanche to justify whatever action a carrier believes is appropriate.'').

[114] Interim Report at 12; *see also* FMC Demurrage Report at 18 (''There are exceptions to the application of demurrage fees known sometimes as ''stop the clock'' provisions.''); *id.* at 33 (''Carriers may ''stop the clock,'' waive, reduce or compromise fees relating to congestion if they have the flexibility to do so under their tariff or service contract.''). *But see* Interim Report at 12 (''[S]everal produced tariffs that specifically state that free time is not automatically extended for events outside the terminal's control, including labor strikes or weather, and at least one said that in those circumstances free time would not be adjusted.'').

[115] *Univ. Cargo Mgmt., Inc.* v. *Hyundai Merchant Marine Co.,* 1996 FMC LEXIS 57, *21–22 (ALJ Dec. 11 1996) (''[T]he Commission long ago began to allow parties in cases involving disputes over the proper rating under filed tariffs to settle their disputes even though this meant that shippers ended up paying something less than what the filed rate otherwise required.'').

guidance, (b) the specificity of guidance, (c) the consequences of guidance, and (d) the Uniform Intermodal Interchange and Facilities Access Agreement.

1. Desirability of Guidance

The Commission issued the rule after a hearing on a petition and a Fact Finding Investigation. It did so after determining that guidance in the form of a non-exclusive list of factors will promote fluidity in the U.S. freight delivery system, mitigate confusion, reduce and streamline disputes, and enhance competition and innovation in business operations and policies. As noted by the petitioners in Docket No. P4–16, guidance will help regulated entities avoid incurring liability under section 41102(c) and will encourage shippers, intermediaries, and truckers to examine their practices as well.[116]

A few commenters, however, assert that Commission guidance is not necessary because the current freight delivery system is working,[117] commercial solutions to demurrage and detention issues are adequate,[118] and complaints by shippers, intermediaries, and truckers are not subject to cross examination and could contain hyperbole.[119]

The majority of the commenters, however, advocate for the proposed rule's prompt adoption.[120] Although the freight delivery system works in the sense that cargo gets delivered, the notion that there are no problems is belied by the consistent complaints of shippers, intermediaries, and carriers.[121] In light of these complaints, the Commission cannot assume that the lack of Shipping Act proceedings about demurrage and detention means these complaints are illusory or hyperbolic.[122] There a number of reasons why a particular shipper, trucker, or intermediary might not file a formal complaint with the Commission, including relatively low amounts in dispute as compared to litigation costs, fear of retaliation from ocean carriers, or the *absence* of Commission guidance on section 41102(c).[123]

As for commercial solutions, to the extent that they adequately resolve demurrage and detention issues, then the Commission's guidance will arguably have little effect. Commenters correctly note that the Fact Finding Investigation revealed that most ocean carriers have policies for extending free time or mitigating demurrage and detention charges caused by circumstances outside the control of cargo interests or truckers.[124] But not all did, and a shipper's right under the Shipping Act to be free from unreasonable practices under section 41102(c) does not turn on the identity of the regulated entity at issue. Further, several ocean carriers noted that their policies give them the discretion to waive demurrage under certain circumstances.[125] But if application of demurrage in those circumstances would be unreasonable, a shipper, intermediary, or trucker should not have to rely on an ocean carrier or marine terminal operator's discretion for a remedy. In other words, while the Commission prefers commercial solutions to demurrage and detention problems, the Fact Finding record showed that commercial solutions are only adequate from the perspective of ocean carriers and marine terminal operators. [126]

2. Specificity of Guidance

The second category of policy-related comments relate to the specificity of the rule. On one hand, some commenters argue that the rule is too broadly applicable and prescriptive and ignores the complexity of the transportation system.[127] According to these commenters, ''[t]he NPRM's approach, which seeks to impose nationwide standards for all terminals and carriers, fails to reflect the nuances of the hundreds and thousands of different factual situations,'' and ''tries to mandate standards that may not be feasible or cost effective for many situations.'' [128] The commenters also argue a ''national standard such as the NPRM'' is inconsistent with the Commission's statement that it would continue to consider the facts of each case.[129]

On the other hand, many commenters request that the Commission be more specific and prescriptive. WSC argues that Commission did not provide enough guidance on how the rule would apply in specific situations,[130] and takes issue with the Commission not stating, for instance, what the proper format, method, or timing of notice of cargo availability would be.[131] Likewise,

[116] Pet. P4–16 at 22–23.

[117] *E.g.,* Ports Am. at 4 (''There is no showing in the Commission's fact-finding or rationale expressed for the proposed rule that suggests this is a material problem in the industry. This is demonstrated conclusively by the virtually total absence of Commission complaint proceedings for many decades.'').

[118] *E.g.,* Ports Am. at 3 (''As the Commission found, when major disruptions occur, such as storms or labor disputes, the terminals work out waivers or other suitable accommodations in individual cases. Terminals are already highly disincentivized by the marketplace from having disputes with their customer vessel operators and their shippers.''); PONYNJSSA at 3 (''The PONYNJSSA has long made available at their own cost commercial solutions to provide enhanced cargo information and transparency.); PMSA at 4–5 (''[I]t appears from the Commission's report that the free market has voluntarily addressed the conditions raised in its NPRM.'').

[119] IICL at 2 (''We note, however, that statements and contentions by interested parties are generally reflections of the problems they have had; they have not been subjected to cross-examination; they may be true or partially true; they may reflect a single occurrence or many; they may be legally admissible or inadmissible; they frequently contain hyperbole.'').

[120] *E.g.,* Letter from 67 Organizations to Michael A. Khouri, Chairman, Fed. Mar. Comm'n (Mar. 16, 2020) (''urg[ing] the Commission to promptly adopt the rule as published which will assist the maritime industry in evaluating the fairness of these charges and resolving potential disputes'').

[121] *See* Part II, *supra.*

[122] Shippers, intermediary, and trucker comments are no more self-interested than comments from ocean carriers, marine terminal operators, or chassis providers.

[123] Pet. P4–16 at 23 (''Ambiguity has a chilling effect on valid claims.'').

[124] Interim Report at 12.

[125] Interim Report at 12.

[126] WCMTOA points out that in the FMC Congestion Report, the Commission's Bureau of Trade Analysis stated that at the FMC port forums, ''[w]ith appropriate leadership and support, constant encouragement, and a willingness to cooperate, industry stakeholders' thoughtful insights and expressions of concern seemed to demonstrate that the intermodal industry itself is well-capable of accurately diagnosing the problems and crafting enduring solutions.'' WCMTOA at 4 (quoting FMC Congestion Report at 7). While that may have been the case at the port forums in 2014, the record in Fact Finding No. 28 suggested that demurrage and detention collections have only increased since then, Interim Report at 7–8, and shipper complaints have not abated.

[127] *E.g.,* IICL at 10 (noting that ''while the FMC is well-intentioned,'' ''in IICL Providers' view the Interpretive Rule presents more problems than it attempts to resolve because the problems at issue exist at many levels and across multiple jurisdictions''); PMSA at 3 (''The NPRM is a broad-brush approach to a very complex subject.'').

[128] PMSA at 3; *see also* WCMTOA at 5 (''The NPRM seeks to mandate the same practices nationwide, without regard to geography, terminal configuration (including operating ports vs. landlord ports), cargo volumes, and other local conditions.'').

[129] WCMTOA at 5 n. 2 (''If each case depends on an analysis of the facts of each case, as has historically been the case under Section 10(d)(1) cases, it is unnecessary, and in fact counter-productive, to have a national standard such as in the NPRM.''); Nat'l Fed. of Indep. Business at 3; PMSA at (arguing that the NPRM erodes the ''broad and fact-specific'' standard of section 41102(c)''). WCMTOA also states that the rule, even if just guidance, might cause stakeholders to adjust their practices in light of the guidance to avoid regulatory risk. According to WCMTOA, this might mean that no cases are filed and the specific facts of cases are not reached. WCMTOA at 5 n.2. WCMTOA does not, however, explain why this would be a problem.

[130] WSC at 15–16.

[131] WSC at 16; *see also id.* at 18–19 (asserting that references to ''extenuating circumstances'' in NPRM are so vague as to be useless in shedding any light on what particular circumstances would counter-balance those situations that the NPRM would deem likely unreasonable); NAWE at 13–14 (describing hypothetical questions that NPRM does not address); Ocean Network Express at 1–2 (listing hypotheticals); SSA Marine (asserting that because the list of factors is non-exclusive, ''there could be

several shipper, intermediary, and trucker commenters want the Commission to do more—to declare certain practices unreasonable or to require various practices. For example, these commenters would have the rule:

- Require that regulated entities extend free time when an ocean carrier requires an empty container to be returned to a location other than where it was retrieved; [132]
- Specify what information ocean carriers or marine terminal operators must provide to shippers and their agents regarding cargo availability; [133]
- Mandate specific requirements for ocean carrier and marine terminal operator dispute resolution and billing processes, such as timeframes and internal appeals processes; [134]
- Prescribe reasonable free time periods; [135]
- Define uniform demurrage and detention terminology; [136]
- Specify that all cargo on a bill of lading be available before demurrage accrues on any container; [137]
- Set caps on the levels of, or total amount of, demurrage or detention that may be charged.[138]

These comments do not justify withdrawing or substantially altering the rule. The Commission proposed general guidance in the form of factors because the operations of industry stakeholders are too varied nationwide, and the risk of inhibiting commercial innovation is too great, for the Commission to prescribe or prohibit specific practices, at least in this rulemaking.[139] Nor is issuing guidance inconsistent with case-by-case adjudication, especially when the Commission expressly states that it will continue to consider all arguments raised in an individual case.[140]

It was because the Commission was issuing guidance applicable to all regulated entities within its purview that the Commission declined to issue a legislative rule or the rule proposed by the petitioners in Docket No. P4–16.[141] It is also why the Commission's rule is not as granular as some commenters would prefer, even if many of the proposals suggested by shippers, truckers, and intermediaries appear to have merit.

The Commission understands that there may be questions about how the rule would apply in practice. Regarding ''extenuating circumstances'' specifically,[142] the Commission used that phrase as a way of indicating that it would consider all arguments raised by the parties, including those involving considerations not listed in the rule. As to what these ''extenuating circumstances'' could be, the NPRM specified one: ''An example of an extenuating circumstance is whether a cargo interest has complied with its customary responsibilities, especially regarding cargo retrieval (*e.g.,* making appointments, paying freight, submitting paperwork, retaining a trucker). If it has not, this could be factored into the analysis.'' [143] Many of the arguments raised by ocean carriers and regulated entities about things such as cost, technical feasibility, and the conduct of shippers, intermediaries, and truckers are issues that could be raised as ''extenuating circumstances'' in a particular case.[144]

The guidance was drafted with the complexity and variety of the U.S. freight delivery system in mind. Further refinement of the Commission's approach would be accomplished by adjudication. Comments by ocean carriers and marine terminal operators suggesting that the rule is fatally flawed because it does not address every fact pattern that could possibly arise set a standard that no Commission guidance could possibly meet. But, as the Commission noted at the outset, the inability of the Commission to solve every problem does not justify doing nothing.[145]

3. Consequences of Guidance

Ocean carrier and marine terminal operator commenters also contend that the rule would have a number of deleterious consequences. They argue that the rule is impracticable,[146] that it ignores the costly burden it would impose on ocean carriers and marine terminal operators and others,[147] that it limits contract flexibility and risk allocation.[148] Additionally, these commenters contend that the rule could lead to an ''explosion of time-consuming and expensive litigation,'' [149] increased container dwell time; [150] and chassis shortages.[151]

Some of these comments, particularly those about the practicability and costliness of the rule, are based on

any number of circumstances brought to the FMC depending on what it views as 'unreasonable' '').

[132] *See* Part III.G., *infra.* Moreover, one commenter suggests that street turns should be cheaper than returning a container to the terminal. Transways Motor Express at 1.

[133] *See* Part III.H, *infra.*

[134] *See* Part III.K and Part III.L, *infra.*

[135] *E.g.,* Int'l Fed. of Freight Forwarders Ass'ns at 10 (''FIATA would appreciate guidance on fair and reasonable free periods that are in line with market developments of higher peaks.'') *cf.* John S. Connor Global Logistics at 3 (''Further to this understanding of availability, there must be a clear and consistent method for calculating Free Time'' and ''[a]ll parties (carriers, MTOs, rail operators) that provide Free Time should be utilizing the same method of calculation''); New Direx, Inc. (''[F]ree time would not count on days when the terminal or rail yards are not open.'').

[136] John S. Connor Global Logistics at 6.

[137] CV Int'l, Inc. at 1; Shapiro at 1.

[138] *E.g.* Int'l Fed. of Freight Forwarders Ass'ns at 7; Int'l Motor Freight at 2 (''Finally, the rates we are charged for per diem and demurrage need to be looked at. Every year, per diem charges increase, regardless of the economic climate, for the same container that sits out year after year.''); Nat'l Retail Sys. at 1; Thunderbolt Global Logistics, LLC at 2 (''We feel that ocean carriers use detention charges as a profit center. There should be a formula for detention charges that can be applied across the board by all carriers at all ports.'').

[139] WCMTOA points out that in the FMC Congestion Report, the Commission's Bureau of Trade Analysis stated that the ''idea here is not to recommend or suggest 'best practices' '' regarding congestion and that it would ''be invidious for the Commission to declare 'best practices.' '' WCMTOA at 6 (quoting FMC Congestion Report at 10). The Commission generally agrees with the idea that it should not be telling regulated entities what the ''best practices'' are. But the Commission is authorized and required to determine what practices are unreasonable, and it is thus appropriate for the Commission to provide guidance about what sorts of practices might or might not trend in that direction.

[140] The suggestion that case-by-case adjudication means analyzing every case in a vacuum could result in inconsistent agency decisionmaking.

[141] That rule would have ''essentially revive[d] rules that the Commission had in place for the port of New York for over 40 years.'' Pet. P4–16 at 32. But those rules only applied to one port—the Commission's guidance here must be flexible enough to account for operations at all ports and marine terminals within the Commission's jurisdiction.

[142] WSC at 19.

[143] 84 FR at 48852. WCMTOA and PMSA read this incorrectly to mean that a shipper who was sloppy in its paperwork or did not pay its freight would get extra free time under the rule. WCMTOA at 12; PMSA at 6. The statement in the NPRM means the opposite: If a shipper does not pay its freight, or does not submit timely or correct paperwork, it would likely have difficulty showing that the application of demurrage or detention because of resulting delays was unreasonable.

[144] WSC at 16 (discussing technical feasibility of practices); WCMTOA at 11–12.

[145] For instance, SSA Marine Inc. points out that ''[r]equiring that demurrage be waived when a terminal fails to provide appointments is not a panacea to solve congestion.'' The Commission is not attempting, however, to provide a panacea; rather it is providing guidance in an effort to ensure that marine terminal operator and ocean carrier practices involving demurrage and detention are reasonable.

[146] NAWE at 12; OCEMA at 4; Ocean Network Express at 1–2; SSA Marine at 2; Ports Am. at 2–3; WCMTOA at 5, 10–11.

[147] IICL at 3; NAWE at 8; OCEMA at 4; Ocean Network Express at 3; WSC at 12; WCMTOA at 5; Am. Ass'n Port Auth. at 2.

[148] OCEMA at 3; Ports Am. at 2–3; WSC at 11, 12; Am. Ass'n Port Auth. at 2.

[149] SSA Marine at 2; WCMTOA at 5 n.2 (asserting that rule ''will encourage an explosion of litigation by shippers and truckers who do not want to pay demurrage or detention''); *see also* NAWE at 13.

[150] Ocean Network Express at 2; WO at 1, 3

[151] IICL at 3. This commenter argues that if a carrier waives or deviates from the provisions in its bill of lading, ''it could theoretically'' void its protection and indemnity insurance. This concern is on its face speculative and was not raised by ocean carrier commenters themselves.

unwarranted assumptions about what the rule does. These arguments are belied by the text of the rule. For instance, commenters insist that the practical difficulties of starting demurrage free time based on cargo availability instead of vessel discharge of a container are insurmountable.[152] Even assuming that is true, the rule does not go so far as to require this change.[153] Statements in the NPRM that certain practices might weigh favorably in the analysis do not mandate their adoption, and the rule cannot reasonably be read as doing so.[154] The same goes for commenters' assumptions that the rule requires things like starting and stopping the free time clock each time a container becomes unavailable on a minute-by-minute basis [155] or waiving a full day of demurrage due to a container being unavailable for less than an entire day [156] or implementing new information technology systems [157] or creating new dispute resolution teams.[158] The rule, in its final form, makes clear that parties will have ample opportunity to argue the merits of any such practices should their absence be challenged as section 41102(c) violations. And, to reiterate, the standard under section 41102(c) is reasonableness, not exacting precision.

Additionally, fears of an explosion of litigation due to the rule are speculative. If, as ocean carriers and marine terminal operators claim, commercial solutions have been adequate to address demurrage and detention problems, then the Commission's guidance will not lead to lawsuits. There have historically been very few formal Shipping Act complaints filed regarding demurrage and detention. If the issuance of guidance results in more disputes because shippers are better able to challenge unreasonable practices, that is a feature, not a bug, of the rule. An increase in valid claims is not a negative result, and guidance is just as likely to reduce disputes because it allows parties to better assess the merits of a dispute before resorting to litigation. At present, there is little to no guidance on demurrage and detention and section 41102(c) in the containerization context.[159]

Similarly speculative are concerns about increased container dwell time and chassis shortages. The rule might result in an increase in free time extensions, but extending free time is just one way to mitigate demurrage and detention charges. Additionally, the rule's primary focus is situations where demurrage and detention do not work because cargo cannot move. Not charging a penalty because a container cannot move would not appear to increase its dwell time.

As for inhibiting the freedom to allocate risk by contract, this is discussed in more detail below. That said, commenters appear to object to the rule because it would ''interfere with private and lawful commercial arrangements'' wherein ocean carriers and shippers have negotiated free time.[160] But whether commercial arrangements are *lawful* is the point. Ocean carriers and marine terminal operators (and ocean transportation intermediaries) do not have an unbounded right to contract for whatever they want. They are limited by the prohibitions of the Shipping Act, one of which is section 41102(c). Although the general trend in the industry has been deregulatory, Congress retained section 41102(c) when it enacted the Ocean Shipping Reform Act in 1998.[161] In this sense, ocean carriers and marine terminal operators are no different from participants in other regulated industries.

Ocean carriers and marine terminal operators benefit, however, from limited antitrust immunity for their agreements with their competitors,[162] and they are also the beneficiaries of cargo lien law [163] and law regarding tariffs and published marine terminal schedules, all of which may affect the negotiating playing field vis-à-vis shippers, intermediaries, and truckers. Whatever their merits, both tariffs and marine terminal schedules share elements of contracts of adhesion: [164] they are presented on a take-it-or-leave-it basis, without the chance for much negotiation.[165] And, like contracts of adhesion, the terms of tariffs and marine terminal schedules ''may be drafted with a view to protect to the maximum degree the enterprise that propounds the form, thus minimizing the realization of the reasonable expectations of the adhering party.'' [166]

This is not to say that shippers and intermediaries do not negotiate certain aspects of demurrage and detention, such as free time, in service contracts. But many, if not, most, shippers lack significant bargaining power as compared to ocean carriers. The same goes for intermediaries and truckers.[167] Under such circumstances, there is reason for the Commission to carefully scrutinize arguments that shippers, intermediaries, and truckers have the ability meaningfully to negotiate contractual terms relating to demurrage and detention.[168]

[152] NAWE at 13; Ports Am. at 3; WSC at 15–16.

[153] 84 FR at 48855 (stating that the Commission may consider ''the extent to which demurrage practices or regulations relate demurrage or free time to cargo availability'').

[154] 84 FR at 48852.

[155] NAWE at 13; OCEMA at 4. A few commenters assert without citation that free time contemplates that there are ''pockets within that time where units will be unavailable for various reasons.'' Ocean Network Express at 1; OCEMA at 4. The Commission would make clear that the reasonableness of free time turns on the needs of a shipper or its agent. *Investigation of Free Time Practices—Port of San Diego,* 9 F.M.C. 525, 539 (FMC 1966). Relatedly, a frequent complaint of ocean carriers and marine terminal operators is that shippers wait until the last free day to retrieve cargo and that the rule does not account for whether there might be other times within the free time that a shipper could have retrieved its cargo. *E.g.* WCMTOA at 11. Shippers and cargo interests are entitled to reasonable demurrage free time, and it is unclear why regulated entities would have the right to determine unilaterally when within that free time period shippers or their agents should pick up their cargo.

[156] Ocean Network Express at 1.

[157] NAWE at 15; OCEMA at 4; WSC at 12; WCMTOA at 4.

[158] WSC at 12.

[159] Two commenters point out that some of the practices mentioned in the NPRM regarding notice would require ''significant additional sharing of information between the terminal and the carriers and clear guidelines as to who bears what responsibility.'' Ocean Network Express at 2; WSC at 16. The Commission does not believe this would be a negative consequence of the proposed rule.

[160] OCEMA at 3 (arguing the rule would deprive both shippers and ocean carriers of the ability to negotiate for competitive terms); Ports Am. at 3; Am. Ass'n of Port Auth. at 2 (claiming rule would ''effectively prohibit private parties from negotiating how the risk of events beyond either's control . . . are to be allocated, putting all the burden completely on the terminal operator and or/carrier''); WSC at 10–11 (describing rule as substantially restricting parties from defining the commercial terms and conditions of their own contractual relationships'').

[161] Ocean Shipping Reform Act of 1998, Public Law 105–258, 112 Stat. 1902. (May 1, 1999).

[162] 46 U.S.C. 40307.

[163] *See infra* note 365.

[164] *See Huffman* v. *Sticky Fingers,* Case No. 2:05–2108–DCN–GCK, 2005 U.S. Dist. LEXIS 55481, at *26–*27 (D.S.C. at Dec. 20, 2005) (defining a contract of adhesion as ''a standard form contract offered on a take-it-or-leave-it basis'' where the terms are ''not negotiable''—''an offeree faced with such a contract has two choices: Complete adherence or outright rejection'').

[165] *See* AgTC at 3 (''The opportunity to negotiate is a myth . . . .'').

[166] 1 Corbin on Contracts § 1.4 (2020).

[167] *See Pet. of the World Shipping Council for an Exemption From Certain Provisions of the Shipping Act of 1984, As Amended, For a Rulemaking Proceeding,* 1 F.M.C.2d 504, 514 (FMC 2019) (''VOCCs hold market power through the antitrust immunity secured pursuant to their filed agreements as well as their ability to discuss and coordinate freight rates and/or vessel capacity and services. . . . Because VOCCs have stronger negotiating positions, they are able to set service contract terms and conditions with NVOCCs; indeed, the majority of service contracts on file with the Commission use boilerplate terms and conditions written by the VOCC.'').

[168] In prohibiting certain exculpatory provisions in marine terminal schedules under section 41102(c), the Commission rejected the argument ''that there is nothing unreasonable, and hence

Suffice it to say, ocean carriers and marine terminal operators do not have an inviolate right to contract with their customers free from government scrutiny, and there is reason to question whether demurrage and detention practices are normally the subject of arms-length negotiation between parties with remotely equal bargaining power.[169] Consequently, that the guidance in the rule, when applied in a case, might put some limits on the ability of ocean carriers or marine terminal operators to impose, or negotiate, demurrage and detention practices vis-à-vis shippers, intermediaries, and truckers, is not itself a reason not to issue guidance. For the same reasons, ocean carrier and marine terminal operator arguments that they are being treated unfairly by the rule are taken with a grain of salt, though the Commission agrees that shippers, intermediaries, and truckers have an equally important role to play in enhancing the efficiency of the transportation system.[170]

4. The Uniform Intermodal Interchange and Facilities Access Agreement

The final general category of policy comments involved the Uniform Intermodal Interchange and Facilities Access Agreement (UIIA). The UIIA ''is a multimodal negotiated interchange agreement that serves as the standard interchange agreement for most intermodal equipment interchanges except chassis.''[171] Generally, it governs relationships between signatory ocean carriers and truckers. Some commenters pointed out that the UIIA has provisions related to empty container return, billing, and billing disputes, and expressed concern that the rule could potentially conflict with this.[172] Others noted problems with the UIIA or the extent to which other parties adhere to it.[173]

A few points about the UIIA. First, not all ocean carriers and truckers are parties to the UIIA. In addition, although there is a standard UIIA agreement, many terms are dictated by each equipment provider's addendum to the UIIA, which is defined as the provider's ''schedule of economic and commercial terms not appropriate for inclusion in the uniform Agreement and other terms and conditions of Equipment use.'' [174]

Because not all ocean carriers or truckers participate in the UIIA, and because ocean carrier practices may be contained in their addenda as opposed to the standard UIIA itself, the Commission cannot simply assume that the processes outlined in the UIIA sufficiently address concerns about ocean carrier detention practices vis-à-vis truckers. This is especially true given complaints that participants do not always abide by the terms of the UIIA or the addenda. That said, the UIIA has been in effect for decades and was negotiated with the participation of carriers, truckers, and railroads.[175] Ocean carrier practices, whether incorporated in the UIIA or not, are within the Commission's purview under section 41102(c).[176] To the extent UIIA terms or conditions are relevant to determining the reasonableness of particular detention practices, nothing precludes parties from raising these issues in individual cases.

C. Purpose of Rule

The first paragraph of the proposed interpretive rule in the NPRM describes its purpose: To provide guidance about how the Commission will interpret 46 U.S.C. 41102(c) and 46 CFR 545.4(d) in the context of demurrage and detention.[177] None of the comments specifically addressed this paragraph of the rule, and the Commission will include it without change in the final rule.

D. Applicability and Scope of Rule

The next paragraph of the rule outlines its applicability and scope. The rule applies to practices and regulations relating to demurrage and detention for containerized cargo. For purposes of the rule, demurrage and detention includes any charges, including ''per diem,'' assessed by ocean common carriers, marine terminal operators, or ocean transportation intermediaries (''regulated entities'') related to the use of marine terminal space (*e.g.,* land) or shipping containers, not including freight charges.[178]

In the NPRM, the Commission explained that the reference to containerized cargo included cargo in refrigerated (reefer) containers.[179] Given that the lack of standard terminology in the industry,[180] the rule defines ''demurrage'' and ''detention'' broadly to cover all charges customarily referred to as demurrage, detention, or per diem.[181] The rule specifically limits these definitions to ''shipping containers'' to exclude charges related to other equipment, such as chassis, because depending on the context, ''per diem'' can refer to containers, chassis, or both.[182]

Commenters did not object to limiting the rule to containerized cargo, to defining demurrage and detention broadly, or to including reefer cargo within the rule's ambit. And while some commenters believe that the Commission's guidance should account

unlawful, about a terminal operator and user agreeing upon a liability-shifting arrangement after an arms-length negotiation over the terms and conditions for the use of such facilities. Final Rule: Filing of Tariffs by Marine Terminal Operators Exculpatory Provisions, 51 FR 46668, 46668 (Dec. 24, 1986). Given the vastly unequal bargaining power between the parties in that instance, the Commission saw ''little validity to the suggestion advanced in some comments that 'free market forces' exist and should govern the promulgation of liability provisions in terminal tariffs.''

[169] *See, e.g.,* Mohawk Global Logistics at 10 (''These [detention] transactions are in many cases much more than arm's reach away, billed by a terminal, to a trucker that is contracted to a consignee, not necessarily related to the NVOCC, whose detention free time is added to the contract by the ocean carrier.'').

[170] *E.g.,* WSC at 18 (arguing that a ''common thread'' in the NPRM is that it is completely one-sided). In a similar vein, WCMTOA requests that the Commission apply the incentive principle in the rule to shippers and truckers. WCMTOA 11–12. Most of WMCTOA's suggestions, however, would effectively limit shipper free time without any regard to whether it represents a reasonable amount of time to retrieve cargo. Moreover, the Commission does not have authority over shippers or truckers under section 41102(c), and the impetus for the fact finding and the NPRM were complaints about ocean carrier and marine terminal operator practices.

[171] FMC Congestion Report at 27; *see also* Joni Casey, *Letter: The UIIA and Street Turn Fees,* Transport Topics (Feb. 19, 2019), (''[T]he UIIA is the only standard industry contract that governs the interchange of equipment between intermodal trucking companies and equipment providers such as ocean carriers, railroads and leasing companies.''), *https://www.ttnews.com/articles/letter-clarifying-uiia-and-ianas-role.*

[172] OCEMA at 4; Ocean Network Express at 3–4; WSC at 17.

[173] IMC Companies at 2 (arguing that UIIA billing process may conflict with service contract language); S. Counties Express at 4 (''Terminals do not have appointments to receive an empty container, steamship line holds the motor carrier responsible until unit has a secured appointment and terminates the container. UIIA violation, no agreement in place.'').

[174] UIIA § B.2; *see also* Casey, *supra* note 175 (''Notably, to comply with antitrust law, the UIIA cannot include or dictate economic and commercial terms that are specific to each equipment provider. Such terms are handled through individual addenda to the UIIA.'').

[175] PMSA at 14.

[176] PMSA asserts that the Commission ''probably does not have jurisdiction'' to ''mandate wholesale changes that are inconsistent with the UIIA.'' PMSA at 14. PMSA cites no authority for this proposition. To the contrary, ocean carrier demurrage and detention practices and regulations are within the Commission's jurisdiction under section 41102(c).

[177] 84 FR at 48851–52, 48855.

[178] 84 FR at 48852, 48855

[179] 84 FR at 48852.

[180] Interim Report at 5–7, 17; Final Report at 11–13, 30.

[181] 84 FR at 48852.

[182] For instance, commenters such as International Motor Freight and Wheaton Grain Inc. refer to container charges in terms of per diem rather than detention. Int'l Motor Freight at 2; Wheaton Grain Inc. at 1. Similarly, the UIIA defines per diem as charges related to ''equipment,'' which includes containers and chassis. *See* UIIA § B.22.

for chassis availability [183] or the interests of chassis lessors,[184] none argued that the scope of the rule should be enlarged to include charges imposed by chassis owners.[185]

Commenters did, however, raise questions about the scope of the rule. Several commenters urged that the rule apply to export shipments as well as imports, and they raised issues unique to exports, such as rolled bookings due to vessel and schedule changes and ocean carrier changes to container return cutoff dates and insufficient notice of such changes.[186]

To be clear, the rule is not limited to import shipments and applies to export shipments as well. In particular, the guidance on the incentive principle, demurrage and detention policies, and transparent terminology would apply in situations involving exports. The NPRM preamble focused on import issues because imports were the focus of the Fact Finding Investigation and most of the complaints.

Another scope-related comment involved the application of the rule outside of marine terminals. The American Cotton Shippers Association noted that ocean carriers, ''responding to the demands of consumers, have crafted service contracts that incorporate inland movements and services'' and ''[t]hus the reasonableness of detention and demurrage practices and regulations, as they apply to inland movements in point-to-point service contracts, have an equally significant impact on the fluidity of all ocean-borne trade.'' [187] It urges that the rule account for the inland components of ocean-borne shipping transactions and apply to point-to-point service contracts.[188] Similarly, IMC Companies believes there is a ''gray area of jurisdiction'' in intermodal shipping, and requests ''greater clarity directed to ocean carriers[’] intermodal shipments moving on a through bill of lading with regard to application of the incentive principles the FMC has outlined.'' [189]

Nothing in the rule limits its scope to shipping activities occurring at ports or marine terminals. Rather, section 41102(c) concerns ocean carrier, marine operator, and ocean transportation intermediary practices and regulations ''relating to or connected with receiving, handling, storing, or delivering property.'' Ocean carrier demurrage and detention practices are subject to section 41102(c) and Commission oversight, regardless of whether the practices relate to conduct at ports or inland, with some caveats. First, not everything an ocean carrier or marine terminal operator does is within the Commission's purview—an ocean carrier or marine terminal operator must be acting as a common carrier or marine terminal operator as defined by the Shipping Act with respect to the conduct at issue.[190] This is often not a difficult question, but the further one gets away from the terminal, the more complicated the inquiry may become, and it is not a question that can always be answered in the abstract.[191]

Second, the Commission must be careful not to encroach into the jurisdiction of other agencies, such as the Surface Transportation Board, which is itself considering issuing guidance to railroads similar to that in the Commission's rule.[192]

Commenters were also concerned about railroads and railyards.[193] To be clear, section 41102(c) of the Shipping Act applies to common carriers, marine terminal operators, and ocean transportation intermediaries. The Commission is without authority to address practices of railroads or rail facilities unless they fall within one of those statutory definitions. That said, if the practice at issue relates to rail but is nonetheless an ocean carrier practice, *e.g.,* is contained in an ocean carrier tariff or service contact, then the guidance in the rule would likely apply.

In sum, the rule is not limited, in its language or intent, to import shipments, nor is it limited solely to ocean carrier practices related to conduct at marine terminals. The precise outer bounds of the Commission's authority, however, is a subject better resolved in the context of a particular factual scenario. Consequently, the Commission will adopt paragraph (b) of the proposed rule in the final rule with only grammatical changes that do not affect its substance.

It is important to emphasize, however, the Commission's focus here is on practices related to charges imposed by regulated entities on shippers, intermediaries, and truckers and not the contractual relationships between ocean carriers and marine terminal operators. Ocean carriers must provide adequate terminal facilities.[194] It appears that most carriers accomplish this by ''contract[ing] for the facilities of another person such as a terminal operator, in which case the terminal operator is in effect the agent of the carrier.'' [195] This relationship—how marine terminal operators are compensated by ocean carriers for use of their terminal facilities—is not the primary concern of the guidance in the rule, even if marine terminal operators are compensated by carriers via charges called ''wharf demurrage'' or ''terminal demurrage.'' [196] The rule might be relevant to that compensation if marine

[183] *See* Part III.F, *infra.*

[184] IICL at 2.

[185] Section 41102(c) does not cover chassis providers who do not otherwise fall within the definition of a regulated entity under the Shipping Act.

[186] *See* Florida Customs Brokers & Forwarders Ass'n; IMC Companies at 2; John S. Connor Global Logistics at 7; Int'l Fed. Of Freight Forwarders Ass'ns at 7; Miami Global Lines; New England Groupage; New York New Jersey Foreign Freight Forwarders and Brokers Ass'n (NYNJFFF&BA) at 5.

[187] Am. Cotton Shippers Ass'n at 7–8.

[188] Am. Cotton Shippers Ass'n at 8.

[189] IMC Companies at 3–4.

[190] *See, e.g., Auction Block Co.* v. *Fed. Mar. Comm'n,* 606 Fed. Appx. 347, 348 (9th Cir. 2015) (''The Commission reasonably concluded that it makes little sense to bring into its regulatory ambit all facilities operated by an entity merely because a single one of them is connected to international marine transportation.''); *Crocus Investments, LLC* v. *Marine Transp. Logistics, Inc.,* 1 F.M.C.2d 403, 415 (FMC 2019) (''The approach supported by the text of section 41102(c) and Commission caselaw asks: was the respondent acting as a regulated entity with respect to the conduct at issue?'').

[191] *Crocus,* 1 F.M.C.2d at 415 (noting that determining whether respondent is a regulated entity, in this case an ocean transportation intermediary, is a ''fact-intensive analysis'' taking into account statutory definitions and evidence about the parties' conduct during the relevant time frame).

[192] Surface Transp. Bd., Policy Statement on Demurrage and Accessorial Rules and Charges (STB Oct. 4, 2019), *https://www.stb.gov/decisions/readingroom.nsf/UNID/F844367E52874F138525848C0042BFB3/$file/47133.pdf.* STB's proposed policy statements also references the incentive principle:

First, demurrage rules and charges are not reasonable when they do not serve to incentivize the behavior of shippers and receivers to encourage the efficient use of rail assets. In other words, charges should not be assessed in circumstances beyond the shipper's or receiver's reasonable control. It follows, then, that revenue from demurrage charges should reflect reasonable financial incentives to advance the overarching purpose of demurrage and that revenue is not itself the purpose.'' Second, transparency and mutual accountability by both rail carriers and the shippers and receivers they serve are important factors in the establishment and administration of reasonable demurrage and accessorial rules and charges.

Id. at 21.

[193] Aluminum Bahrain (''The rail carrier and the yard itself made sure that every container paid extra for the chassis and for detention''); APL Logistics (''APL Logistics seeks clarification whether the proposed interpretive rule applies to railroad terminals when an international shipment passes through a marine terminal operator and is then transported to its final destination via rail on a through bill of lading''); Global Fairways LLC (complaining about rail practices and ocean carriers not providing sufficient information); IMC Companies; Wheaton Grain.

[194] Final Report at 27; *Boston Shipping Ass'n* v. *Port of Boston Marine Terminal Ass'n,* 10 F.M.C. 409, 415 (FMC 1967).

[195] *Boston Shipping Ass'n,* 10 F.M.C. at 415.

[196] This should allay some of the concerns raised by commenters like the American Association of Port Authorities that the rule would prevent marine terminal operators from being compensated for use of terminal space. Am. Ass'n of Port Auth. at 2.

terminal charges to ocean carriers are passed on to shippers and their agents via demurrage.[197] In those instances, however, the Commission would be assessing the reasonableness of ocean carrier demurrage practices vis-à-vis shippers, intermediaries, and truckers, not marine terminal operator practices with respect to ocean carriers.

E. Incentive Principle

The main thrust of the rule is that although demurrage and detention are valid charges when they work, when they do not, there is cause to question their reasonableness.[198] This derives from the well-established principle that to pass muster under section 41102(c), a regulation or practice must be tailored to meet its intended purpose,[199] that is, ''fit and appropriate for the end in view.'' [200] The Commission determined that because the purpose of demurrage and detention are to incentivize cargo movement, it will consider in the reasonableness analysis under section 41102(c) the extent to which demurrage and detention are serving their intended purposes as financial incentives to promote freight fluidity.[201]

The Commission explained in the NPRM that practices imposing demurrage and detention when such charges are incapable of incentivizing cargo movement, such as when a trucker arrives at a marine terminal to retrieve a container but cannot do so because it is in a closed area or the port is shutdown, might not be reasonable.[202] Similarly, the Commission stated, ''absent extenuating circumstances, demurrage and detention practices and regulations that do not provide for a suspension of charges when circumstances are such that demurrage and detention are not serving their purpose would likely be found unreasonable.'' [203]

The commenters did not dispute that demurrage and detention practices must be tailored to meet their purpose. But several commenters objected to the rule because: (1) Demurrage and detention serve purposes other than acting as financial incentives for cargo movement, (2) the rule will disincentivize cargo movement, (3) the rule might conflict with the principle of once-in-demurrage-always-in-demurrage, and (4) the rule unfairly allocates risks better allocated by contract.

1. Purposes of Demurrage and Detention

The Commission stated in the NPRM that the ''intended purposes of demurrage and detention charges are to incentivize cargo movement and the productive use of assets (containers and port or terminal land).'' This understanding was based on what shippers, ocean carriers, and marine terminal operators told the Commission.[204] Many commenters agreed that the ''incentive principle'' is ''supported by law and Shipping Act policies'' and assert that charges should be mitigated when efficiency incentives cannot be achieved.[205] Commenters also recognized that ''the primary purpose of detention and demurrage is to provide an incentive for cargo interests to remove their cargo from the terminal promptly or to return equipment in a timely manner.'' [206]

Several commenters asserted, however, that demurrage and detention serve other legitimate purposes. Ocean carriers argued that demurrage and detention function to compensate them for costs associated with their equipment.[207] Marine terminal operators asserted that these charges are appropriate to compensate terminal operators for the use of terminal space.[208] Shippers and intermediaries, too, indicated that demurrage and detention have a compensatory element.[209] As a few commenters pointed out, the Final Report in Fact Finding Investigation No. 28 noted that ''some cases refer to demurrage also serving a compensatory purpose.'' [210] Additionally, some commenters asserted that demurrage and detention actually serve an illegitimate purpose: serving as a revenue stream for ocean carriers and marine terminal operators.[211]

Historically, the Commission recognized that demurrage has ''penal elements which are designed to encourage the prompt movement of cargoes off the piers'' and includes a compensatory element which accounts for ''the use of the pier facilities, for watchmen, fire protection, etc., on the cargo not picked up during free time.'' [212] It is important to specify, however, what this compensatory aspect of demurrage traditionally meant. To the extent demurrage had a compensatory aspect, it was to reimburse ocean carriers for costs incurred *after* free time expired—''costs'' in this context meant *additional* costs associated with cargo remaining on a pier after free time.[213] In other words, demurrage and detention are not the mechanism by which ocean carriers recover all costs related to their equipment,[214] and the Commission cannot assume that these charges are the primary method by which ocean carriers recover their capital investment and container costs, as some commenters suggest.[215]

A second point is that Commission in *Free Time and Demurrage Charges at New York* assumed that the minimum demurrage charge in that case—the first period demurrage—represented a compensatory charge for that period.[216] This assumption was based on Commission caselaw requiring ocean carriers to charge at least compensatory

[197] Interim Report at 16 (''The VOCC's tariff rates and practices may also directly pass through or refer to those of the relevant port authority's or MTO's schedule.'').

[198] 84 FR at 48852.

[199] 84 FR a 48852 (citing *Distribution Servs. Ltd.* v. *Trans-Pac. Freight Conference of Japan and Its Member Lines,* 24 S.R.R. 714, 722 (FMC 1988)).

[200] *Distribution Servs.,* 24 S.R.R. at 722 (quoting Port of San Diego, 9 F.M.C. at 547).

[201] 84 FR at 48852, 48855.

[202] *See* 84 FR at 48852.

[203] 84 FR at 48852.

[204] 84 FR at 12 (citing Interim Report at 2–3; Final Report at 12, 13).

[205] *E.g.,* Wal Mart at 1 (''Wal Mart has also experienced abuse of such charges in ways that do not incentivize efficient movement and therefore applauds FMC's identification of efficient cargo movement as the key consideration in assessing reasonableness of demurrage and detention practices under 46 U.S.C. 41102(c).''); Cal. Cartage Co. at 1; Dreisbach Enter. at 1.

[206] SSA Marine at 1; Nat'l Indus. Transp. League at 5 (''Demurrage and detention practices should be applied to serve their intended purpose, with correct financial incentives to promote freight fluidity.''); NCBFAA at 5.

[207] OCEMA at 2; WCMTOA at 8–9.

[208] Am. Ass'n Port Auth. at 2; NAWE at 10–11; WCMTOA at 2–3.

[209] *E.g.,* Am. Coffee Corp. at 2; Int'l Fed. of Freight Forwarders Ass'ns at 1–2; Nat'l Indus. Transp. League at 13; Sea Shipping Line at 2; *see also* IICL at 2.

[210] Final Report at 28 n.36.

[211] AgTC at 3 (''It is also clear that the penalties have now become a significant revenue source for the carriers.''); Mohawk Global Logistics at 5; NCBFAA at 7; Lee Hardeman Customs Broker, Inc. at 1 (arguing that demurrage and detention are ''CLEARLY revenue streams from frequently unreasonable application of them''); Bunzl Int'l Servs. Inc. at 1; Int'l Motor Freight at 2; The Judge Org. at 1; Mondelez Int'l at 2; Thunderbolt Global Logistics at 2; Transp. Intermediaries Ass'n at 4; Retail Indus. Leaders Ass'n at 2*; see also Free Time and Demurrage Charges at New York,* 3 U.S.M.C. 86, 107 (FMC 1948) (NYI) (''We hold, however, that demurrage charges *at penal levels* are not justifiable by reference to a carrier's need for revenue.'').

[212] *In re Free Time and Demurrage Practices on Inbound Cargo at New York Harbor,* 9 S.R.R. 860, 864 (1967) (*NYII*); *NYI,* 3 U.S.M.C. at 107.

[213] *NYII,* 9 S.R.R. at 864.

[214] For example, in the ''ideal'' situation, where a container is retrieved and returned with free time, an ocean carrier would collect no demurrage or detention. The Commission cannot assume that in this preferred scenario that ocean carriers would have to absorb their equipment costs. Rather, they presumably recover their equipment costs in other ways, such as in their freight rate.

[215] WSC at 9 (''From the carrier's perspective, detention charges are structured to serve as a recovery mechanism for the capital investment and cost of the container, including repair, maintenance, and leasing, as well as opportunity costs associated with not having the equipment available for revenue-producing cargo transport.'').

[216] *NYI,* 9 U.S.M.C. at 109.

demurrage.[217] Given that that this caselaw pre-dated containerization, its precedential value is an open question, and in the absence of evidence establishing the extent to which ocean carrier demurrage or detention are compensatory, the Commission cannot assume that demurrage and detention have compensatory aspects in every case. As noted above, however, the rule does not preclude ocean carriers and marine terminal operators from arguing and producing evidence regarding the compensatory aspects of demurrage and detention in individual cases.

Accordingly, because the participants in Fact Finding Investigation No. 28 and the commenters consistently emphasized the utility of demurrage and detention in incentivizing cargo movement and productive asset use, the Commission continues to understand demurrage and detention as primarily being financial incentives to promote freight fluidity. That said, the Commission is amending the final rule to recognize that the demurrage and detention might have other purposes. First, the Commission is adding the word ''primary'' to the ''Incentive Principle'' paragraph of the rule. Second, the Commission is adding a new ''Non-Preclusion'' paragraph of the interpretive rule, which confirms that the Commission may consider additional factors, arguments, and evidence in addition to the factors specifically listed in the rule. This would include arguments and evidence that demurrage and detention have purposes other than as financial incentives.[218]

2. Incentives

Ocean carrier and marine terminal operators also object to the ''incentive principle'' on the grounds that it will effectively disincentivize cargo movement and equipment return. According to NAWE: ''If the cargo interest knows that its free time will be extended because of terminal closure due to a force-majeure-type situation, the cargo interest is not incentivized to retrieve its cargo before the event.'' [219] Some commenters also suggest that the rule would permit shippers to get extra free time by withholding the payment of freight or by being careless with paperwork.[220]

As to the former concern, the Commission does not believe that shippers will be disincentivized from retrieving their cargo in a timely fashion. This assumes that shippers are willing to run the risk of paying demurrage charges on the off chance a ''force majeure'' event occurs. Moreover, shippers have commercial incentives to get their cargo off terminal, including ''contractual delivery deadlines and perishable condition time limits.'' [221] In addition, one could easily argue the flip side of the commenters' position, namely that the ability of ocean carriers and marine terminal operators to collect demurrage even if it is impossible for a shipper to retrieve cargo or a truck to return equipment might disincentivize ocean carriers and marine terminal operators from acting efficiently.[222]

As for concerns that shippers will game the system to get more free time, the rule presupposes that shippers, intermediaries, and truckers have complied with their customary obligations, including those involving cargo retrieval.[223] Any evidence that these obligations were not met can be raised in the context of a case. Relatedly, the National Industrial Transportation League requests that the Commission ''clarify that not making an advance payment of freight charges, where the parties have a credit arrangement in place, should not be viewed as failure to comply with customary cargo interest responsibilities.'' [224] The Commission agrees that as a general matter, paying freight in advance may not necessarily be a ''customary cargo interest responsibility'' if a shipper or intermediary has a credit arrangement with an ocean carrier, but such determinations will depend on the facts of each case and the specific arrangements between the shipper and carrier.

3. Once-in-Demurrage, Always-in-Demurrage

Ocean carriers and marine terminal operators further urge the Commission to reaffirm that notwithstanding the rule, the principle of ''once-in-demurrage, always-in-demurrage'' still governs.[225] According to these commenters, under this principle shippers ''bear the risk of any disability that arises after free time has ended.'' [226] In other words, once free time ends, it would not be unreasonable to impose demurrage on a shipper even if the shipper is unable to retrieve the container due to circumstances outside the shipper's, or anyone's, control. Conversely, other commenters request that the Commission expressly overrule the once-in-demurrage, always-in-demurrage principle.[227]

As an initial matter, it is useful to describe the legal context before and after the expiration of free time.[228] Prior to the expiration of free time, there are two relevant legal principles in play relevant to demurrage. First, as part of its transportation obligation, an ocean carrier must allow a shipper a ''reasonable opportunity to retrieve its cargo,'' *i.e.,* free time.[229] Free time is ''free'' because during this time period, an ocean carrier cannot assess any demurrage.[230] Nor can marine terminal

[217] *NYI,* 9 U.S.M.C. at 93, 109.

[218] Shippers, intermediaries, and truckers do not necessarily oppose ocean carriers and marine terminal operators recovering, in certain circumstances, legitimate costs. Mohawk Global Logistics at 6 (noting that in government hold situations, ''[t]here should be compensation to both the terminals and the carriers in these cases.''); Agregar Consultoria at 1. Nor do most of them deny that demurrage and detention have a necessary place in ocean commerce. *E.g.,* Mohawk Global Logistics at 2. Their primary concern is avoiding ''punitive'' demurrage and detention. John S. Connor Global Logistics at 1; AgTC at 1; ContainerPort Group at 1; Mohawk Global Logistics at 6–7.

[219] *E.g.,* NAWE at 11; *see also* OCEMA at 4; WCMTOA at 1, 10. A ''force majeure'' clause is a contract provision that excuses a party's performance of contractual obligations when certain circumstances arise outside the party's control, making performance inadvisable, impracticable, or impossible. 14 Corbin on Contract § 74.19. These clauses usually list circumstances that trigger the clause, such as acts of God, fires, floods, labor disputes, etc. *Id.* Presumably, commenters use the phrase ''force majeure'' as shorthand for events outside their control.

[220] WCMTOA at 12; PMSA at 6.

[221] AgTC at 4. Truckers likely have commercial and other incentives to return equipment in a timely fashion. It may be true that some ''importer-consignees operate on small margins of profit, and because public warehouse charges are generally higher than demurrage charges, some consignees tend to use the piers as warehouses.'' *NYII,* 9 S.R.R. at 864. But this possibility is insufficient reason to ignore the incentive principle.

[222] *Cf.* EMO Trans Atlanta, GA USA at 1 (''To ask the forwarding community to pay the price for operational issues of ports and carriers must stop.'') F.O.X. Intermodal Corp. at 1 (arguing that ''terminals directly benefit from their inability to service the truckers in a timely fashion''); The Judge Organization at 1 (same).

[223] 84 FR at 48852.

[224] Nat'l Indus. Transp. League at 6.

[225] J. Peter Hinge at 3; NAWE at 14 n.5; OCEMA at 5; PMSA at 7–8.

[226] WCMTOA at 9 (''If any final rule is adopted, it should make clear that it is reasonable for a terminal operator to charge demurrage if a container becomes unavailable for any reason after free time has expired.''); NAWE at 14 n.5.

[227] Green Coffee Ass'n at 2 (''We also contend that the demurrage clock should be suspended during ''non-accessible'' periods when the container may already be incurring demurrage charges thus eliminating the practice of 'once in demurrage, always in demurrage.' ''); Commodity Supplies, Inc. at 2 (same, but for detention).

[228] The caselaw involves demurrage, but similar concepts would apply in detention context.

[229] Final Report at 27 (citing *Port of San Diego,* 9 F.M.C. at 539).

[230] *NYII,* 9 S.R.R. at 874 (noting obligation to ''tender for delivery free of assessments of any demurrage''); *NYI,* 3 U.S.M.C. at 101 (''This is an obligation which the carrier is bound to discharge as a part of its transportation service, and consignees must be afforded fair opportunity to

costs be shifted to a shipper during free time, even in the event of a strike.[231] Second, during free time ocean carriers remain subject to section 41102(c)'s reasonableness standard: its practices must be tailored to meet their purposes.

Once free time expires, however, the first of these legal principles drops away because the transportation obligation of the carrier has ended.[232] At that point, ocean carriers can, and should, charge demurrage. As the Commission recognized in the NPRM, demurrage is a valuable charge when it incentivizes prompt cargo movement.[233] Ocean carriers remain subject, however, to section 41102(c) and its requirement that demurrage practices be tailored to meet their purposes—acting as financial incentives for cargo and equipment fluidity. If demurrage cannot act as an incentive for cargo and equipment fluidity because, for instance, a marine terminal is closed for several days due to a storm, charging demurrage in such a situation, even if a container is already in demurrage, raises questions as to whether such demurrage practices are tailored to their intended purpose in accordance with section 41102(c).

The ocean carrier and marine terminal operator commenters have two answers: precedent and incentives.[234] According to the commenters, *Boston Shipping Association* stands for the proposition that it is ''reasonable for a carrier to continue assessing demurrage against cargo that had exceeded free time when a strike broke out, thus precluding pick up.'' [235] Commenters rely on a single quotation: ''Thus, in our view, it is only just and reasonable that the consignee, who has failed to avail himself of the opportunity to pick up his cargo during free time, should bear the risk of any additional charges resulting from a strike occurring after free time has expired.'' [236]

But this quotation must be read in context. The question in *Boston Shipping Association* was who should be responsible, the ocean carrier or the consignee, for paying the terminals' cost: ''Thus, where the terminal is the intermediate link between the carrier and the shipper or consignee, one of these two persons must pay the terminal's *cost* of providing the services rendered.'' [237] The Commission held that during free time, this burden was on the ocean carrier; once free time expired, it was on the shipper. The Commission in *Boston Shipping Association* said nothing about the penalty aspect of demurrage. At most, it stands for the proposition that once free time ends, a shipper may be responsible for any compensatory aspect of demurrage.

This interpretation of *Boston Shipping Association* is consistent with the *New York* cases. *In Free Time and Demurrage Charges at New York,* the Commission held that even after free time expired, levying penal demurrage charges when a consignee, for reasons beyond its control, could not remove cargo from a pier was unjust and unreasonable:

> When property lies at rest on a pier after free time has expired, and consignees, through reasons beyond their control, are unable to remove it, the penal element of demurrage charges assessed against such property has no effect in accelerating clearance of the pier. To the extent that such charges are—penal, *i.e.,* in excess of a compensatory level—they are a useless and consequently unjust burden upon consignees, and a source of unearned revenue to carriers.[238]

The Commission further held, however, that in such circumstances, the ocean carrier is entitled to fair compensation for sheltering and protecting the cargo.[239] The Commission reached a similar conclusion almost 20 years later in *In re Free Time and Demurrage Practices on Inbound Cargo at New York Harbor,* explaining that ''[d]uring longshoremen's strikes affecting even a single pier, the penalty element of demurrage affords no incentive to remove cargo from the pier because the consignee cannot do so for reasons entirely beyond his control.'' [240]

To the extent, then, that these pre-containerization cases are relevant, they stand for the proposition that insofar as demurrage is a penalty *i.e.,* an incentive to retrieve cargo, it is unreasonable to assess it on cargo ''in demurrage.'' This is consistent with the guidance in the rule. And, while those cases allowed ocean carriers to recover certain costs, as noted above, the rule does not preclude the Commission from considering whether demurrage and detention have some compensatory aspect when determining the reasonableness of specific practices in individual cases.

As for incentives, the commenters' second argument in favor of ''once-in-demurrage, always-in-demurrage'' is that it provides an incentive for shippers and truckers to retrieve cargo and return equipment during free time. According to PMSA, ''[i]f a cargo interest knows that if it does not pick up cargo or return equipment during the original free time period, it will be subject to charges even if a no-fault event occurs during the demurrage/per diem, it will have a strong incentive to pick up the cargo during the original free time, promoting container velocity.'' [241]

This is a corollary to the argument that the rule disincentivizes shippers from retrieving containers during free time. As noted above, shippers and truckers have commercial reasons for wanting to get containers off-terminal or returned in a timely fashion.[242] Moreover, the prospect of having to pay demurrage or detention alone is an incentive. And, as noted above, once-in-demurrage, always-in-demurrage may also lessen the incentive for ocean carriers and marine terminal operators to perform efficiently.

The Commission therefore does not agree with some commenters' arguments that it is always a reasonable practice to charge detention and demurrage after free time regardless of cargo availability or the ability to return equipment. The rule and the principles therein apply to demurrage and detention practices regardless of whether containers at issue are ''in demurrage'' or ''in detention.'' That is, in assessing the reasonableness of demurrage and detention practices, the Commission will consider the extent to which demurrage and detention are serving their intended primary purposes as financial incentives to promote freight fluidity, including how demurrage and detention are applied after free time has expired.

accept delivery of cargo without incurring liability for penalties.'').

[231] *Boston Shipping Ass'n,* 10 F.M.C. at 416 (''No one would argue that the carrier should pay the terminals' cost of providing the pier for the free time period itself.''); *id.* at 417 (''We would place the burden upon him who at the time of the strike owes an undischarged obligation to the cargo. Thus, where the cargo is in free time and a strike occurs, it is the vessel which has yet to discharge its full obligation to tender for delivery and it is to the vessel that the terminal is at this point in time supplying the attendant facilities and services.'').

[232] *Boston Shipping Ass'n,* 10 F.M.C. at 417; NYII, 9 S.R.R. at 874.

[233] 84 FR at 48852.

[234] NAWE at 14 n.5; OCEMA at 5; PMSA at 7–8; WCMTOA at 9.

[235] OCEMAT at 5.

[236] 10 F.M.C. at 417–18.

[237] 10 F.M.C. at 417 (emphasis added); *id.* (''It is therefore just and reasonable to require the vessel to pay the *cost* of the supervening strike which renders the discharge of that responsibility impossible.'') (emphasis added).

[238] *NYI,* 3 U.S.M.C. at 107.

[239] *Id.* at 107–108.

[240] 9 S.R.R. at 875. The Commission reiterated that ocean carriers were entitled to compensation for use of their piers during longshoremen's strikes for cargo in demurrage when strike began and also allowed the assessment of demurrage (penal and compensatory) after the end of a strike, despite post-strike congestion, on containers in demurrage when the strike began. *Id.* at 877, 880.

[241] PMSA at 8.

[242] *E.g.,* AgTC at 4,

4. Risk Allocation

Finally, ocean carriers and marine terminal operators argue that the rule unfairly allocates all risks in force majeure situations to ocean carriers and marine terminal operators and prevents allocation of those risks by contract.[243] Commenters refer to ''risk related to fluctuations in terminal fluidity,'' ''risk and all of the attendant costs related to events beyond their control,'' [244] and ''the entire financial responsibility for no-fault situations.'' [245] Similarly, NAWE's states that ''the NPRM would legally mandate that all risk of demurrage/detention costs in force majeure-type situations be placed on terminals and carriers.'' [246]

The Commission interprets these comments as saying that in a ''force majeure'' situation, *e.g.,* a port is completely closed due to weather, commenters incur costs related to containers and terminal property, and if they cannot charge demurrage or detention, they have to absorb those costs. Again, part of the problem is that the commenters treat a factor in the reasonableness analysis—the incentive principle—as creating bright line rule, and they further assume the Commission would be incapable of exercising common sense when applying the factors. As explained above, nothing precludes the Commission from considering whether demurrage and detention have some compensatory aspect when determining the reasonableness of specific practices in individual cases.

F. Cargo Availability

In addition to describing how section 41102(c) may apply in the demurrage and detention context—the incentive principle—the Commission in the NPRM also sought to explain how that principle might work in particular contexts. First, the Commission clarified that it may consider in the reasonableness analysis the extent to which demurrage practices and regulations relate demurrage or free time to cargo availability for retrieval.[247] If, the Commission stated, shippers or truckers cannot pick up cargo within free time, then demurrage cannot serve its incentive purpose.[248] Put slightly differently, if a free time practice is not tailored so as to provide a shipper a reasonable opportunity to retrieve its cargo, it is not likely to be reasonable.[249]

The Commission emphasized that concepts such as cargo availability or accessibility refer to the *actual* availability of cargo for retrieval by a shipper or trucker. The Commission did not go so far as to define what availability means, but it said that certain practices would weigh favorably in the reasonableness analysis, including starting free time upon container availability and stopping a demurrage or free time clock when a container is rendered unavailable, such as when a trucker cannot get an appointment within free time.

There was significant support for the Commission's guidance from shippers, truckers, and intermediaries, and the Commission will include the language on container availability from the proposed rule in the final rule. A number of commenters request bright line rules. For instance, several commenters argue that free time should not start until a container is available, and that starting free time before availability should be deemed an unreasonable practice.[250] Others assert that free time and demurrage and detention clocks should stop when containers become non-accessible due to situations beyond the control of shipper or trucker.[251] Still others request that the Commission define ''container availability,'' [252] that the Commission expressly address things like terminal hours of operation vis-à-vis free time,[253] appointment systems,[254] and that the concept of availability should include chassis availability.[255]

As explained in the NPRM, it makes sense that if free time represents a reasonable opportunity for a shipper to retrieve a container, it should be tied, to the extent possible, to cargo availability, and the Commission recognizes the merits of that approach. But the Commission will not in this general interpretive rule make a finding that failure to start free time upon ''availability'' is necessarily unreasonable. The operational environments and commercial conditions at terminals across the country vary significantly, and in some situations, there might not be much difference between tying free time to vessel discharge and tying it to availability.[256] For similar reasons, while the Commission will consider in the reasonableness analysis how demurrage and detention practices address interruptions in availability during free time, requiring specific ''stop-the-clock'' procedures is beyond the scope of this rulemaking.[257] The Commission is sympathetic to shipper, intermediary, and trucker arguments that bright line rules will be more beneficial to them and would be clearer than the Commission's factor-based approach. But imposing bright line rules could inhibit the development of better solutions.

As for defining ''container availability,'' the Commission declines to do so here, as it can vary by port or marine terminal. Suffice it to say, availability at a minimum includes things such as the physical availability of a container: Whether it is discharged from the vessel, assigned a location, and in an open area (where applicable).[258]

[243] Am. Ass'n of Port Auth. at 2 (''However, the proposed rule would effectively prohibit private parties from negotiating over how the risk of events beyond either's control (such as weather event or actions of a third party) are to be allocated, putting all the burden completely on the terminal operator and/or carrier.''); *see also* NAWE at 11; OCEMA at 2–3; PMSA at 6; Ports Am. at 5;

[244] OCEMA at 2–3.

[245] PMSA at 6.

[246] NAWE at 11.

[247] 84 FR at 48852, 488555.

[248] 84 FR at 48852.

[249] 84 FR at 48852 (''The more a demurrage practice is tailored to cargo availability, the less likely the practice is to be found unreasonable.'').

[250] *E.g.,* Dow Chemical Co. at 2 (''Free time should be tied to actual cargo availability and not vessel arrival since efficient cargo pickup cannot be incentivized if the cargo may not yet be available.''); Am. Cotton Shippers Ass'n at 4; Am. Coffee Corp. at 2; Commodity Supplies at 1; CV Int'l at 1; Harbor Trucking Ass'n at 1–2; Int'l Fed. of Freight Forwarders Ass'ns at 2; John S. Connor Global Logistics at 2; New Direx Inc. at 1; NYNJFFF&BA at 4; Retail Indus. Leaders Ass'n at 2; Transp. Intermediaries Ass'n at 4.

[251] *E.g.,* Nat'l Indus. Transp. League at 8 (''The League agrees wholeheartedly that the reasonableness of demurrage practices and charges, including free time rules, should be related to actual physical availability of the cargo.''); Am. Cotton Shippers Ass'n at 4; Commodity Supplies at 2; Int'l Fed. of Freight Forwarders Ass'ns at 2; John S. Connor Global Logistics at 2

[252] *E.g.* EMO Trans Atlanta, GA USA at 1; FedEx Trade Networks, Inc. at 1; Int'l Motor Freight at 1.

[253] *E.g.,* Mondelez Int'l at 1 (''All free time should be defined as business days as not all ports allow pick up/return on weekends.''); Rio Tinto at 1.

[254] *E.g.,* Retail Indus. Leaders Ass'n at 2 (''A terminal's volume of appointment times and appointment availability are a critical component of cargo owners' ability to collect cargo. It is essential to consider the details of a terminal's appointment system, including availability and time frames of appointments, when assessing if fees are justified.''); Harbor Trucking Ass'n at 2 (''Important to consider the workings of terminal appointment systems in evaluating reasonableness—should be some minimum period of appointment availability.'').

[255] *E.g.,* Am. Cotton Shippers Ass'n at 5; CV Int'l, Inc. at 1; John Steer Co. at 1; John S. Connor Global Logistics, Inc. at 2–3; Yusen Logistics (Americas) Inc. at 1. *But see* Thunderbolt Global Logistics at 1 (''The lack of an available chassis should not be considered a requirement of availability unless the steamship line is supplying the chassis as part of their contract of carriage.'').

[256] *See* Final Report at 21–22.

[257] Accordingly, many ocean shipper and marine terminal operator concerns about the ''unworkability'' of the rule are unfounded. *See* NAWE at 12–13; WMCTOA at 10–11.

[258] 84 FR at 48853; Final Report at 20.

Depending on the facts of the case, the Commission may consider things such as appointment systems and appointment availability and trucker access to the terminal, *i.e.,* congestion.[259]

The chassis situation is more complicated. It is undeniable that chassis availability impacts the ability of a shipper or a trucker to remove a container from a port.[260] But the Commission has held that ''[p]ersons importing merchandise may reasonably be assumed to have, or be able promptly to obtain, the equipment needed to receive it,'' and, therefore, ''[i]t is not necessary, in fixing free time, to allow for delays that may be encountered in the procurement of equipment.'' [261] Additionally, chassis supply models vary. Sometimes a trucker provides his or her own chassis. Sometimes chassis are provided via third-party chassis providers, over whom the Commission does not have authority under section 41102(c). And, although ocean carriers in many cases sold their chassis fleets, sometimes they substantially affect chassis availability via chassis pools owned by ocean carrier agreements such as OCEMA.[262] Ocean carriers also exert control over chassis via ''box rules,'' under which ocean carriers determine which chassis a trucker must use in a carrier haulage situation.[263] According to the Agriculture Transportation Coalition (AgTC), ''carriers' 'box rules' limit availability of chassis, forcing trucker to 'hunt' for a container brand designated by the carrier, and cannot use other containers more conveniently located.'' [264]

Suffice it to say, the assumption in *Free Time and Demurrage Charges at New York* that a shipper is able promptly to obtain equipment'' might, in the case of a trucker and chassis, *in some circumstances,* no longer be valid.[265] Accordingly, the Commission may, in an appropriate case, consider chassis availability in the analysis. In doing so the Commission would be especially careful to analyze how the chassis supply model at issue relates to the primary incentive purpose of demurrage and detention.

G. Empty Container Return

The second application of the incentive principle discussed in the rule is empty container return.[266] The rule states that absent extenuating circumstances, practices and regulations that provide for imposition of detention when it does not serve its incentivizing purposes, such as when empty containers cannot be returned, are likely to be found unreasonable.[267] The Commission explained that such practices, absent extenuating circumstances, weigh heavily in favor of a finding of unreasonableness, because if an ocean carrier directs a trucker to return a container to a particular terminal, and that terminal refuses to accept the container, no amount of detention can incentivize its return.[268] In addition to refusal to accept empty containers, the Commission listed additional situations where imposition of detention might weigh toward unreasonableness, such as uncommunicated or untimely communicated changes in container return, or uncommunicated or untimely communicated notice of terminal closures for empty containers.[269]

Most of the comments about this aspect of the rule were supportive.[270] Several commenters suggest additional ideas. Some argue that an ocean carrier should grant more detention free time when the carrier requires an empty to be returned to a location other than where it was retrieved, or when a marine terminal operator requires an appointment to return an empty container.[271] Commenters also raised issues with marine terminal ''dual move'' requirements.[272] In the import context, a ''dual move'' is where a trucker drops off an empty container and picks up a loaded container on the same trip to a terminal. Mohawk Global Logistics described some of the issues that arise when a marine terminal operator requires a dual move to return an empty container:

> When winding down peak season, there are typically more empty containers being returned than full containers available to pick up, so single empty returns are more commonly needed, and without inbound loads, dual moves are hard to effect. When terminals go for days without accepting single moves, the trucker is stuck holding the container, usually on a chassis that is being charged for daily, and in a storage yard that is also charging daily. When a few single slots open up, everyone scrambles to get there with empties, quickly closing the yard down again.[273]

Changes in return location, and requiring dual moves, are certainly practices that the Commission could review under section 41102(c) in light of the guidance in rule.[274] While the rule does not discuss the extension of free time when containers must be returned to a different terminal than that from which they were retrieved, the approach may have merit. The NPRM referred to the similar situation when container return location changes and the change is not communicated in a timely fashion.[275] The Commission is particularly concerned about the reasonableness of dual move requirements, or more specifically, an ocean carrier imposing detention when a trucker's inability to return a container within free time is due to it not being able to satisfy a dual move requirement.[276] Although the

[259] 84 FR at 48852–53; *id.* at 48852 n.16; Final Report at 20. That the Commission in an appropriate case could consider appointment systems and appointment availability is by no means a requirement that all terminals must adopt appointment systems. *Contra* WCMTOA at 11; SSA Marine, Inc. at 2.

[260] 84 FR at 48851 at n.7 (''Current variations in chassis supply models have frequently contributed to serious inefficiencies in the freight delivery system.''); *id.* (''Timely and reliable access to roadworthy chassis is a source of ongoing and systemic stress to the system.'').

[261] *NYI,* 3 U.S.M.C. at 100.

[262] Inst. of Int'l Container Lessors at 7.

[263] *See* Bill Mongelluzzo, *Box rules hold back interoperable chassis pools: truckers,* JOC.com (Dec. 12, 2019) (defining ''box rules'').

[264] AgTC at 5.

[265] *NYI,* 3 U.S.M.C. at 100. To be clear, the Commission agrees in general with the assumption that a shipper or its agent has or can obtain the equipment necessary to retrieve cargo. In ordinary circumstances, a shipper could not escape liability for demurrage because it is unable to procure a trucker or because its trucker cannot obtain a chassis. There could, however, be circumstances when the Commission could consider chassis availability in the reasonableness analysis.

[266] 84 FR at 48853, 48855.

[267] 84 FR at 48855.

[268] 84 FR at 48853; *see also id.* (''Absent extenuating circumstances, assessing detention in such situations, or declining to pause the free time or detention clock, would likely be unreasonable.'').

[269] 84 FR at 48853.

[270] *E.g.,* A.N. Deringer, Inc. at 1 (''If we cannot return a container because the terminal will not take it, detention should not accrue.''); Int'l Fed. of Freight Forwarders Ass'ns at 2; Mohawk Global Logistics at 7; NYNJFFF&BA at 3; Transp. Intermediaries Ass'n at 4; Transways Motor Express at 1; Yupi at 1; NCBFAA at 7.

[271] *E.g.,* Best Transp. at 2; F.O.X. Intermodal Corp. at 1; Int'l Motor Freight at 1 (''All empty equipment should be returned to the marine terminal it was picked up from in order to increase truck efficiency and reduce the number of chassis splits.''); Mohawk Global Logistics at 7 (''Some carriers argue the containers should be returned to a different facility, but typically they are more distant, or also closing down.''); S. Counties Express at 2.

[272] *E.g.* Mohawk Global Logistics at 7; S. Counties Express at 2 (''Empties only being received as a 'dual transaction' when the motor carrier has no load to pull from the terminal. Steamship line charges motor carrier for not returning the empty and pulling a load.''); Quik Pick Express, LLC (''Typically, this is due to terminals only receiving empty containers as part of a dual transaction. If our company does not have an import container to extract from that terminal, we are unable to bring them our empty. We have no viable option to return the container, but are still faced with Detention charges by the Steamship line.'').

[273] Mohawk Global Logistics at 7.

[274] Assuming the other elements of a section 41102(c) case are met.

[275] 84 FR at 48853.

[276] As between ocean carriers and marine terminal operators, in this context the focus would

Continued

CommCission assumes there are operational reasons for dual move requirements, they effectively tie a trucker's ability to avoid charges to doing additional business with a carrier or at a terminal. In an appropriate case, the Commission would carefully scrutinize such practices.[277]

The National Customs Brokers and Forwarders Association of America (NCBFAA) also advocates that the Commission ''expand'' the rule to reflect the railroad concept of constructive delivery of empty containers.[278] Under this approach, the detention clock should stop once a container ''has been or could be delivered back to the port, VOCC or CY [container yard], but for the recipient's inability or unwillingness to receive the asset.'' [279] The Commission views this approach as one option an ocean carrier could use to mitigate detention under circumstances where the charges cannot serve their primary purpose of incentivizing freight fluidity. To the extent that NCBFAA is suggesting that the Commission should adopt the constructive delivery principle, the Commission believes that importing this concept from the railroad context is something better addressed in the context of a specific case or a future proceeding devoted to that topic, so that it can receive comments and arguments from all sides.

In sum, the Commission is adopting this paragraph of the rule without modification.

H. Notice of Cargo Availability

The rule also states that in assessing the reasonableness of demurrage practices and regulations, the Commission may consider whether and how regulated entities provide notice to cargo interests that cargo is available for retrieval. The rule further states that the Commission may consider the type of notice, to whom notice is provided, the format of notice, method of distribution of notice, the timing of notice, and the effect of the notice. This factor reflects that: (1) Ocean carriers are obligated under their contracts of carriage to give notice to consignees so that they have a reasonable opportunity to retrieve the cargo; (2) that notification practices must be reasonably tailored to fit their purposes under section 41102(c); and (3) the notion that aligning cargo retrieval processes with the availability of cargo will promote efficient removal of cargo from valuable terminal space.[280]

In applying this factor, the most important consideration is the extent to which any notice is calculated to apprise shippers and their agents that a container is available for retrieval.[281] The Commission explained that the type of notice is important—types of notice that are expressly linked to cargo availability weigh favorably in the analysis—and listed examples.[282] The Commission also noted the merits of ''push notifications'' of cargo availability, notifying users of changes in container availability, linking free time to notice of availability, and appointment guarantees.[283] The Commission stopped short, however, of specifying any particular form of notice.

The comments about this paragraph of the rule were generally of two types. Shippers, intermediaries, and truckers strongly support notice of cargo availability and urged that the Commission require such notice and specify what information a notice must contain.[284] Marine terminal operators opposed the Commission requiring any particular type of notice.[285]

The substantial supportive comments bolster the Commission's belief that consistent notice that cargo is actually available for retrieval would provide significant benefits to ocean freight delivery system, especially if that notice is tied to free time.[286] As pointed out by a commenter, notice of availability ''would serve the important function of clearly identifying when the cargo is truly available for pick up and thus when the free time clock should start and end.'' [287]The Commission remains concerned that legacy forms of notice might not be providing shippers with a reasonable opportunity to retrieve cargo.[288] Those concerns militate in favor of the Commission keeping ''notice'' as a factor in its guidance.

That said, the Commission is not requiring specific types of notice. The Commission's guidance is intended to apply to a wide variety of terminal conditions. What constitutes appropriate notice in one situation might not in another. Ocean carrier and marine terminal operator customers have varied needs, and the Commission is wary of asking regulated entities to develop tools that their customers are unwilling to use.[289] Consequently, while the Commission may consider the factors listed in the NPRM in the analysis, it is not requiring any specific form of notice.

Marine terminal operators argue that by noting the merits of things like ''push notifications'' and updates regarding container status, the Commission is ''requiring'' marine terminal operators to do these things. This is based on an misreading of the NPRM.[290] The marine terminal operators also make a number of claims about the costliness and technical feasibility and necessity of some of the suggestions.[291] These are

likely be on ocean carrier practices. *See* FMC Demurrage Report at 7 (''For the return of their empty containers, VOCCs instruct the consignees and terminal operators who serve them when, where, and how this equipment can be returned.'').

[277] Some commenters also asserted that off-terminal empty container storage areas should have the same hours as marine terminals. Int'l Motor Freight at 1; Transways Motor Express at 1. While that is something regulated entities may consider, delving into the hours of operation of particular facilities is beyond the scope of the rule, which is to provide general guidance.

[278] NCBFAA at 7.

[279] NCBFAA at 7.

[280] Final Report at 18–20, 27–28; Interim Report at 9, 18; 84 FR at 98853 (''The more these factors align with the goal of moving cargo off terminal property, the less likely demurrage practices would be found unreasonable.'').

[281] 84 FR at 48853.

[282] 84 FR at 48853 (''[n]otice that cargo is discharged and in an open area,'' ''notice that cargo is discharged, in an open area, free of holds, and proper paperwork has been submitted,'' and ''notice of all of the above and that an appointment is available.'').

[283] 84 FR at 48853.

[284] *E.g.,* Mohawk Global Logistics at 2; NCBFAA at 13; Airforwarders Ass'n at 1; ContainerPort Group at 1; CV Int'l, Inc. at 2; FedEx Trade Networks, Inc. at 1–2; Florida Customs Brokers & Forwarders Ass'n at 1; Int'l Fed. of Freight Forwarders Ass'ns at 2; John S. Connor Global Logistics at 3–4; Thunderbolt Global Logistics at 2; *cf.* Int'l Logistics; ContainerPort Group.

[285] PMSA at 5–6; WCMTOA at 10–11. In contrast, WSC argues that the rule is too vague in this regard because the Commission did not specify ''what it considers to be the proper format, method, or timing'' of notice.'' WSC at 16.

[286] In *NYI,* the Commission declined to require that free time start upon issuance of a notice of availability. *NYI,* 3 U.S.M.C. at 105–06. The Commission noted that ''[c]onsignees are universally apprised of the arrival of vessels'' and reasoned that ''[i]nsistence upon a notice of availability would subject the carriers to extra work and expense that would be largely futile and which appears quite unjustifiable.'' *Id.* at 106. The advent of containerization and the technological advances that have occurred over the past 72 years raise serious questions as to the continuing validity of these conclusions. As the Fact Finding Officer found, and shippers, intermediaries, and trucker commenters persuasively asserted, notices of availability would have benefits. Final Report at 19–20.

[287] NYNJFFF&BA at 4.

[288] Final Report at 19 (noting that some terminal operators as well as cargo interests ''believed that vessel arrival is a poor proxy for notice that a container is available''); *see also* Transp. Intermediaries Ass'n at 4 (''TIA supports tying free time to actual cargo availability and not to vessel arrival: As FMC points out, demurrage cannot incentivize efficient cargo pickup if the cargo is not truly available yet.'').

[289] Final Report at 19 (''In other words, the terminal operators stated, they are being asked to create tools that are not effective for the market.'').

[290] WCMTOA insists that the NPRM ''seeks to mandate the optimum level and type of notice for all terminal operators and carries in all circumstances.'' WCMTOA at 11. The language of the rule, however, belie WCMTOA's inferences.

[291] PMSA at 10–11 (noting that few industry players use push notifications because existing technology does not accommodate them.'');

arguments that the commenters would be free to make if relevant in a particular case.

Further, in describing things likely to be found reasonable, the Commission was reacting to what it heard from shippers, intermediaries, and truckers during the Fact Finding Investigation, and pointing out their potential advantages. The Commission mentioned the ''type'' of notice because notice related to cargo availability was, in some circumstances, more aligned with the ability to retrieve the cargo than notice of vessel arrival.[292] But that is not necessarily the case at all ports or at all terminals or for all shippers.[293] The Commission referred ''to whom'' notice would be provided as a consideration because truckers and others said that efficient retrieval of cargo could be enhanced if they were directly notified.[294] As for the notice format and distribution method, the Commission commented on push notifications because truckers explained that even when marine terminal operators provide container status information on websites, truckers would have to continuously monitor or ''scrape'' the websites to know when a container would be ready.[295] And as for appointment availability and notice, the Commission was noting the potential advantages of an idea proposed during the Fact Finding Investigation wherein once an appointment is made, a marine terminal operator would guarantee that the container would be available at the appointed time. If for some reason the marine terminal could not honor the appointment, it would accommodate the trucker in some other way, such as restarting free time, giving priority to a new appointment, or waiving the need for an appointment. The Commission, based on the Fact Finding Officer's reports, noted in the NPRM that these were potentially valuable ideas, but they were not intended to be the only ideas.[296]

WCMTOA claims that the Commission ''would seem to impose a requirement for a terminal operator to update cargo interests on a minute-by-minute basis as to the availability status of individual containers.'' [297] But nothing in the rule requires ''minute-by-minute updates'' of changes in container status. Rather, the Commission may consider whether and how notice of changes in cargo availability is provided, with the focus being how well ocean carrier and marine terminal operator practices are *reasonably* tailored to their purposes.[298]

In light of the foregoing, the Commission is adopting the language regarding notice of cargo availability without change.

I. Government Inspections

The Commission acknowledged in the NPRM that significant demurrage and detention issues involve government inspections of cargo.[299] Such inspections not only involve shippers, intermediaries, truckers, and marine terminal operators, but also government agencies, third-parties, and off-terminal facilities, such as centralized examination stations.[300] The Commission sought comment on three proposals, and any other suggestions for ''handling demurrage and detention in the context of government inspections, consistent with the incentive principle.'' [301] The Commission's proposals were:

(a) In the absence of extenuating circumstances, demurrage and detention practices and regulations that provide for the escalation of demurrage or detention while cargo is undergoing government inspection are likely to be found unreasonable;

(b) In the absence of extenuating circumstances, demurrage and detention practices and regulations that do not provide for mitigation of demurrage or detention while cargo is undergoing government inspections, such as by waiver or extension of free time, are likely to be found unreasonable; or

(c) In the absence of extenuating circumstances, demurrage and detention practices and regulations that lack a cap on the amount of demurrage or detention that may be imposed while cargo is undergoing government inspection are likely to be found unreasonable.[302]

Option B is the most popular option among the shipper, intermediary, and trucker commenters.[303] This option is essentially a restatement of the general incentive principle. Under the incentive principle, ''absent extenuating circumstances, demurrage and detention practices and regulations that do not provide for a suspension of charges when circumstances are such that demurrage and detention are incapable of serving their purpose would likely be found unreasonable.'' [304] Option B simply treats ''government inspections of cargo'' as a type of circumstance, like a port closure due to weather, where demurrage and detention may not be serving their incentive function.

A few commenters support Option C, wherein there would be a cap on the amount of demurrage or detention that could be imposed while cargo is undergoing government inspection. Most of these commenters tie this cap to costs incurred by regulated entities

PONYNJSSA (''[T]he NPRM suggests that if such a system does not 'push' relevant information, then such a system might not be considered a reasonable notice of cargo availability.'').

[292] *E.g.,* Transworld Logistics & Shipping Servs., Inc. at 3 (''It must be mentioned here that the arrival notice which is a courtesy information cannot be confused or construed to replace a cargo availability notice.'').

[293] Yupi at 1.

[294] There was significant discussion during the investigation about who should be providing notice related to cargo availability. Ocean carriers have a notice obligation under their contracts of carriage, which they purport to fulfil by providing notice of vessel arrival. *See* Final Report at 27. Otherwise, notice about container status is typically provided by marine terminal operators. The difficulty is that the entity in the best position to know about container status—the marine terminal operator—is not necessarily privy to information about who should receive notice, which is information the carrier has via bills of lading and other shipping documents. The solution would seem to involve better coordination between ocean carriers and the marine terminal operators with whom they contract to provide terminal facilities.

[295] *E.g.* Harbor Trucking Ass'n (''Notice must be timely and readily accessible to the contracting party or its designee, must provide clear information as to when and where cargo may be retrieved, and 'push notices' are favored.''); Mohawk Global Logistics at 2 (''Truckers must proactively and continuously po[re] over multiple websites to check on availability of containers they have been assigned.''). *But see* PMSA at 10–11 (arguing that there is little difference between getting a push notification and ''accessing the website or app to get the information at the shipper's or trucker's convenience'').

[296] For instance, the International Federation of Freight Forwarders Associations advocates ''advance notice of cargo availability.'' Int'l Fed. of Freight Forwarders Ass'ns at 3–4; *see also* Mondelez Int'l at 1 (''If the carriers could advise even within a few days prior to vessel arrival that the cargo will be ready at a certain date for pickup it would allow for more efficient planning and appointment making instead of a constant scramble.'').

[297] WCMTOA at 12.

[298] *Volkswagenwerk Aktiengesellschaft* v. *Fed. Mar. Comm'n,* 390 U.S. 261, 295 (1968) (''Of course charges need only be 'reasonably' related to benefits, and not perfectly or exactly related . . . .'') (Harlan, J, concurring).

[299] 84 FR at 48853.

[300] A ''centralized examination station'' is ''a privately operated facility, not in the charge of a Customs officer, at which merchandise is made available to Customs officers for physical examination.'' 19 CFR 118.1. CESs are established by port directors, and a CES operator agrees to, among other things, ''[p]rovide adequate personnel and equipment to ensure reliable service for the opening, presentation for inspection, and closing of all types of cargo designated for examination by Customs.'' 19 CFR 118.2, 118.4(b). CES operators have the option of providing transportation for merchandise to the CES. 19 CFR 118.4(l). CES operators are obliged to perform in accordance with reasonable requirements imposed by a port director. 19 CFR 118.4(k). A port director may propose to cancel an agreement to operate a CES if the operator fails to comply with its § 118.4 obligations. 19 CFR 118.21.

[301] 84 FR at 48853.

[302] 84 FR at 48853.

[303] *E.g.,* Commodity Supplies Inc. at 2; Harbor Trucking Ass'n at 2; Dow Chemical Co. at 2; FedEx Trade Networks at 2; Green Coffee Ass'n at 2; Int'l Ass'n of Movers at 2; Meat Import Council of America at 3; Nat'l Retail Fed. at 2.

[304] 84 FR at 48852.

related to the inspections.[305] As explained by one commenter, the cap would be ''akin to a compensatory component of a demurrage or detention charge that does not include the penal component of the charge.'' [306] Few commenters prefer Option A.[307] As for ocean carrier and marine terminal operator commenters, they object to any change to the status quo, under which, they assert, ''carriers and terminals are not required to extend free time based on delays in the availability of cargo resulting from government inspections.'' [308]

Some commenters also suggest different proposals, including disallowing any demurrage or detention during government inspections, so long as correct customs entries had been made,[309] extending free time for five days, after which demurrage during a hold could accrue,[310] disallowing demurrage and detention during government inspections and restarting free time clock from zero after inspection,[311] and a Container Inspection Fund, funded by a fee on containers, used to defray ocean carrier and marine terminal operator costs incident to inspections as well as to pay for demurrage and detention.'' [312] The objective of the latter proposal would be spread the costs of inspections among a ''wider constituency'' because ''[g]overnmental inspections and holds are performed for the benefit of the shipping community as a whole and society at large, not just for the individual shipper involved in a particular inspection.'' [313] For similar reasons, Mohawk Global Logistics suggests ''assign[ing] the true cost of the resources as a 'special government hold' demurrage or detention charges or cap the fee at 25% assuming the punitive aspect being removed is 75%, or thereabouts.'' [314]

The Commission has determined that, consistent with precedent, reasonableness should be assessed by considering whether demurrage and detention serve their intended purposes. As noted above, when shippers cannot retrieve cargo from a terminal, it is hard to see how demurrage or detention serve their primary incentive purpose. The question is, why shouldn't that principle apply during government inspections of cargo? In other words, why are government inspections different from any other circumstance where a shipper cannot retrieve its cargo?

Ocean carriers and marine terminal operators argue that it is permissible to treat government inspections differently under Commission precedent. They also argue that to extend free time during government inspections or to not charge demurrage and detention during them disincentivizes shippers, for instance, to properly submit paperwork. Finally, they argue that ocean carriers and marine terminal operators incur costs during government inspections, and those costs are most appropriately allocated to shippers because they are the only ones with any control of whether inspections happen and how they proceed. In contrast, they argue, marine terminal operators and ocean carriers have no control over whether containers are inspected or how long inspections last.

Although Commission caselaw supports these commenters' arguments, that caselaw pre-dates, and does not reflect, the Commission's modern interpretation of section 41102(c). In *Free Time and Demurrage Charges at New York,* the Commission held that ocean carriers are not required to extend free time to account for government inspections of cargo.[315] Delays related to government inspections, the Commission stated, ''are not factors that carriers are required to consider in fixing the duration of free time.'' [316] The Commission in that case cited no precedent. It reasoned that allowing free time to run during government inspections was permissible because delays related to government inspections were not attributable to ocean carriers or related to their operations.[317] The Commission reaffirmed this principle in 1967, finding that ''inspection delays are occasioned by factors other than those relating to the obligation of the carrier.'' [318]

Subsequently, however, the Supreme Court held that to determine reasonableness under section 41102(c)'s predecessor, one should look at how well charges correlate to their benefits.[319] And the Commission later held in *Distribution Services* that in the context of a carrier's terminal practices, ''a regulation or practice must be tailored to meet its intended purpose.'' [320] The reasoning regarding government inspections in *Free Time and Demurrage Charges at New York,* which did not consider whether free time and demurrage practices were tailored to meet their intended purposes, is inconsistent with the analytical framework of these more recent cases. Consequently, Commission precedent does not bar the Commission from applying the incentive principle to government inspections—it supports its application.[321]

Nor do the incentives at play suggest that government inspections should be treated specially under the rule. According to WCMTOA: ''If the terminal operator or carrier may not reasonably impose demurrage during a government inspection or include such periods in free time the importer/exporter will have no incentive to avoid or minimize government inspections by ensuring that its paperwork is complete and accurate, that it properly loads and

[305] *E.g.,* CV Int'l at 2 (''There should be a cap to the potential D/D charges resulting from government holds: perhaps a level that corresponds clearly to the true cost or income lost on the container or storage space during the hold period.''); Dow at 2; Int'l Ass'n of Movers at 2; Nat'l Indus. Transp. League at 13; Thunderbolt Global Logistics (cap for detention, demurrage should be waived).

[306] Nat'l Indus. Transp. League at 13.

[307] CV Int'l at 2 (''Accelerated D/D charges should not be permitted for cargo under government hold.''); Meat Import Council of Am. at 3; John S. Connor Global Logistics at 5 (''[W]e do not believe it is appropriate for the carriers and/or MTO operators to escalate charges (*i.e.,* impose penalty demurrage) in these situations.'').

[308] NAWE at 15; *see also* OCEMA at 5; PMSA at 9–10; WCMTOA at 6–9; WSC at

[309] FedEx Trade Networks at 2.

[310] Emo Trans Atlanta, GA USA at 1.

[311] AgTC at 6.

[312] Sea Shipping Line at 2; Sefco Export Management Co. at 2 (''The proposal for a Container Inspection Fund is one of the rare out of the box suggestions that I have come across that might actually do some good.'').

[313] Sea Shipping Line at 2.

[314] Mohawk Global Logistics at 6.

[315] *NYI,* 3 U.S.M.C. at 96, 99; *id.* at 101 (holding that ''the carriers, in determining the duration of free time, are not obliged to take account of delays in the removal of cargo which arise from the causes hereinabove discussed.'').

[316] 3 U.S.M.C. at 96.

[317] 3 U.S.M.C. at 96; *id.* at 99 (''As regarding either commodity, the sampling is not an operation required in connection with delivery by the carriers. Therefore, it can provide no valid ground to contend that free time allowed is unjust or unreasonable.'').

[318] *NYII,* 9 S.R.R. at 880.

[319] *Volkswagenwerk,* 390 U.S. at 282.

[320] *Distribution Servs.,* 24 S.R.R. at 722.

[321] NAWE *also* cites *Truck & Lighter Unloading Practices at New York Harbor,* 12 F.M.C. 166 (FMC 1969) for the proposition that terminal operators are only responsible for delays within their control. NAWE at 5–6. This case did not discuss *Volkswagenwerk,* however, and pre-dated *Distribution Services.* Moreover, the context was very different. *Truck & Lighter* in involved *truck* detention. In contrast to the issues here, at the time, marine terminals were required to compensate truckers for delays. 12 F.M.C. at 170 (requiring adoption of a rule that ''will compensate the truckers for unusual truck delays caused by or under the control of the terminals''). The Commission said that marine terminals only had to pay a fee (truck detention) when delays were within their control. *Id.* at 171. Here, however, it is shippers, intermediaries, and truckers who are arguing that they should not have to pay a fee (demurrage and detention) due to delays outside their control. In other words, *Trucker & Lighter* does not stand for the proposition that marine terminal operators can *impose* fees when delays are outside of their control.

secures its cargo in a container and that it carefully verifies the nature, quantity, safety, or labelling of its cargo.'' [322] This argument is unpersuasive. First, there are numerous incentives other than avoiding demurrage that motivate shippers to avoid or minimize government inspections. Not only are there examination costs, but government inspections delay cargo from reaching its intended destination and may result in cargo damage.[323] Second, under the rule, the Commission may consider the extent to which a shipper complies with its customary responsibilities. These responsibilities include things like submitting complete, accurate, and timely paperwork.[324]

Marine terminal operators and ocean carriers also point out that they suffer costs due to government inspections despite having no control over inspections.[325] The Commission does not disagree, nor do shippers, intermediaries, or truckers. As one commenter noted, ''government holds [impose on marine terminal operators and ocean carriers] a hardship, too.'' [326] Shippers, however, also incur costs due to inspections, and their control over an inspection is limited. Shippers cannot always control whether their cargo is inspected, for instance,[327] nor can they exert much control of the timeliness of examinations.[328]

In sum, none of these features of government inspections distinguish them from other circumstances that prevent shippers from retrieving cargo. That said, the complexity of government inspections and the variety of types of government inspections militate against adopting a single approach in the Commission's guidance.[329] Consequently, the final rule does not incorporate any of the language options proposed in the NPRM. Instead, the rule makes clear that the Commission may consider the incentive principle in the government inspection context as it would in any other context. Additionally, given ocean carrier and marine terminal operator concerns about disincentivizing shippers from complying with the customary obligations, the final rule includes language expressly indicating that the Commission may consider extenuating circumstances. Specifically, the final rule states that in assessing the reasonableness of demurrage and detention practices in the context of government inspections, the Commission may consider the extent to which demurrage and detention are serving their intended purposes and may also consider any extenuating circumstances. If circumstances demonstrate the need for more specific guidance in this regard, especially as to specific ports or terminals or specific types of inspections, the Commission can refine these principles via adjudication or further rulemaking.

J. Demurrage and Detention Policies

Although the incentive principle and its applications were the focus of the rule, the Commission's guidance also included ''other factors that the Commission may consider as contributing to the reasonableness inquiry.'' [330] The first ''other factor'' is the existence and accessibility of policies implementing demurrage and detention practices and regulations.[331] This factor was based on the Fact Finding Officer's finding that there existed a marked lack of transparency regarding demurrage and detention practices, including dispute resolution processes and billing procedures.[332] The Commission reasoned in the NPRM that ''[t]he opacity of current practices encourages disputes and discourages competition over demurrage and detention charges,'' and stated that shippers, intermediaries, and agents ''should be informed of who is being charged, for what, by whom, and how disputes can be addressed in a timely fashion.'' [333]

This paragraph of the rule first considers the existence of demurrage and detention policies, that is, ''whether a regulated entity has demurrage and detention policies that reflect its practices.'' [334] There was little comment on this aspect of the rule, but what there was supports the Commission's approach.[335] The Commission is therefore retaining this language about the ''existence'' of policies in the final rule.

The rule also refers to the accessibility of policies. The Commission stated in the NPRM that it would consider in the reasonableness analysis ''whether and how those policies are made available to cargo interests and truckers and the public.'' [336] ''The more accessible these policies are'' the Commission explained, ''the greater this factor weighs against a finding of unreasonableness.'' [337] The Commission went on to note that ''[t]his factor favors demurrage and detention practices and regulations that make policies available in one, easily accessible website, whereas burying demurrage and detention policies in scattered sections in tariffs would be disfavored.'' [338]

Although commenters agree that demurrage and detention policies should be accessible,[339] ocean carriers and marine terminal operators object to this aspect of the rule on the grounds that it is inconsistent with statutory and regulatory provisions regarding publication of tariffs and marine terminal operator schedules.[340] As these commenters point out, the Shipping Act requires a common carrier to ''keep open to public inspection in an automated tariff system, tariffs showing all its rates, charges, classifications, rule, and practices.'' [341] The Act also requires that a tariff be ''made available electronically to any person . . . through appropriate access from remote locations.'' [342] A marine terminal

[322] WCMTOA at 7.

[323] AgTC at 6; NCBFAA at 8; NYNJFFF&BA at 6; Int'l Fed. of Freight Forwarders Ass'ns at 4.

[324] *See, e.g.,* WCMTOA at 6.

[325] WCMTOA at 6 (''Government inspections of containers are never caused by the terminal operator, and never relate to the MTO's facility or operations.''); *id.* at 7–8; NAWE at 16; OCEMA at 5; PMSA at 9–10

[326] Mohawk Global Logistics at 6.

[327] *E.g.,* Meat Import Council of Am. at 3 (''All imported meat is subject to 100% inspection by the U.S. Department of Agriculture . . .'').

[328] Int'l Ass'n of Movers at 2 (''Delays are typically experienced because of a backlog or lack of CBP manpower, required to be present during the intensive exams.'').

[329] WCMTOA at 7 (''The proposals would impose a single approach to a complicated area involving a wide variety of inspections.''); PMSA at 9 (''It is difficult to mandate a single approach to inspections because there are so many types of inspections and inspection situations.''); *id.* (describing VACIS/X-ray inspection, Radioactive Portal Monitor inspections, and tailgate inspections).

[330] FF28 Letter at 2.

[331] 84 FR at 48856.

[332] Interim Report at 3 (noting that the record supports consideration of the benefits of ''[c]larity, simplification, and accessibility regarding demurrage and detention (a) billing practices and (b) dispute resolution processes''); *id.* at 2, 4, 10–12; Final Report at 13 (''The Phase Two meetings also reinforced the value of making demurrage and detention billing and dispute resolution policies and practices more transparent and accessible to cargo interest and truckers.''); *id.* at 14–18, 29; FF28 Letter at 2.

[333] 84 FR at 48853.

[334] 84 FR at 48853.

[335] OCEMA at 6 (''As noted in the NPRM, OCEMA has encouraged its members to publish their demurrage and detention policies and related dispute resolution processes either directly or via link on the OCEMA website.'').

[336] 84 FR at 48853.

[337] 84 FR at 48853.

[338] 84 FR at 48853–54.

[339] OCEMA at 6; Int'l Fed. of Freight Forwarders Ass'ns at 5 (''Policies should be transparent and easily available on web pages which should be identified in the cargo notification.'').

[340] NAWE at 16–17; PMSA at 12–13; Ports America 8–9; WSC at 17.

[341] 46 U.S.C. 40501(a)(1); *see also* 46 U.S.C. 40501(b)(4) (requiring tariff to ''state separately each terminal or other charge . . . and any rules that in any way change, affect, or determine any part of the total of the rates or charges'').

[342] 46 U.S.C. 40501(c).

operator, may, but is not required to, ''make available to the public a schedule of rates, regulations, and practices.'' [343] A schedule ''made available is enforceable by an appropriate court as an implied contract without proof of actual knowledge of its provisions.'' [344] Similarly, a shipper is presumed to have knowledge of tariff rules.[345] The Commission's regulations regarding tariffs and marine terminal schedules are found in 46 CFR parts 520 and 525.

According to these commenters, the Commission's statement disfavoring demurrage and detention policies buried in scattered sections in tariffs and favoring policies in easily accessible websites is inconsistent with the above Shipping Act and Commission provisions. ''To the extent the NPRM purports to add any requirements beyond those set forth in the statute and Part 525 of the regulations,'' a commenter argues, ''such requirements would be unlawful.'' [346]

The Commission continues to believe that the ocean freight delivery system would benefit from ocean carriers and marine terminal operators making their demurrage and detention policies available in easily accessible websites, in addition to their inclusion in ocean carrier tariffs and MTO schedules. And the Commission notes that unlike ocean carrier tariffs, marine terminal operator schedules are not required to be made public.

But commenters' points are well-taken, and the Commission would avoid any interpretation of section 41102(c) that would be inconsistent with other Shipping Act provisions or Commission regulations or that would subject regulated entities to incompatible requirements. Consequently, to the extent the Commission considers the ''accessibility'' of demurrage and detention policies under section 41102(c), the factor will not be construed or weighed such that compliance with the minimum tariff and schedule obligations under the Shipping Act or the Commission's regulations would tend toward a finding of unreasonableness. On the other hand, providing additional accessibility above and beyond the minimum tariff and schedule requirements would weigh in favor of a finding of reasonableness.

The Commission also remains concerned about the opacity of tariffs and marine terminal operator schedules. They tend to be complicated and difficult to navigate even for those in the industry (let alone, say, household goods shippers or others less familiar with international ocean shipping). Although section 41102(c) and this interpretive rulemaking might not be the right vehicle for addressing these concerns, the Commission may consider in an appropriate case whether an ocean carrier tariff is ''clear and definite'' as required by 46 CFR 520.7(a)(1). The Commission could also assess whether a tariff is adequately searchable.[347] Moreover, the Commission is charged with interpreting what it means for a tariff to be kept ''open to public inspection,'' what it means for a tariff to be ''available electronically'' through ''appropriate access,'' and what it means for a marine terminal schedule to be ''made available to the public.''

The Commission is making two minor, non-substantive changes to this paragraph of the rule. The first sentence of the paragraph stated that the Commission may consider the existence and accessibility of demurrage and detention policies. The final rule makes explicit that the Commission's analysis is not limited to those two factors and that it may also consider the content and clarity of any policies. That the Commission would consider the content of demurrage and detention policies reflecting demurrage and detention practices is implicit in the rule—the proposed rule stated that the Commission may consider certain aspects about dispute resolution policies, in other words, the content of those policies.[348] As for clarity, the Commission emphasized in the NPRM the importance of shippers, intermediaries, and truckers knowing what they are being charged for and by whom.[349] Adding the word ''clarity'' to the guidance is consistent with that emphasis, and appears unobjectionable.[350]

K. Dispute Resolution Policies

The rule indicates that the Commission is particularly interested in demurrage and detention dispute resolution policies, and consequently, the Commission may consider the extent to which they contain information about points of contact, timeframes, and corroboration requirements.[351] The Commission explained that it may consider in ascertaining reasonableness under section 41102(c) whether ocean carrier and marine terminal operator demurrage and detention dispute resolution policies ''address things such as points of contact for disputing charges; time frames for raising disputes, responding to cargo interests or truckers, and for resolving disputes; and the types of information and evidence relevant to resolving demurrage or detention disputes.'' [352] Based on discussions with stakeholders during all three phases of the Fact Finding Investigation, the Commission listed examples of attributes of dispute resolution policies that, while not required, would weigh toward reasonableness.[353] The Commission cited a best practices proposal put forward by OCEMA as a useful model for dispute resolution policies.[354]

There was little substantive objection to this part of the rule.[355] WSC protests that the Commission did not acknowledge the fact-specific nature of dispute resolution policies.[356] But the Commission expressly acknowledged in the NPRM that each regulated entity would tailor its dispute resolution policies to fit its own circumstances.[357] Further, the list of dispute resolution policy characteristics in the NPRM is a common-sense list of ideas raised during the Fact Finding Investigation. For example, during the third phase of the investigation, shippers, intermediaries, and truckers pointed out that demurrage or detention waivers or free time extensions were often met with a negative response without any

[343] 46 U.S.C. 40501(f).

[344] 46 U.S.C. 40501(f).

[345] *Kraft Foods* v. *Moore McCormack Lines,* 17 FMC 320, 323 n.4 (FMC 1974).

[346] NAWE at 17; PMSA at 12 (''[T]he Commission has no authority to require non-tariff publication of rates and charges, however desirable it might be from a customer service standpoint.'').

[347] 46 CFR 520.6.

[348] 84 FR at 48856. Further, given the Commission's ability to determine the reasonableness of demurrage and detention practices, it would also have the ability to assess the content of policies reflecting those practices.

[349] 84 FR at 48853; *see also* FF28 Letter at 2 (noting that under the proposed interpretive rule, the Commission could consider the ''transparency of demurrage and detention policies'').

[350] OCEMA at 6 (''OCEMA has long supported the notion of clarity and accessibility with regard to detention and demurrage practices.'').

[351] 84 FR at 48856.

[352] 84 FR at 48854 (citing Interim Report at 14–17–18; Final Report at 7–8. 17–18).

[353] 84 FR at 48854 (citing favorably ''step-by-step instructions for disputing a charge, dedicated dispute resolution staff at regulated entities, allowing priority appointments after successful dispute resolution or when a container is not available; sufficient responses to cargo interests request for free time extensions or waiver; processes for elevating disputes after an initial response; and allowing a trucker to continue to do business with a regulated entity during the pendency of a dispute'').

[354] 84 FR at 48854.

[355] In fact, the UIIA provides a default dispute resolution process. UIIA H.1.

[356] WSC at 17 (''In addition, the Commission does not acknowledge or address the fact-specific nature of all dispute resolution policies, which are created by each individual carrier.'').

[357] 84 FR at 48854 (stating that OCEMA provided a useful model ''which each regulated entity would tailor to fit its own circumstances'').

explanation or the ability to raise the issue to higher level management.

Shippers, intermediaries, and truckers, like WSC, would also like specific guidance on what sort of attributes dispute resolution policies must have to pass muster.[358] The former suggest that the Commission should set specific timeframes for dispute resolution and billing,[359] processes for internal appeals of disputes within an ocean carrier or marine terminal operator,[360] and points of contact with actual authority to settle disputes.[361] They also argue in favor of ocean carriers and marine terminal operators suspending charges during disputes about those charges,[362] allowing cargo to move freely during disputes,[363] and not ''shutting out'' truckers, intermediaries, or consignees from doing business with an ocean carrier or marine terminal operator simply because a trucker, intermediary, or consignee is engaged in a dispute with an ocean carrier or marine terminal operator.[364]

The Commission recognizes the merits of most [365] of these proposals, and when considering the totality of the circumstances in a section 41102(c) case involving demurrage and detention, the inclusion of such proposals in ocean carrier and marine terminal operator dispute resolution policies would likely weigh in favor of reasonableness and against a violation. In fact, application of these proposals could likely reduce the need for formal disputes and thereby enhance operational efficiency.[366] But for the Commission to require specific dispute resolution policies to include them, or to conclusively state that the absence of them makes a policy unreasonable, is beyond the scope of this rulemaking.[367] Accordingly, the Commission is retaining the language about dispute resolution policies in the final rule, with, as explained above, the clarification that the Commission may consider the content and clarity of demurrage and detention policies under section 41102(c).[368] The Commission further notes that the practice of ''shutting out'' truckers, intermediaries, or consignees from ocean carrier systems or terminals not only appears to impede efficient cargo movement,[369] but raises potentially serious concerns under other sections of the Shipping Act.[370]

L. Billing

The rule text does not address ocean carrier or marine terminal operator billing or invoicing practices. In the NPRM, however, the Commission noted that the ''efficacy (and reasonableness) of dispute resolution policies also depends on demurrage and detention bills having enough information to allow cargo interests to meaningfully contest the charges.'' [371] The Commission also pointed out that one idea that could promote transparency and the alignment of stakeholder interests was to tie billing relationships to ownership or control of the assets that are the source of the charges.[372] Additionally, the Commission noted that ocean carriers should bill their customers rather than imposing charges contractually-owed by cargo interests on third parties.

The Commission received a number of comments about billing and invoices. There was little dispute that demurrage and detention bills should have enough information for those receiving the bills to assess their accuracy and validity.[373] There was significant comment, however, about the idea that demurrage and detention be billed based on who owns the asset at issue. Under this approach, ''[o]cean carriers would bill cargo interest directly for the use of containers,'' and ''marine terminal operators would bill cargo interest directly for use of terminal land.'' [374] This idea was mentioned in both Fact Finding No. 28 reports.[375]

Although this billing model is not included in the rule, and the Commission did not suggest adopting it as part of the reasonableness analysis under section 41102(c),[376] the comments about this model are mostly negative because most commenters preferred billing relationships tied to the entity with whom contractual relationships exist.[377] Typically, the

[358] WSC at 17–18 (arguing that the Commission does not provide any guidance on what would render an appeals process sufficient). Some shippers, intermediaries, and truckers would also prefer more specific guidance in this regard

[359] *E.g.,* Am. Cotton Shippers Ass'n at 7; Int'l Fed. of Freight Forwarders Ass'ns at 6; Best Transp. at 2; CVI Int'l at 2; EMO Trans Atlanta, GA USA at 1; Mohawk Global Logistics at 8; Nat'l Indus. Transp. League at 15; Shapiro at 2.

[360] VLM Foods USA Ltd. at 1; FedEx Trade Networks & Brokerage, Inc. at 2.

[361] *E.g.,* Florida Customs Brokers & Forwarders Ass'n at 1; Int'l Fed. of Freight Forwarders Ass'ns at 5; VLM Foods USA Ltd. at 1.

[362] *E.g.,* Int'l Fed. of Freight Forwarders Ass'ns at 5 (noting that once a merchant pays an ocean carrier, the carrier has ''no motivation to look into such disputes delaying related refunds unreasonably'' and that a more reasonable practice would be to suspend payment of disputed charges pending resolution of the dispute); Mondelez Int'l at 2; Transp. Intermediaries Ass'n at 5.

[363] *E.g.,* NCBFAA at 16–17 (noting that ''pay now/argue later'' ''uses coercion as a means to extract money from NVOCCs'' and arguing that there should be mechanism allowing for release of cargo to NVOCCS without requiring them to first pay disputed demurrage or detention charges); CV Int'l at 2; FedEx Trade Networks Transport & Brokerage Inc. at 2; Container Port Group at 1; Transworld Logistics & Shipping Services Inc. at 5; Mohawk Global Logistics at 10.

[364] *E.g.* AgTC (''Many truckers own one truck, are immigrants in their first job in this country, may not have command of the English. They have no way to defend themselves from being locked out—its bullying.''); Mohawk Global Logistics (''In the case of detention charges billed and disputed after the fact, the terminals collecting on behalf of the carriers will frequently shut out truckers from access to their terminals when coming to pick up another unrelated container, again compelling payment before resolution.''); NYNJFFF&BA at 7 (''What is most important is that it should be considered unreasonable for a carrier to freeze all activity with the cargo owner or its subcontractors such as truckers and OTIS when there is a dispute on one shipment.''); VLM Foods Inc. at 1, (''Truckers and consignees should be able to obtain access to the containers and continue doing business with a carrier even if there is a pending dispute OR outstanding charges to their account.'').

[365] The idea that regulated entities should suspend charges pending a dispute or allow cargo to move freely runs up against the long-established lien law. Ocean carriers have maritime liens on cargo they transport. *Petra Pet Inc.* v. *Panda Logistics, Ltd.,* FMC Case No. 11–14, 2012 FMC LEXIS 33, at *43–*44 (ALJ Aug. 14, 2012), *aff'd* 2013 FMC LEXIS 37, at *17–*18 (FMC Oct. 31, 2013) (quoting *Bernard & Weldcraft Welding Equip.* v. *Supertrans Int'l,* Inc., 29 S.R.R. 1348, 1356 n.14 (ALJ 2003)). A carrier loses the lien if it surrenders the cargo. *Id.* But in any case, the Commission would need to examine precisely the lien at issue. *See Adenariwo* v. *BDP Int'l,* FMC Case No. 1921(I), 2014 FMC LEXIS 46, at *3 (FMC Feb. 20, 2014), *vacated on other grounds Adenariwo* v. *Fed. Mar. Comm'n,* 808 F.3d 73 (D.C. Cir. 2015); *Petra Pet* at *43–*44.

[366] Some commenters suggested that demurrage and detention disputes be subject to binding arbitration. See NYNJFFF&BA (''The NYNJFF&BA would like to suggest that disputes that cannot be easily solved between the parties be decided by binding decision of an impartial arbitrator. Perhaps more authority can be given to CADRS or parties incorporate the use of arbitrators in their contracts and agreements.''); Transworld Logistics & Shipping Services Inc. at 5.

[367] Part III.B.2, *supra.*

[368] *See* Part.III.J, *supra.*

[369] NYNJFFF&BA at 7 (explaining that locking out an intermediary can affect cargo of unrelated shipments handled by that intermediary and ''when carriers threaten to cutoff truckers from picking up any containers for any of their customers all shippers are affected when detention is not paid for one of them due to a dispute'').

[370] *See* 46 U.S.C. 41104(a)(3) (prohibition against carrier retaliation), 41104(a)(10) (prohibition against carrier unreasonably refusing to deal or negotiate), and 41106(3) (prohibition against marine terminal operator refusing to deal or negotiate). Assessing the lawfulness of ''lock out'' practices, however, under these provisions is beyond the scope of this rulemaking.

[371] 84 FR at 48854.

[372] 84 FR at 48854.

[373] NCBFAA at 17 (''For anyone to, first, understand and, second, contest disputed charges, it must be clear what is being billed and by whom.'').

[374] 84 FR at 48854.

[375] Interim Report at 18; Final Report at 26 n.26.

[376] The Commission did not, as OCEMA insists, ''propose[ ] to limit billing practices by function such that terminal would bill solely for land use and ocean carriers would bill for equipment use.'' OCEMA at 7.

[377] *See, e.g.,* Best Transp. At 2; Nat'l Indus. Transp. League at 16; Nat'l Retail Fed. at 2;

Continued

commenters point out, there is no direct commercial mechanism for shippers to negotiate demurrage provisions directly with marine terminal operators, since shippers contract instead directly with ocean carriers.[378] And few shippers or intermediaries want to receive separate invoices from ocean carriers and marine terminal operators.[379] Marine terminal operators and ocean carriers also prefer that billing be tied to contractual relationships.[380] In light of these comments, the Commission does not intend to consider the use or nonuse of this billing model in determining the reasonableness of demurrage and detention policies.

The Commission's emphasis in the NPRM that ocean carriers bill the correct party reflected concerns raised by truckers that they were being required to pay charges that were more appropriately charged to others. Commenters reiterate these concerns. AgTC contends that ''carriers should impose detention and/or demurrage on the actual exporter or importer customer with whom the carrier has a contractual relationship.'' [381] In contrast, the New York New Jersey Foreign Freight Forwarders & Brokers Association and others assert that truckers should be accountable for detention under the UIIA.[382] It also argues that ocean carriers define the term ''merchant'' in their bill of lading too broadly, resulting in parties being billed for demurrage and detention ''regardless of whether they are truly in control of the cargo when the charges were incurred.''

To clarify, the Commission's goal in the NPRM was to emphasize the importance of ocean carriers and marine terminal operator bills aligning with contractual responsibilities.[383] This does not mean, however, that every billing mistake is a section 41102(c) violation. Section 41102(c) applies to acts or omissions that occur on a normal, customary, and continuous basis.[384] Further, billing mistakes can presumably be addressed under contract law or other legal theories.[385]

As for the arguments that ocean carriers' billing practices are unreasonable because carrier bills of lading, tariffs, service contracts, or the UIIA assigns responsibility for charges to the wrong parties, the Commission believes that whatever the merit of these arguments, they are better addressed in the context of specific fact patterns rather than in this interpretive rule, the purpose of which is to provide general guidance about how the Commission will apply section 41102(c). Likewise, shippers, intermediaries, and truckers identify ocean carrier and marine terminal operator practices that they believe raise reasonableness issues. These commenters urge the Commission to require, or address in the rule:

- *Billing timeframes.* Many commenters assert that ocean carriers and marine terminal operators should issue demurrage or detention bills or invoices within specified timeframes.[386]
- *Advance payment of charges.* Several commenters suggest that it is unreasonable for ocean carriers or marine terminal operators to require advance payment of charges before cargo is released, especially when: (a) The regulated entity and the customer have negotiated credit arrangements; [387] or (b) when the charges are disputed.

As to billing and invoice timeframes, the Commission believes that having time frames and abiding by them would be a positive development. It is beyond the scope of this guidance, though, for the Commission to decide what those timeframes should be.[388] Similarly, in the abstract, it is not immediately clear why an ocean carrier or marine terminal operator would require payment of demurrage before releasing cargo if there is a credit arrangement involved. But specific situations may not so simple. As noted above, ocean carriers have liens on cargo that they can lose if they surrender the cargo.[389]

While the Commission does not believe it is appropriate in this interpretive rule to prescribe timeframes, let alone specific ones, or mandate that ocean carriers or marine terminal operators release cargo prior to payment when credit arrangements are involved, the Commission may address such issues in the context of particular facts, considering all relevant arguments. To reflect this, the Commission is including a reference to demurrage and detention billing practices and regulations in the final rule.

M. Guidance on Evidence

The rule paragraph on demurrage and detention policies mentions ''corroboration requirements'' because the Fact Finding record demonstrated that the international ocean freight delivery system would benefit from ''[e]xplicit guidance regarding the types of evidence relevant to resolving demurrage and detention disputes.'' [390] In the NPRM, the Commission stated that ''[d]ispute resolution policies that lack guidance about the types of evidence relevant to resolving

NYNJFFF&BA at 10–11; Harbor Trucking Ass'n at 2; NAWE at 20. *But see* Int'l Fed. of Freight Forwarders Ass'ns at a 6 (''Shipping lines should only charge to the merchant for the demurrage of their containers. The terminals should charge the merchant directly for the space used in their terminals.''); NCBFAA at 17–18 (advocating for billing tied to party having ownership or control of assets as it ''allows for greater transparency, consistency, prevents double billing, and eliminate confusion as to who and what the charges are for'').

[378] Nat'l Indus. Transp. League at 16; *see also* Nat'l Retail Fed. at 2 (''Instead, we endorse the view, espoused by Coalition for Fair Port practices that disputes over detention and demurrage should [be] between the ocean carrier and the BCO, simply because the commercial relationship exists only between the BCO and the ocean carrier.'').

[379] *E.g.,* Int'l Logistics, Inc at 2; Am. Coffee Corp. at 3.

[380] NAWE at 20; Pac. Merchant Shipping Ass'n at 13–15; WSC at 17 (''The Commission's interpretation of reasonable billing practices would require separate invoices by MTOs and carriers.'').

[381] AgTC at 7; *see also* IMC Companies (''In turn, ocean carriers on carrier haulage should bill their shippers for detention/per diem directly given motor carriers are not party to the service contract. Motor carriers are also not party to service contract exceptions on merchant haulage moves, and therefore any exceptions under service contract should require billing by ocean carrier directly to their shipper.''); J. Peter Hinge (''Therefore, it must be made crystal clear also in the context of the Commission's findings that when you say 'Ocean carriers would bill cargo interests directly for use of containers,' the 'cargo interest' is the consignee on the Ocean carrier's B/L as opposed to truckers and ultimate consignees on an NVOCC B/L.''); Mondelez Int'l at 2 (''The long-established rule of terminals and carriers billing the truckers for demurrage and detention (per diem) is a hardship.'').

[382] NTNJFFF&BA at 9 (''Where detention is concerned the steamship lines routinely have ignored the [UIIA], which holds the trucker accountable for the charges incurred when equipment is not returned on time.''); *see also* PMSA at 13 (''Specifically, equipment charges (detention or per diem) are generally assessed against motor carriers, not cargo interests, under the provisions of the [UIIA].'').

[383] 84 FR at 48854.

[384] 46 CFR 545.4(b).

[385] *See, e.g.,* 83 FR 64479 (''Matters that may previously have been brought under section 41102(c) however, can still find resolution in other provisions or regulations of the Shipping Act or be adjudicated as matters of contract law, agency law, or admiralty law.'').

[386] *See, e.g.,* Crane Worldwide Logistics (suggests a ''defined invoicing period''); Int'l Fed. of Freight Forwarders Ass'ns at 6; Mohawk Global Logistics at 8; Shapiro at 2.

[387] *See, e.g.,* The Evans Network of Companies at 1 (asserting that there is ''no need for advance payment of all charges here credit has been agreed to between the shipper and ocean carrier'' and that ''pre-payment should not apply to disputed charges''); FedEx Trade Networks Transport & Brokerage Inc. (''[W]e feel that it is essential that cargoes not be 'Held Hostage' for the immediate payment of demurrage or detention charges.''); Retail Indus. Leaders Ass'n at (''Similarly, where shippers and carriers have agreed to credit terms as a part of an existing, contracted business relationship, there is no basis for requiring advance payment of all charges prior to release of cargo'').

[388] *See* Part III.B.2, *supra.* The Commission notes, however, that the standard UIIA agreement requires equipment providers to invoice motor carriers for ''Per Diem, Container Use, Chassis Use/Rental and/or Storage Ocean Demurrage charges within sixty (60) days from the date on which the Equipment was returned.'' UIIA § E.6(c).

[389] *See supra* note 365.

[390] Final Report at 17–18.

demurrage and detention disputes, are likely to fall on the unreasonable end of the spectrum.'' [391] The Commission then listed examples of ideas proposed by shippers and truckers that could be incorporated into dispute resolution policies. The Commission noted that the OCEMA best practices proposal expressly contemplates that member dispute resolution policies include such guidance.[392]

Most of the comments about this aspect of the rule reflect disagreement about who should bear the burden of providing evidence relevant to demurrage and detention issues. WSC contends that the Commission's statements in the NPRM ''would require carriers to supply truckers with evidence that truckers possess in several circumstances.'' [393] Rather, the Commission stated that ''[p]roviding truckers with evidence substantiating trucker attempts to retrieve cargo that are thwarted when the cargo is not available'' is an idea that, if implemented by an ocean carrier or marine terminal operator, would weigh favorably in a reasonableness analysis.[394] By listing examples of ideas that would weigh favorably—ideas suggested by shippers and truckers—the Commission was not mandating a specific practice.

In contrast, other commenters assert that shippers and truckers should not have to prove that they do not owe demurrage and detention, rather ''[t]he entity billing the fees should prove they are owed, as it is with any other business on Earth.'' [395] Another commenter points out it would be helpful if truckers have geo-fencing data available to demonstrate attempts (and wait times) to retrieve cargo and log records of attempts to make appointments.[396]

When the Commission discussed ''corroboration requirements'' in demurrage and detention dispute resolution policies, and ''guidance about the types of evidence relevant to resolving demurrage and detention disputes,'' [397] it was referring to informal dispute resolution among ocean carriers, marine terminal operators, shippers, intermediaries, and truckers, in the form of requests for free time extensions or waiver of charges.[398] The Commission was not referring to who should bear the burden of producing evidence in a lawsuit in court or a Shipping Act action before the Commission.[399]

The Commission's point was that disputes about demurrage and detention might be resolved more efficiently if a shipper or trucker knows in advance what type of documentation or other evidence an ocean carrier or marine terminal operator needs to see to grant a free time extension or waiver. If an ocean carrier or marine terminal operator provides things like trouble tickets or log records to its customers or their agents, so much the better. Dispute resolution policies that contain guidelines on corroboration will weigh favorably in the totality of the reasonableness analysis. It would seem to be in the best interests of ocean carriers and marine terminal operators to provide this sort of guidance and to avoid imposing onerous evidentiary requirements on their customers, as legitimate disputes that do not get resolved informally can lead to formal action in the form of Shipping Act claims or calls for additional Commission regulation.

N. Transparent Terminology

Paragraph (e) of the proposed rule states that the Commission may consider in the reasonableness analysis the extent to which regulated entities have defined the terms used in demurrage and detention practices and regulations, the accessibility of definitions, and the extent to which the definitions differ from how the terms are used in other contexts.[400] The Commission started with the basic principle that for demurrage and detention practices to be just and reasonable, it must be clear what the relevant terminology means.[401] Consequently, as the Commission explained, it would consider in the reasonableness analysis: (a) Whether a regulated entity has defined the material terms of the demurrage or detention practice at issue; (b) whether and how those definitions are made available to cargo interests, truckers, and the public; and (c) how those definitions differ from a regulated entity's past use of the terms, how the terms are used elsewhere in the port at issue, and how the terms are used in the U.S. trade.[402]

The Commission also supported defining demurrage and detention in terms of what asset is the source of the charge (land or container) as opposed to the location of a container (inside or outside a terminal). The Commission discouraged use of terms such as ''storage'' and ''per diem'' as synonyms for demurrage and detention because these terms add additional complexity and are apparently inconsistent with international practice.[403]

Shippers, intermediary, and trucker commenters strongly support the rule's emphasis on clear language.[404] And those who otherwise opposed the Commission's rule did not object to the principle that the definitions of terms used in demurrage and detention practices should be clear.[405] To better reflect this emphasis on clarity, the Commission is including the term ''clearly'' in paragraph (e) of the final rule.

Moreover, no commenters object to the notion that regulated entities should define material terms like ''demurrage'' and ''detention.'' [406] As NCBFAA points out, if shippers do not know what a charge means, they cannot ''ascertain the nature of the charge and if it is justified.'' [407] There are no substantive comments on the ''accessibility'' portion of this paragraph. The focus on accessibility, however, runs into some of the same issues addressed above regarding the accessibility of demurrage and detention policies: existing statutory and regulatory provisions regarding the publication and contents of common carrier tariffs and marine

[391] 84 FR at 48854.

[392] 84 FR at 48854.

[393] WSC at 18.

[394] 84 FR at 48854.

[395] Nat'l Retail Fed. at 3 (noting it ''continue[d] to be concerned that MTOs and carriers may develop transparent policies that place the evidentiary onus on cargo interests,'' and arguing that ''MTOs and carriers should have an obligation to provide information in instances where a BCO or its agent attempts to make an appointment but is unable to, or where truckers arrive at the terminal only to discover that cargo is not available''); A.N. Deringer Inc. at 1; Green Coffee Ass'n.

[396] John S. Connor Global Logistics at 6.

[397] 84 FR at 48854.

[398] *See* Final Report at 17 (''The Phase Two respondents generally agreed that cargo interests seeking a demurrage waiver or free time extension should substantiate their arguments with corroborating documentation and that having guidelines could resolve disputes more efficiently.'').

[399] The UIIA, for instance, requires equipment providers to provide truckers documentation reasonably necessary to support invoices, whereas in other situations the UIIA requires the trucker to provide documentation supporting a claim. UIIA § E.6(d), (e).

[400] 84 FR at 48856.

[401] 84 FR at 48854.

[402] 84 FR at 48854.

[403] 84 FR at 48854.

[404] *See, e.g.,* Am. Cotton Shippers Ass'n; Harbor Trucking Ass'n; NCBFAA; Retail Industry Leaders Ass'n.

[405] NAWE at 18; OCEMA at 6.

[406] Additionally, ocean common carrier tariffs must contain all ''rates, charges, classifications, rules, and practices between all points or ports on its own route and on any through transportation route that has been established.'' 46 U.S.C. 40501(a); *see also* 46 CFR 520.4 (requiring tariffs to state ''separately each terminal or other charge, privilege, or facility under the control of the carrier or conference and any rules or regulations that in any way change, affect, or determine any part of the aggregate of the rates or charges).

[407] NCBFAA at 18.

terminal operator schedules.[408] Consequently, to the extent the Commission considers the ''accessibility'' of demurrage and detention definitions under section 41102(c), the factor will not be construed or weighed such that minimum compliance with the applicable tariff and schedule requirements would tend toward a finding of unreasonableness. On the other hand, providing additional accessibility of such definitions above and beyond the requirements will be viewed favorably in any reasonableness analysis.

The most commented upon aspect of the rule regarding terminology was the clause stating that the Commission would consider in the reasonableness analysis the ''extent to which the definitions differ from how the terms are used in other contexts,'' *i.e.,* how the definitions differ from a regulated entity's past use of the terms, how the terms are used elsewhere in the port at issue, and how the terms are used in the U.S. trade. The rationale was that the more a regulated entity's definitions of demurrage and detention differ from how it had used the terms and how the terms were used in the industry, the more important it was for the regulated entity to ensure that the definitions were clear. Further, considering how the terms were used elsewhere would encourage consistent demurrage and detention terminology, which was in line with the Fact Finding Officer's finding that standardized demurrage and detention language would benefit the freight delivery system.[409]

In their comments, shippers, intermediaries, and truckers largely support consistent or standardized demurrage and detention terminology.[410] Ocean carrier and marine terminal operator commenters, however, object to the Commission considering in the reasonableness analysis how terms were used in the past and elsewhere in a port or U.S. trade.[411] They argue that the Commission should assess the transparency of terminology based on the face of demurrage and detention documents, and that the rule would chill innovation or improvements in technology; ignores differences between carriers and marine terminal operators that result in different terminology; indicates a Commission preference for uniformity over competition; could increase risk that regulated entities could be accused by the Department of Justice or private plaintiffs of engaging in concerted activity; and would ''add to confusion within the industry by requiring ocean carriers to abandon familiar, existing terminology in favor of some undefined standard.''[412]

Despite these criticisms, the Commission is not deleting this portion of the rule. The NPRM merely proposed that one factor that the Commission may consider in combination with other factors in the reasonableness analysis is how terms are used in light of how they are used elsewhere. The Commission, by issuing this guidance, is not requiring regulated entities to change their current terminology, and the primary consideration when it comes to the clarity of terminology would be the definitional documents themselves. Moreover, this guidance does not mean that the Commission would find a section 41102(c) violation simply because an ocean carrier or marine terminal operator changed its terminology. The Commission is capable of distinguishing between a regulated entity simply changing its terminology, which would in most cases would not raise any issues, and a regulated entity using its own terminology inconsistently. Likewise, regulated entities are free to use terminology that differs from that used in a particular port or the U.S. trade generally, so long as they make it clear what the terms mean. While the commenters do not explain how operational differences between, say, marine terminal operators, would result in different definitions of demurrage and detention, the proposed guidance does not mean that the Commission would ignore such differences if raised in a case.

As for the competitive concerns, the Fact Finding Officer's reports indeed indicate a preference for standardized or consistent demurrage and detention terminology, stating that it would benefit the industry and American economy.[413] The Commission finds unpersuasive the claim that ocean carriers and marine terminal operators compete on the basis of the demurrage and detention terminology they use, and these commenters provide no support for the contention that they are at risk of antitrust prosecution or litigation due to their choice of terminology.

At the end of the day, the Commission's proposed guidance in this regard is intended to provide advance notice that if ocean carriers or marine terminal operators use terms that are unclear, or use terms inconsistently, and as a consequence confuse or mislead shippers, intermediaries, or truckers, the Commission may take that into account as part of the reasonableness analysis under section 41102(c). Although the Commission believes that consistent demurrage and detention language would be beneficial, and encourages it, the rule should not be construed to mandate it.[414]

O. Carrier Haulage

Finally, it is worth highlighting comments about ''carrier haulage,'' because, while not specifically the subject of the Commission's rule, the topic was mentioned by several commenters. In a carrier haulage arrangement, also referred to as ''store door'' delivery or a ''door move'' or ''door-to-door'' transportation, the ocean carrier is responsible for arranging transport of a container from the terminal to another location, such as a consignee warehouse. In other words, the ocean carrier provides drayage trucking.[415] In contrast, in a ''merchant haulage'' arrangement, also known as CY (container yard) or port-to-port transportation, the shipper makes the trucking arrangements.[416]

Some commenters argue that ocean carriers should not be able to charge shippers demurrage or detention on carrier haulage moves because in those situations the ocean carrier, not the shipper or consignee, is responsible for ensuring that containers are timely retrieved from the terminal and delivered to the appropriate location.[417]

[408] *See* Part III.J, *supra.*

[409] Final Report at 3, 30, 32.

[410] *E.g.,* Am. Coffee Corp.; Green Coffee Ass'n; Am. Cotton Shipper's Ass'n; Harbor Trucking Ass'n; IMC Companies; Meat Import Council of America; Nat'l Indus. Transp. League; NYNJFFF&BA; Retail Indus. Leaders Ass'n.

[411] NAWE at 18–20; OCEMA at 6; WSC at 17.

[412] OCEMA at 6; *see also* NAWE at 19.

[413] Interim Report at 17; Final Report at 32.

[414] The Commission in the NPRM supported certain definitions of ''demurrage'' and ''detention'' and discouraged other terms such as storage or per diem. Although some commenters support the Commission's definitions, others did not. Moreover, one commenter noted that some ocean carriers use alternative terms such as ''storage'' or ''per diem'' to distinguish these charges from terminal demurrage. OCEMA at 6. While the Commission believes that, based on the Fact Finding Investigation, the definitions it suggested have merit, and that terms like storage and per diem could potentially cause confusion, use or nonuse of those definitions would not affect the reasonableness analysis.

[415] FMC Congestion Report at 9, 18.

[416] *Id.* at 9, 18.

[417] Mohawk Global Logistics at 9; Samaritans Int'l of Waxhaw (''Many times the freight line is in control of door to door delivery, by lack of coordination container are not moved in a timely fashion, Once again they charge us demurrage for their lack of efficiency.''); W. Overseas Corp. at (describing situation in which ocean carrier was unable to find a trucker on a door move resulting in imposition of demurrage on importer because the carrier ''had a provision in their tariff that allowed this to happen'' and arguing that ''[t]he whole point in making these books a door move was'' so that

As one commenter maintained: ''Of late carriers have started billing importers for truck capacity issues at gateway ports (on carrier door moves) which, should immediately stop as the carrier is obliged to honor the terms of the 'door bill of lading.' '' [418] In contrast, truckers argue that ''ocean carriers on carrier haulage should bill their shippers directly given motor carriers are not party to the [service] contract.'' [419]

Also of interest is the comment that ''[d]uring recent terminal congestion, reports indicated that shipping lines charged demurrage to merchants who arranged the transport in merchant haulage but waived the charges for merchants for whom they arranged the transport in carrier haulage.'' [420] The commenter asserts that when arranging haulage, ocean carriers in carrier haulage are competing with entities such as ocean transportation intermediaries.[421] Because, the commenter asserted, markets are less efficient when entities have the power to levy unreasonable charges on their competitors, the Commission's guidance should make clear that ''containers in merchant haulage and carriers haulage be treated alike.'' [422]

Although the rule does not address these specific situations, the Commission has concerns about them, especially charging shippers demurrage on carrier haulage moves, under section 41102(c) and will closely scrutinize them in an appropriate case. Additionally, insofar as ocean carriers are not fulfilling contractual obligations, shippers may have additional remedies.[423]

IV. Rulemaking Analyses

Congressional Review Act

The rule is not a ''major rule'' as defined by the Congressional Review Act, codified at 5 U.S.C. 801 *et seq.* The rule will not result in: (1) An annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies. 5 U.S.C. 804(2).

Regulatory Flexibility Act

The Regulatory Flexibility Act (codified as amended at 5 U.S.C. 601–612) provides that whenever an agency promulgates a final rule after being required to publish a notice of proposed rulemaking under the Administrative Procedure Act (APA) (5 U.S.C. 553), the agency must prepare and make available for public comment a final regulatory flexibility analysis (FRFA) describing the impact of the rule on small entities. 5 U.S.C. 604. An agency is not required to publish a FRFA, however, for the following types of rules, which are excluded from the APA's notice-and-comment requirement: interpretive rules; general statements of policy; rules of agency organization, procedure, or practice; and rules for which the agency for good cause finds that notice and comment is impracticable, unnecessary, or contrary to public interest. *See* 5 U.S.C. 553(b).

Although the Commission elected to seek public comment, the rule is an interpretive rule. Therefore, the APA did not require publication of a notice of proposed rulemaking in this instance, and the Commission is not required to prepare a FRFA.

National Environmental Policy Act

The Commission's regulations categorically exclude certain rulemakings from any requirement to prepare an environmental assessment or an environmental impact statement because they do not increase or decrease air, water or noise pollution or the use of fossil fuels, recyclables, or energy. 46 CFR 504.4. This rule regarding the Commission's interpretation of 46 U.S.C. 41102(c) falls within the categorical exclusion for investigatory and adjudicatory proceedings, the purpose of which is to ascertain past violations of the Shipping Act of 1984. 46 CFR 504.4(a)(22). Therefore, no environmental assessment or environmental impact statement is required.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before collecting information from the public. 44 U.S.C. 3507. This rule does not contain any collections of information as defined by 44 U.S.C. 3502(3) and 5 CFR 1320.3(c).

Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards in E.O. 12988 titled, ''Civil Justice Reform,'' to minimize litigation, eliminate ambiguity, and reduce burden.

Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, available at *http://www.reginfo.gov/public/do/eAgendaMain.*

List of Subjects in 46 CFR Part 545

Antitrust, Exports, Freight forwarders, Maritime carriers, Non-vessel-operating common carriers, Ocean transportation intermediaries, Licensing requirements, Financial responsibility requirements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Federal Maritime Commission amends 46 CFR part 545 as follows:

PART 545–INTERPRETATIONS AND STATEMENTS OF POLICY

■ 1. The authority citation for part 545 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. 305, 40307, 40501–40503, 41101–41106, and 40901–40904; 46 CFR 515.23.

■ 2. Add § 545.5 to read as follows:

§ 545.5 Interpretation of Shipping Act of 1984—Unjust and unreasonable practices with respect to demurrage and detention.

(a) *Purpose.* The purpose of this rule is to provide guidance about how the Commission will interpret 46 U.S.C. 41102(c) and § 545.4(d) in the context of demurrage and detention.

(b) *Applicability and scope.* This rule applies to practices and regulations relating to demurrage and detention for containerized cargo. For purposes of this rule, the terms demurrage and detention encompass any charges, including ''per diem,'' assessed by ocean common carriers, marine terminal operators, or ocean transportation intermediaries (''regulated entities'') related to the use of marine terminal space (*e.g.,* land) or shipping containers, not including freight charges.

the ocean carrier would make the delivery arrangements'').

[418] Transworld Logistics & Shipping Servs. Inc. at 4.

[419] Harbor Trucking Ass'n at 2. It is possible that those comments can be reconciled, if the former is referring to demurrage and the latter, detention.

[420] Int'l Fed. of Freight Forwarders Ass'ns at 7.

[421] *Id.*

[422] *Id.*

[423] *See* 83 FR at 64479 (noting that shippers may have remedies outside the Shipping Act for some complaints, under principles of contract law, agency law, or admiralty law).

(c) *Incentive principle*—(1) *General.* In assessing the reasonableness of demurrage and detention practices and regulations, the Commission will consider the extent to which demurrage and detention are serving their intended primary purposes as financial incentives to promote freight fluidity.

(2) *Particular applications of incentive principle*—(i) *Cargo availability.* The Commission may consider in the reasonableness analysis the extent to which demurrage practices and regulations relate demurrage or free time to cargo availability for retrieval.

(ii) *Empty container return.* Absent extenuating circumstances, practices and regulations that provide for imposition of detention when it does not serve its incentivizing purposes, such as when empty containers cannot be returned, are likely to be found unreasonable.

(iii) *Notice of cargo availability.* In assessing the reasonableness of demurrage practices and regulations, the Commission may consider whether and how regulated entities provide notice to cargo interests that cargo is available for retrieval. The Commission may consider the type of notice, to whom notice is provided, the format of notice, method of distribution of notice, the timing of notice, and the effect of the notice.

(iv) *Government inspections.* In assessing the reasonableness of demurrage and detention practices in the context of government inspections, the Commission may consider the extent to which demurrage and detention are serving their intended purposes and may also consider any extenuating circumstances.

(d) *Demurrage and detention policies.* The Commission may consider in the reasonableness analysis the existence, accessibility, content, and clarity of policies implementing demurrage and detention practices and regulations, including dispute resolution policies and practices and regulations regarding demurrage and detention billing. In assessing dispute resolution policies, the Commission may further consider the extent to which they contain information about points of contact, timeframes, and corroboration requirements.

(e) *Transparent terminology.* The Commission may consider in the reasonableness analysis the extent to which regulated entities have clearly defined the terms used in demurrage and detention practices and regulations, the accessibility of definitions, and the extent to which the definitions differ from how the terms are used in other contexts.

(f) *Non-Preclusion.* Nothing in this rule precludes the Commission from considering factors, arguments, and evidence in addition to those specifically listed in this rule.

By the Commission.

Rachel Dickon,

Secretary.

[FR Doc. 2020–09370 Filed 5–15–20; 8:45 am]

BILLING CODE 6730–02–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 5, 8, 9, 12, 13, 15, 19, 22, 25, 30, 50, and 52

[FAC 2020–06; FAR Case 2018–007; Item II; Docket No. FAR–2018–0007; Sequence No. 1]

RIN 9000–AN67

Federal Acquisition Regulation: Applicability of Inflation Adjustments of Acquisition-Related Thresholds

Correction

In rule document 2020–07109 appearing on pages 27088–27097 in the issue of May 6, 2020, make the following correction:

52.212–5 [Corrected]

■ On page 27092, in the third column, Instruction 40 e. for 52.212–5, should read as set forth below:

■ e. Revising paragraphs (e)(1)(viii) through (x) and the first sentence of paragraph (e)(1)(xxi); and

[FR Doc. C1–2020–07109 Filed 5–15–20; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 216 and 300

[Docket No. 200511–0133]

RIN 0648–BJ23

International Fisheries; Pacific Tuna Fisheries; Fishing Restrictions for Silky Shark, Fish Aggregating Devices, and Observer Safety in the Eastern Pacific Ocean

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations under the Tuna Conventions Act to implement three Resolutions adopted by the Inter-American Tropical Tuna Commission (IATTC) in 2018 and 2019: Resolution C–19–01 (*Amendment to Resolution C–18–05 on the Collection and Analyses of Data on Fish-Aggregating Devices*); Resolution C–19–05 (*Amendment to the Resolution C–16–06 Conservation Measures for Shark Species, with Special Emphasis on the Silky Shark (Carcharhinus falciformis), for the Years 2020 and 2021*); and Resolution C–18–07 (*Resolution on Improving Observer Safety at Sea: Emergency Action Plan).* NMFS also issues regulations under the Marine Mammal Protection Act to implement a Resolution adopted by parties to the Agreement on the International Dolphin Conservation Program (AIDCP): Resolution A–18–03 (*On Improving Observer Safety At Sea: Emergency Action Plan*). This final rule is necessary for the United States to satisfy its obligations as a member of the IATTC and Party to the AIDCP.

DATES: The amendment to § 300.27(e) is effective June 17, 2020, and the remaining amendments are delayed. NMFS will publish a document in the **Federal Register** announcing the effective date.

ADDRESSES: Copies of supporting documents are available via the Federal eRulemaking Portal: *http://www.regulations.gov,* docket NOAA–NMFS–2019–0149, or contact Rachael Wadsworth, NMFS WCR SFD, 7600 Sand Point Way NE, Building 1, Seattle, WA 98115, or *WCR.HMS@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Rachael Wadsworth, NMFS at 562–980–4036.

SUPPLEMENTARY INFORMATION:

Background

On January 24, 2020, NMFS published the proposed rule in the **Federal Register** (85 FR 4250) to implement provisions of three IATTC Resolutions and one AIDCP Resolution on silky shark, data collection for fish aggregating devices (FADs), and observer safety. The proposed rule contains additional background information, including information on the IATTC, AIDCP, and Convention Areas; the international obligations of the United States as an IATTC member and Party to the AIDCP; and the need for these regulations. The 30-day public comment period for the proposed rule closed on February 24, 2020.

This final rule is implemented under the Tuna Conventions Act (16 U.S.C. 951 *et seq.*) and the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*). This rule applies to U.S. commercial fishing vessels that fish for tuna or tuna-like species in the IATTC Convention Area. The IATTC Convention Area is defined as waters of the eastern Pacific Ocean (EPO) within the area bounded by the west coast of the Americas and by 50° N. latitude, 150° W. longitude, and 50° S. latitude.

Because the preamble of the proposed rule contained detailed information on the Resolutions, this final rule will briefly summarize these Resolutions and include more detail on the new regulations.

New Regulations

The new regulations implemented in the final rule as related to FAD data reporting, silky sharks, and observer safety are described below.

FAD Data Collection

Per Resolution C–19–01, this rule revises existing regulations for FAD data collection requirements to remove the reporting requirements for captains of purse seine vessels fishing on FADs that have observers onboard. Because IATTC observers are now collecting all of the information previously required on the FAD data collection form, the IATTC removed this requirement for captains. Captains are still required to provide the observer with the FAD identification code and, as appropriate, the other information in the standard format. On purse seine vessels without an observer aboard, the captain is still responsible for recording the information on the FAD form developed by the IATTC staff.

Silky Shark

This final rule bans the retention of silky shark by U.S. longline vessels in the IATTC Convention Area. Paragraph 5 of Resolution C–19–05 on silky shark requires establishment of an inspection system at landing ports for members and cooperating non-members that allow retention of silky shark by longline vessels. However, NMFS considered the time and effort required to implement a port inspection system and the impacts on U.S. longline vessels that would be subjected to such an inspection process. Given these considerations, NMFS determined that implementing the port inspection requirement of the Resolution would be more of a burden to the U.S. Government and the public than simply prohibiting all retention of silky shark on U.S. longline vessels in the IATTC Convention Area. Therefore, this rule institutes such a ban.

Because U.S. longline vessels fishing in the IATTC Convention Area do not target, and infrequently catch, silky sharks, a retention ban for longline vessels would not impact current fishing practices. Data from 2008 to 2015 indicate that virtually all incidentally caught silky sharks in the IATTC Convention Area were released by U.S. longline vessels, and almost all were released alive. In addition, such a prohibition in the eastern Pacific Ocean would be consistent with U.S. regulations in the western Pacific Ocean. Since 2015, U.S. vessels fishing in the western and central Pacific Ocean have been subject to a prohibition on the retention on board, transshipping, storing, or landing any part or whole carcass of a silky shark that is caught in the Western and Central Pacific Fisheries Commission Convention Area (50 CFR 300.226).

Per Resolution C–19–05, the final rule also increases flexibility for retention of silky shark on purse seine vessels that are not seen during fishing operations and are delivered into the vessel hold. Since January 2017, the IATTC Resolution and U.S. regulations have prohibited retention of silky shark on purse seine vessels caught in the IATTC Convention Area. This rule allows for exemptions in the case of any silky shark that is not seen during fishing operations and is delivered into the vessel hold. In such case, the silky shark may be stored on board and landed, but the vessel owner or operator must surrender the whole silky shark to a government authority present at the point of landing. In U.S. ports the responsible governmental authority is the NOAA Office of Law Enforcement divisional office nearest to the port. If government authorities are unavailable, the whole silky shark must not be sold or bartered but must be donated for purposes of domestic human consumption consistent with relevant laws and policies. The vessel owner or operator shall report any silky sharks surrendered in this manner to the IATTC Secretariat by recording the incident in the note section of the IATTC Pacific Tuna Regional Logbook.

U.S. purse seine vessels do not target or intentionally retain silky shark in the IATTC Convention Area, yet they are caught incidentally and are primarily discarded. The regulations are expected to provide regulatory relief from the previous prohibition on the retention of silky shark that are not seen during fishing operations and are delivered into the vessel hold and frozen during fishing operations, which is an infrequent event for U.S. purse seine vessels.

Observer Safety

This final rule implements provisions of Resolutions C–18–07 and A–18–03 to strengthen protections for observers in longline and transshipment observer programs required by the IATTC and on purse seine vessels required by the AIDCP. Most of the requirements in these Resolutions are already required by procedures implemented by the U.S. Coast Guard (USCG) in its marine casualty regulations at 46 CFR part 4. This rule is intended to fill the gaps between the existing USCG procedures and these Resolutions. There are two categories of observer safety incidents (serious illness and harassment) that are specified in the IATTC and AIDCP decisions and are not included in USCG marine casualty regulations. Regulations for situations involving serious illness and harassment are described below.

Per the Resolutions, this final rule includes requirements for vessel owners and operators to contact observer providers and appropriate government contacts in cases of serious illness, assault, intimidation, threats, interference, or harassment of observers. NMFS notes that some of these incidents lead to civil rather than criminal proceedings and can even involve circumstances that do not create emergency situations needing a specific or immediate response from the U.S. Government. The NMFS West Coast Regional Administrator has posted a list of appropriate contacts for U.S. Government offices as well as observer providers on the NMFS WCR website: *https://www.fisheries.noaa.gov/west-coast/partners/emergency-contacts-vessel-owners-operators-and-observers-longline-and-purse.* This website includes emails and phone numbers, which are not referenced here.

The USCG continues to be the point of contact for other emergency situations that necessitate an immediate USCG search and rescue, or law enforcement response. NMFS WCR does not maintain a 24-hour hotline to handle such emergencies. Thus, in emergency situations that need an immediate response, vessel owners and operators are encouraged to contact the nearest U.S. Coast Guard Rescue Coordination Center (RCC) that can help coordinate with the closest Search and Rescue (SAR) facility in the area of the vessel: *https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Response-Policy-CG-5R/Office-of-Incident-Management-Preparedness-CG-5RI/US-Coast-Guard-Office-of-Search-and-Rescue-CG-SAR/RCC-Numbers/.*

In addition, this rule sets forth procedures the vessel owner or operator

are required to follow in the event that an observer has a serious illness or injury. The owner or operator of a fishing vessel of the United States is required to immediately report serious illness or injury that threatens the life and/or long-term health or safety of an observer to the observer provider and a U.S. Government contact.

This rule requires that, in the event that the observer has a serious illness or injury that threatens his or her life and/or long-term health or safety, the owner or operator of the fishing vessel must: (i) Immediately cease fishing operations; (ii) take all reasonable actions to care for the observer and provide any medical treatment available and possible on board the vessel, and where appropriate seek external medical advice; (iii) where directed by the observer provider, if not already directed by the appropriate U.S. Government contact, facilitate the disembarkation and transport of the observer to a medical facility equipped to provide the required care, as soon as practicable; and (iv) cooperate fully in any official investigations into the cause of the illness or injury. The regulations specify that the owner or operator of the fishing vessel must ''immediately cease fishing operations.'' NMFS anticipates that there may be circumstances where ''immediately cease'' could allow for gear to be retrieved and NMFS does not encourage abandoning fishing gear.

This rule sets forth procedures the vessel owner or operator are required to follow in the event that an observer has been assaulted, intimidated, threatened or harassed. The rule requires that, in the event that an observer on a fishing vessel of the United States has been assaulted, intimidated, threatened or harassed, the owner or operator of the fishing vessel must: (i) Immediately take action to preserve the safety of the observer and mitigate and resolve the situation on board; (ii) if the observer or the observer provider indicate that they wish for the observer to be removed from the vessel, facilitate the safe disembarkation of the observer in a manner and place, as agreed by the observer provider, that facilitates access to any needed medical treatment; and (iii) cooperate fully in any official investigations into the incident.

In addition to serious illness and harassment cases, both Resolutions detail a number of requirements for vessel owners and operators specifically related to vessel operations, notification, search and rescue procedures, and investigations in the event of death, injury, serious illness, missing or presumed fallen overboard, or harassment of an observer. The United States requires U.S. vessel owners or operators to notify the USCG about marine casualties, which applies in the event of death, missing or presumed fallen overboard, or serious injury of an observer. The USCG regulations in 46 CFR part 4 specify requirements for notifications, reporting, and investigations. Thus, NMFS did not promulgate additional regulations for cases of death, missing or presumed fallen overboard, or serious injury of an observer. However, the Resolutions also require that the observer provider be notified in cases of an observer that dies or goes missing, and this rule includes requirements for the vessel owner or operator to notify the observer provider and a Government contact. Therefore, in the event that an observer dies, is missing or presumed fallen overboard, the owner or operator of a fishing vessel must immediately notify a U.S. Government contact and the observer provider.

Public Comments and Responses

NMFS received one comment during the comment period. This comment was outside the scope of the action and is not relevant to this rule.

Changes From the Proposed Rule

NMFS is making minor changes to the regulatory text in the final rule from the proposed rule. These changes are intended to make minor corrections and clarify the regulatory text; NMFS does not consider these substantive changes. In paragraph (e)(4) in § 216.24, the numbering of the first subordinate paragraph was corrected, and the regulatory text was changed to correct the format of a cross reference to another section number of the regulations. In paragraph (f) in § 300.27 on incidental catch and tuna retention requirements, the sentence describing the paragraph on silky shark regulations removes the word ''unintentional'' and adds ''on purse seine vessels.'' This text was revised because of difficulty enforcing the intentions of vessel owners or operators. In addition, paragraph (b) in § 300.29, as it relates to observer safety, is revised to clarify that it is the ''the owner or operator of the'' fishing vessel that must immediately notify a U.S. Government contact and the observer provider. Similarly, in paragraphs (c) and (d) in the same section, it is the ''the owner or operator of the'' fishing vessel that must take the actions described in the following text.

Classification

After consultation with the Department of State and Department of Homeland Security, the NMFS Assistant Administrator has determined that this final rule is consistent with the Tuna Conventions Act of 1950, as amended, the Marine Mammal Protection Act, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866. This final rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

This final rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for amendments to the West Coast Region Pacific Tuna Fisheries Logbook and Fish Aggregating Device Form (OMB Control No. 0648–0148) to only require FAD data collection for purse seine vessels without an observer onboard and require captains provide the observer with the FAD identification number is estimated to average 1 minute per form. The requirement to report silky shark surrendered or donated is also estimated to average 1 minute per form and the reporting related to observer safety on purses seine vessels is estimated to average 5 minutes per reporting incident. Public reporting burden for amendments to the supporting statement for the Pacific Islands Region Logbook Family of Forms (OMB Control No. 0648–0214) for reporting related to observer safety on longline vessels are estimated to average 5 minutes per reporting incident. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Regarding the elements of the rule pertaining to prohibiting retention of silky sharks on longline vessels; there are no new collection-of-information requirements associated with this action that are subject to the PRA, and existing collection-of-information requirements still apply under the following Control Numbers: 0648–0593 and 0648–0214.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number. All currently approved NOAA collections of information may be viewed at: *http://www.cio.noaa.gov/services_programs/prasubs.html.*

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chief Counsel for Regulation of the Department of

Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Further details on the factual basis for the certification were published in the proposed rule (85 FR 4250, January 24, 2020) and are not repeated here. No comments were received regarding the certification, and none of the changes from the proposed to the final rule will increase costs to the affected public. Therefore, the certification published with the proposed rule that states this rule is not expected to have a significant economic impact on a substantial number of small entities is still valid. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Parts 216 and 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: May 11, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 216 and 300 are amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.,* unless otherwise noted.

Subpart C—General Exceptions

■ 2. In § 216.24, remove ''Southwest Region'' and add in its place ''West Coast Region'' everywhere it appears and add paragraphs (e)(4)(i) and (ii) to read as follows:

§ 216.24 Taking and related acts in commercial fishing operations including tuna purse seine vessels in the eastern tropical Pacific Ocean.

* * * * *

(e) * * *

(4) * * *

(i) Requirements for owners and operators of U.S. purse seine vessels for reporting and actions in response to observer safety are at § 300.29 of this title.

(ii) [Reserved]

* * * * *

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart C—Eastern Pacific Tuna Fisheries

■ 3. The authority citation for part 300, subpart C, continues to read as follows:

Authority: 16 U.S.C. 951 *et seq.*

■ 4. In § 300.22, revise paragraph (a)(3)(i) to read as follows:

§ 300.22 Recordkeeping and reporting requirements.

(a) * * *

(3) * * *

(i) *Reporting on FAD interactions.* U.S. purse seine vessel operators shall provide the observer with the FAD identification code and, as appropriate, the other information in the FAD interaction standard format provided by the HMS Branch. U.S. vessel owners and operators, without an observer onboard, must ensure that any interaction or activity with a FAD is reported using a FAD interaction standard format provided by the HMS Branch. The owner and operator shall ensure that the form is submitted within 30 days of each landing or transshipment of tuna or tuna-like species to the address specified by the HMS Branch.

* * * * *

■ 5. In § 300.24, revise paragraphs (ff) through (hh) to read as follows:

§ 300.24 Prohibitions.

* * * * *

(ff) Fail to provide information to an observer or record or report data on FADs as required in § 300.22(a)(3).

(gg) Use a commercial purse seine or longline fishing vessel of the United States to retain on board, transship, store, or land any part or whole carcass of a silky shark (*Carcharhinus falciformis*) in contravention of § 300.27(e).

(hh) Fail to follow observer safety requirements as specified under § 300.29.

* * * * *

■ 6. In § 300.27:

■ a. Effective June 17, 2020, revise paragraph (e); and

■ b. Delayed indefinitely, revise paragraph (f).

The revisions read as follows:

§ 300.27 Incidental catch and tuna retention requirements.

* * * * *

(e) *Silky shark restrictions for purse seine vessels.* The crew, operator, and owner of a commercial purse seine or longline fishing vessel of the United States used to fish for tuna or tuna-like species is prohibited from retaining on board, transshipping, storing, or landing any part or whole carcass of a silky shark (*Carcharhinus falciformis*) that is caught in the IATTC Convention Area, except as provided in paragraph (f) of this section.

(f) *Exception for silky shark caught and frozen on purse seine vessels.* In the case of a purse seine vessel operating in the IATTC Convention Area that catches a silky shark that is not seen during fishing operations and is delivered into the vessel hold, the silky shark may be stored on board and landed, but the vessel owner or operator must surrender the whole silky shark to the responsible government authority present at the point of landing. In U.S. ports the responsible governmental authority is the NOAA Office of Law Enforcement divisional office nearest to the port, or other authorized personnel. If no governmental authorities are available, the whole silky shark surrendered must not be sold or bartered but must be donated for purposes of domestic human consumption consistent with relevant laws and policies. The vessel owner or operator shall report these incidences to the IATTC Secretariat by recording them in the IATTC Regional Purse Seine Logbook, or another form identified by NMFS.

* * * * *

■ 7. Add § 300.29 to subpart C to read as follows:

§ 300.29 Observers.

The following requirements apply to all on-board fisheries observers required under this subpart, which includes observers on purse seine, longline vessels, and transshipment carrier vessels, and while on a fishing trip in the IATTC Convention Area.

(a) *Contact information.* A full list of U.S. longline and IATTC purse seine observer providers and U.S. Government contacts for situations described in paragraphs (b) through (d) of this section is available at the following website: *https://www.fisheries.noaa.gov/west-coast/partners/emergency-contacts-vessel-owners-operators-and-observers-longline-and-purse.*

(b) *Loss of life.* In the event that an observer dies, is missing, or presumed fallen overboard, the owner or operator of the fishing vessel must immediately notify a U.S. Government contact and the observer provider.

(c) *Serious illness or injury.* The owner or operator of a fishing vessel of the United States shall immediately report serious illness or injury that

threatens the life and/or long-term health or safety of an observer to the observer provider and a U.S. Government contact. In addition, the owner or operator of the fishing vessel must:

(1) Immediately cease fishing operations;

(2) Take all reasonable actions to care for the observer and provide any medical treatment available and possible on board the vessel, and where appropriate seek external medical advice;

(3) Where directed by the observer provider, if not already directed by the appropriate U.S. Government contact, facilitate the disembarkation and transport of the observer to a medical facility equipped to provide the required care, as soon as practicable; and

(4) Cooperate fully in any official investigations into the cause of the illness or injury.

(d) *Assault, intimidation, threat, or harassment.* For reporting violations in the event that an observer on a fishing vessel of the United States has been assaulted, intimidated, threatened, or harassed, the owner or operator of the fishing vessel shall immediately notify the observer provider and the NOAA Office of Law Enforcement West Coast Division Duty Officer line at (206) 526–4851 of the situation and the status and location of the observer. In addition, the owner or operator of the fishing vessel must:

(1) Immediately take action to preserve the safety of the observer and mitigate and resolve the situation on board;

(2) If the observer or the observer provider indicate that they wish for the observer to be removed from the vessel, facilitate the safe disembarkation of the observer in a manner and place, as agreed by the observer provider and a U.S. Government contact, that facilitates access to any needed medical treatment; and

(3) Cooperate fully in any official investigations into the incident.

[FR Doc. 2020–10407 Filed 5–15–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 200423–0120]

RIN 0648–XY201

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Final 2020 and 2021 Harvest Specifications for Groundfish; Correction

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

ACTION: Final rule; correction.

SUMMARY: The National Marine Fisheries Service is correcting a final rule that published on March 10, 2020, implementing the final 2020 and 2021 harvest specifications and prohibited species catch allowances for the groundfish fishery of the Gulf of Alaska. One table in the document contains errors associated with deep-water flatfish, and another table contains an error associated with northern rockfish. These corrections are necessary to provide the correct information about the amount of deep-water flatfish and northern rockfish available for commercial harvest in 2020, thus allowing commercial fishermen to maximize their economic opportunities in this fishery. This correction also is necessary to comport with the requirements of the Fishery Management Plan for Groundfish of the Gulf of Alaska.

DATES: Effective May 18, 2020.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Need for Correction

The National Marine Fisheries Service (NMFS) published the Gulf of Alaska (GOA) final 2020 and 2021 harvest specifications in the **Federal Register** on March 10, 2020 (85 FR 13802). The harvest specifications were effective March 10, 2020. NMFS has identified two tables in that final rule that contain errors. First, a table (Table 18) providing information about the 2020 groundfish sideboard limits for non-exempt American Fisheries Act (AFA) catcher vessels contains errors associated with the deep-water flatfish sideboard limits in the Central and Eastern Regulatory Areas of the GOA. Second, a table (Table 23) providing information about 2020 Rockfish Program (RP) sideboard limits for catcher/processors contains one error associated with the northern rockfish sideboard limit in the Western Regulatory Area of the GOA. These tables, associated errors, and corrections to each table are discussed below.

Corrections to Table 18: Non-Exempt AFA Catcher Vessel Sideboard Limits

An explanation of AFA sideboard limits is contained in the final rule implementing the 2020 and 2021 harvest specifications (85 FR 13802, March 10, 2020) and is not repeated here. In conjunction with calculating the non-exempt AFA catcher vessel sideboard limits contained in Table 18 of the final 2020 and 2021 harvest specifications, NMFS also incorporated changes to the specification and management of non-exempt AFA catcher vessel sideboard limits that were implemented in a final rule published in 2019 (84 FR 2723, February 8, 2019). That particular final rule established regulations to prohibit directed fishing for specific groundfish species or species groups subject to sideboard limits in regulations (§ 679.20(d)(1)(iv)(D) and Table 56 to 50 CFR part 679), which effectively reduced the number of non-exempt AFA catcher vessel groundfish sideboard limits that must be annually specified. However, NMFS must continue to specify some non-exempt AFA catcher vessel sideboard limits for certain groundfish species or species groups.

In the final harvest specifications, the table (Table 18) associated with the 2020 non-exempt AFA catcher vessel sideboard limits provides information about species, apportionments by gear and season, areas, ratios used to calculate sideboard limits, total allowable catch (TAC) limits, and final 2020 sideboard limits. This table was revised and condensed from an equivalent table published in 2019 to remove species or species groups for which directed fishing is now prohibited in regulation, following the implementation of a final rule (84 FR 2723, February 8, 2019) that, in part, revised the specification and management of non-exempt AFA catcher vessel sideboard limits. In Table 18 on page 13821 of the harvest specifications published in the **Federal Register** (85 FR 13802, March 10, 2020), NMFS inadvertently included a deep-water species sideboard limit for the Western GOA and omitted a deep-water species sideboard limit for the Eastern GOA. Table 18 also includes the incorrect ratio used for calculating the sideboard limit for deep-water flatfish for the Central GOA. The correct ratios for calculating sideboard limits for deep-water flatfish for the Central and

Eastern Regulatory Areas of the GOA are .0647 and .0128, respectively. The correct 2020 deep-water flatfish TACs for the Central and Eastern Regulatory Areas of the GOA are 1,948 metric tons (mt) and 3,856 mt, respectively. The correct 2020 deep-water flatfish sideboard limits for the Central and Eastern Regulatory Areas of the GOA are 126 mt and 49 mt, respectively. This action will revise columns 3, 4, 5, and 6 of Table 18 to incorporate the correct amounts for ratios for calculating sideboard limits, TACs, and sideboard limits for the 2020 deep-water flatfish in the Central Regulatory Area of the GOA (C) and the Eastern Regulatory Area of the GOA (E).

Correction to Table 23: RP Sideboard Limits for the Western GOA and West Yakutat District for the Catcher/Processor Sector

A table (Table 23) providing information about the final 2020 RP sideboard limits for the catcher/processor sector by area and fishery contains one error associated with the northern rockfish sideboard limit for the Western Regulatory Area of the GOA (or Western GOA). In Table 23 on page 13824 of the harvest specifications published in the **Federal Register** (85 FR 13802, March 10, 2020), NMFS inadvertently used an incorrect value for the northern rockfish sideboard limit for the Western Regulatory Area of the GOA. The correct 2020 northern rockfish sideboard limit for catcher/processors for the Western Regulatory Area of the GOA is 842 mt. This action will revise column 5 of Table 23 to incorporate the correct amount for the 2020 RP northern rockfish sideboard limit for the catcher/processor sector for the Western Regulatory Area of the GOA (or Western GOA).

Classification

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 unnecessary and contrary to the public interest. This correcting amendment makes changes to correct mis-specified 2020 deep-water flatfish sideboard limits for non-exempt AFA catcher vessels in Table 18 and the 2020 RP northern rockfish sideboard limit for catcher/processors in Table 23, as described above, and does not change operating practices in the fisheries. This correcting action is consistent with the harvest specifications recommended by the North Pacific Fishery Management Council in December 2019, and ensures that the groundfish sideboard limits that the fishing industry expected to be available in 2020 are correct. If this correction is delayed to allow for notice and comment, it would result in confusion for participants in the fisheries, given that the final rule implementing the 2020 and 2021 harvest specifications already is effective. The correct 2020 deep-water flatfish sideboard limits for non-exempt AFA catcher vessels for the Central and Eastern Regulatory Areas of the GOA are different from the incorrectly specified sideboard limits for these two management areas. The correct 2020 RP northern rockfish sideboard limit for catcher/processors is less than the incorrectly specified sideboard limit for the Western Regulatory Area of the GOA (or Western GOA). Without this correction, commercial fishermen may believe that there are different amounts of sideboard limits available for harvest in 2020 than are actually available, to their economic detriment. In addition, the public was already provided with notice and opportunity to comment during the public comment period for the proposed harvest specifications (84 FR 66109, December 3, 2019), so additional opportunity for public comment at this point would not be meaningful. Therefore, in order to avoid any negative consequences that could result from this correction, the AA finds good cause to waive the requirement to provide prior notice and opportunity for public comment.

For the reasons above, the AA also finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date and make this rule effective immediately upon publication.

Corrections

In the final rule document, published on March 10, 2020 (85 FR 13802), the following corrections are made:

1. On page 13821, Table 18 is corrected to read as follows:

TABLE 18—FINAL 2020 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH SIDEBOARD LIMITS

[Values are rounded to the nearest metric ton]

Species	Apportionments by season/gear	Area/component	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	Final 2020 TACs [3]	Final 2020 non-exempt AFA CV sideboard limit
Pollock	A Season: January 20–March 10	Shumagin (610)	0.6047	517	313
		Chirikof (620)	0.1167	18,757	2,189
		Kodiak (630)	0.2028	5,783	1,173
	B Season: March 10–May 31	Shumagin (610)	0.6047	517	313
		Chirikof (620)	0.1167	22,222	2,593
		Kodiak (630)	0.2028	2,318	470
	C Season: August 25–October 1	Shumagin (610)	0.6047	9,070	5,485
		Chirikof (620)	0.1167	6,739	786
		Kodiak (630)	0.2028	9,248	1,875
	D Season: October 1–November 1	Shumagin (610)	0.6047	9,070	5,485
		Chirikof (620)	0.1167	6,739	786
		Kodiak (630)	0.2028	9,248	1,875
	Annual	WYK (640)	0.3495	5,554	1,941
		SEO (650)	0.3495	10,148	3,547
Pacific cod	A Season: [1] January 1–June 10	W	0.1331	1,246	166
		C	0.0692	2,284	158
	B Season: [2] September 1–December 31	W	0.1331	830	111
		C	0.0692	1,522	105
Flatfish, shallow-water	Annual	W	0.0156	13,250	207

TABLE 18—FINAL 2020 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH SIDEBOARD LIMITS—Continued

[Values are rounded to the nearest metric ton]

Species	Apportionments by season/gear	Area/component	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	Final 2020 TACs [3]	Final 2020 non-exempt AFA CV sideboard limit
		C	0.0587	27,732	1,628
Flatfish, deep-water	Annual	C	0.0647	1,948	126
		E	0.0128	3,856	49
Rex sole	Annual	C	0.0384	8,579	329
Arrowtooth flounder	Annual	C	0.0280	68,669	1,923
Flathead sole	Annual	C	0.0213	15,400	328
Pacific ocean perch	Annual	C	0.0748	23,678	1,771
		E	0.0466	6,123	285
Northern rockfish	Annual	C	0.0277	3,178	88

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.
[3] The Western and Central GOA and WYK District area apportionments of pollock are considered ACLs.

2. On page 13824, Table 23 is corrected to read as follows:

TABLE 23—FINAL 2020 ROCKFISH PROGRAM SIDEBOARD LIMITS FOR THE WESTERN GOA AND WEST YAKUTAT DISTRICT BY FISHERY FOR THE CATCHER/PROCESSOR SECTOR

[Values are rounded to the nearest metric ton]

Area	Fishery	C/P sector (% of TAC)	Final 2020 TACs	Final 2020 C/P limit
Western GOA	Dusky rockfish	72.3	776	561
	Pacific ocean perch	50.6	1,437	727
	Northern rockfish	74.3	1,133	842
West Yakutat District	Dusky rockfish	Confidential [1]	115	Confidential [1]
	Pacific ocean perch	Confidential [1]	1,470	Confidential [1]

[1] Not released due to confidentiality requirements associated with fish ticket data, as established by NMFS and the State of Alaska.

Authority: 16 U.S.C. 773 *et seq.;* 16 U.S.C. 1540 (f), 1801 *et seq.;* 16 U.S.C. 3631 *et seq.;* Pub. L. 105–277; Pub. L. 106–31; Pub. L. 106–554; Pub. L. 108–199; Pub. L. 108–447; Pub. L. 109–241; Pub. L 109–479.

Dated: April 24, 2020.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2020–09084 Filed 5–15–20; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 96
Monday, May 18, 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 Part 271 and 273

RIN 0584–AE68

Employment and Training Opportunities in the Supplemental Nutrition Assistance Program; Extension of Comment Period

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

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Department of Agriculture's Food and Nutrition Service (FNS) is extending the public comment period on the proposed rule titled, ''Employment and Training Opportunities in the Supplemental Nutrition Assistance Program'', which was published in the **Federal Register** on March 17, 2020. This action extends the deadline for receipt of public comments to give the public additional time to review the proposed rule.

DATES: To be assured of consideration, comments on this proposed rule must be received by the Food and Nutrition Service on or before June 17, 2020.

ADDRESSES: The Food and Nutrition Service invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Send comments to Moira Johnston, Food and Nutrition Service, Office of Employment and Training, 1320 Braddock Place, Alexandria, VA 22314.
- *Email:* Send comments to *ETORule@usda.gov.* Include Docket ID Number FNS–2019–0008, ''Employment and Training Opportunities in the Supplemental Nutrition Assistance Program'' in the subject line of the message.
- All 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 comments publicly available on the internet via *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Moira Johnston, Food and Nutrition Service, Office of Employment and Training, 1320 Braddock Place, Alexandria, VA 22314, and *ETORule@usda.gov.*

SUPPLEMENTARY INFORMATION: The Food and Nutrition Service is extending the public comment period for the proposed rule, ''Employment and Training Opportunities in the Supplemental Nutrition Assistance Program'', which published March 17, 2020 at 85 FR 15304. The new comment period ends June 17, 2020. There are no other changes to this proposed rule.

Pamilyn Miller,
Administrator, Food and Nutrition Service.

[FR Doc. 2020–10536 Filed 5–15–20; 8:45 am]
BILLING CODE 3410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0211; Product Identifier 2020–NM–006–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747SR series airplanes. This proposed AD was prompted by reports of inboard foreflap departures from the airplane. This proposed AD would require repetitive replacement of certain parts; a general visual inspection to determine production configuration for certain parts; a repetitive lubrication of certain parts and a repetitive general visual inspection of certain parts for any exuding grease; repetitive detailed inspections of certain parts for loose or missing attachment bolts, cracks or bushing migration, cracks or gouges, or broken, binding, or missing rollers; repetitive detailed inspections of certain parts for cracks or corrosion; repetitive lubrication; and on-condition actions if necessary. 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 July 2, 2020.

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

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; phone: 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–2020–0211.

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–2020–0211; 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: Eric Lin, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3523; email: *eric.lin@faa.gov.*

SUPPLEMENTARY INFORMATION:

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–2020–0211; Product Identifier 2020–NM–006–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, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this proposed AD.

Discussion

The FAA has received reports of partial and full inboard foreflap departures from the airplane, some of which resulted in significant damage to the airplane. Inboard foreflap departures have been attributed to inadequate lubrication of the outboard fitting assembly, corrosion of the outboard fitting assembly, and corrosion in the inboard link assembly. In addition, broken center toggle rollers at the inboard sequence carriage and binding of inboard foreflap tracks due to defective or seized foreflap track rollers can lead to higher than normal loads on the outboard fitting assembly and the inboard link assembly, which may lead to cracked or broken attachment fittings, and in some cases the damage has resulted in an inboard foreflap departing the airplane. This condition, if not addressed, could result in the departure of an inboard foreflap assembly from the airplane possibly resulting in damage to the airplane, and adversely affecting the airplane's continued safe flight and landing.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 747–57A2367 RB, dated November 15, 2019. This service information describes procedures for repetitive replacement of certain parts; a general visual inspection to determine production configuration for certain parts; a repetitive lubrication of certain parts and a repetitive general visual inspection of certain parts for any exuding grease; repetitive detailed inspections of certain parts for loose or missing attachment bolts, cracks or bushing migration, cracks or gouges, or broken, binding, or missing rollers; repetitive detailed inspections of certain parts for cracks or corrosion; repetitive lubrication; and on-condition actions if necessary. On-condition actions include replacements and repair.

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

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishment of the actions identified in Boeing Alert Requirements Bulletin 747–57A2367 RB, dated November 15, 2019, described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

For information on the procedures and compliance times, see this service information at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0211.

Explanation of Requirements Bulletin

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

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

Costs of Compliance

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

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Repetitive Replacement	Up to 10 work-hours × $85 per hour = Up to $850 per replacement cycle.	$35,719	Up to $36,569 per replacement cycle.	Up to $4,571,125 per replacement cycle.
General Visual Inspection for Parts Production Configuration.	1 work-hour × $85 per hour = $85	$0	$85	$10,625.
Repetitive Detailed Inspections	4 work-hours × $85 per hour = $340 per inspection cycle.	$0	$340 per inspection cycle.	$42,500 per inspection cycle.
Repetitive inspection for lubrication and repetitive lubrication.	1 work-hour × $85 per hour = $85 per lubrication.	$0	$85 per lubrication	$10,625 per lubrication.

The FAA estimates the following costs to do any necessary on-condition actions that would be required. The FAA has no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION REPLACEMENTS

Labor cost	Parts cost	Cost per product
Up to 8 work-hour × $85 per hour = $680	Up to $17,720	Up to $18,400.

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

Authority for This Rulemaking

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

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

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):

The Boeing Company: Docket No. FAA–2020–0211; Product Identifier 2020–NM–006–AD.

(a) Comments Due Date

The FAA must receive comments by July 2, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747SR, series airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 747–57A2367 RB, dated November 15, 2019.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by reports of inboard foreflap departures from the airplane. The FAA is issuing this AD to address departures of the inboard foreflap assembly from the airplane, which could result in damage to the airplane and adversely affect the airplane's continued safe flight and landing.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 747–57A2367 RB, dated November 15, 2019, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 747–57A2367 RB, dated November 15, 2019.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 747–57A2367, dated November 15, 2019, which is referred to in Boeing Alert Requirements Bulletin 747–57A2367 RB, dated November 15, 2019.

(h) Exceptions to Service Information Specifications

Where Boeing Alert Requirements Bulletin 747–57A2367 RB, dated November 15, 2019, uses the phrase ''the original issue date of Requirements Bulletin 747–57A2367 RB,'' this AD requires using ''the effective date of this AD.''

(i) Alternative Methods of Compliance (AMOCs)

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

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

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

(j) Related Information

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

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

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

Issued on March 27, 2020.

Gaetano A. Sciortino,

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

[FR Doc. 2020–10539 Filed 5–15–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0494; Project Identifier AD–2020–00324–E]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all General Electric Company (GE) GE90–110B1 and GE90–115B model turbofan engines with a certain high-pressure turbine (HPT) rotor stage 2 disk installed. This proposed AD was prompted by a report from the manufacturer that a subsurface anomaly was found on a HPT rotor stage 2 disk. This proposed AD would require an ultrasonic inspection (USI) of the HPT rotor stage 2 disk and, depending on the result of the inspection, replacement of the HPT rotor stage 2 disk with a part eligible for 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 July 2, 2020.

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

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

For service information identified in this NPRM, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215; phone: 513–552–3272; email: *aviation.fleetsupport@ge.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA, 01803. For information on the availability of this material at the FAA, call 781–238–7759.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0494; 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, 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: Stephen Elwin, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7236; fax: 781–238–7199; email: *stephen.l.elwin@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–2020–0494; Project Identifier AD–2020–00324–E'' 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.

Except for Confidential Business Information (CBI) 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 received about this NPRM.

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 Stephen Elwin, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

The FAA received a report from the manufacturer that a subsurface anomaly was found on a HPT rotor stage 2 disk. The manufacturer determined that the subsurface anomaly developed during the material melting process. This condition, if not addressed, could result in uncontained HPT rotor stage 2 disk release, damage to the engine, and damage to the airplane.

Related Service Information Under 1 CFR Part 51

The FAA reviewed GE GE90–100 Service Bulletin (SB) 72–0838, dated January 31, 2020. The SB describes procedures for performing an USI of the HPT rotor stage 2 disk. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require an USI of the HPT rotor stage 2 disk and, depending on the results of the inspection, replacement of the HPT rotor stage 2 disk with a part eligible for installation.

Costs of Compliance

The FAA estimates that this proposed AD affects 12 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
USI of HPT rotor stage 2 disk	8 work-hours × $85 per hour = $680	$0	$680	$8,160.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Remove and replace HPT rotor stage 2 disk	2 work-hours × $85 per hour = $170	$565,600	$565,770.

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):

General Electric Company: Docket No. FAA–2020–0494; Project Identifier AD–2020–00324–E.

(a) Comments Due Date

The FAA must receive comments by July 2, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all General Electric Company (GE) GE90–110B1 and GE90–115B model turbofan engines with a high-pressure turbine (HPT) rotor stage 2 disk, part number 2505M73P03, and with a serial number listed in Appendix—A, Table 1, of GE GE90–100 Service Bulletin (SB) 72–0838, dated January 31, 2020.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report from the manufacturer that a subsurface anomaly was found on a HPT rotor stage 2 disk. The FAA is issuing this AD to prevent failure of the HPT rotor stage 2 disk. The unsafe condition, if not addressed, could result in uncontained HPT rotor stage 2 disk release, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Action

(1) At the next piece-part exposure after the effective date of this AD, perform an ultrasonic inspection (USI) of the HPT rotor stage 2 disk in accordance with the Accomplishment Instructions, paragraph 3.B.(1)(a), of GE GE90–100 SB 72–0838, dated January 31, 2020.

(2) If, during the USI required by paragraph (g)(1) of this AD, a rejectable indication is found, remove the HPT rotor stage 2 disk from service before further flight and replace it with a part eligible for installation.

(h) Definition

For the purpose of this AD, ''piece-part exposure'' is when the HPT rotor stage 2 disk is removed from the engine and completely disassembled.

(i) Alternative Methods of Compliance (AMOCs)

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

(2) Before using any approved AMOC, notify your appropriate principal inspector,

or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office.

(j) Related Information

(1) For more information about this AD, contact Stephen Elwin, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803; phone: 781–238–7236; fax: 781–238–7199; email: *stephen.l.elwin@faa.gov.*

(2) For service information identified in this AD, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215; phone: 513–552–3272; email: *aviation.fleetsupport@ge.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA, 01803. For information on the availability of this material at the FAA, call 781–238–7759.

Issued on May 13, 2020.

Gaetano A. Sciortino,

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

[FR Doc. 2020–10571 Filed 5–15–20; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2019–0220; FRL–10008–78–Region 1]

Air Plan Approval; Massachusetts; Negative Declaration for the Oil and Gas Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. The revision provides Massachusetts' determination, via a negative declaration, that there are no facilities within its borders subject to EPA's 2016 Control Technique Guideline (CTG) for the oil and gas industry. The intended effect of this action is to propose approval of these items into the Massachusetts SIP. This action is being taken in accordance with the Clean Air Act.

DATES: Written comments must be received on or before June 17, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2019–0220 at *https://www.regulations.gov,* or via email to *garcia.ariel@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, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact 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 *https://www.epa.gov/dockets/commenting-epa-dockets.* Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Ariel Garcia, Environmental Protection Specialist, Air and Radiation Division (Mail Code 05–2), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts 02109–3912; (617) 918–1660. *garcia.ariel@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: April 21, 2020.

Dennis Deziel,

Regional Administrator, EPA Region 1.

[FR Doc. 2020–09073 Filed 5–15–20; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 85, No. 96

Monday, May 18, 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

Forest Service

Southern Montana Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southern Montana Resource Advisory Committee (RAC) will meet with virtual attendance only. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information and url for virtual meeting can be found at the following website: *https://www.fs.usda.gov/main/custergallatin/workingtogether/advisorycommittees.*

DATES: The meeting will be held on Thursday, June 4, 2020, at 9:00 a.m.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Location: The meeting will be held virutally with virtual attendance only. The url for the meeting can be found at the following website: *https://www.fs.usda.gov/main/custergallatin/workingtogether/advisorycommittees.*

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Custer Gallatin National Forest Supervisor's Office. Please call ahead at 406–587–6701 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Karen Tuscano, RAC Coordinator, by phone at 406–223–2028 or via email at *karen.tuscano@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Approve minutes from November 13, 2019 meeting;

2. Discuss, recommend, and approve new Title II projects; and

3. Review and give feedback on Dakota Prairie Grasslands fee proposals;

4. Discuss next meeting for the Southern Montana RAC which will provide; feedback on recreation fee proposals.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by Wednesday, May 20, 2020, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Karen Tuscano, RAC Coordinator, PO Box 1130, Big Timber, Montana 59011; by email to *karen.tuscano@usda.gov,* or via facsimile to 406–587–6758.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: May 12, 2020.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2020–10541 Filed 5–15–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

West Virginia Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The West Virginia Resource Advisory Committee (RAC) will hold a virtual meeting. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Act. RAC information can be found at the following website: *https://cloudapps-usda-gov.secure.force.com/FSSRS/RAC_Page?id=001t0000002JcuqAAC.*

DATES: The meeting will be held on June 2, 2020, at 9:00 a.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held with virtual attendance only. For virtual meeting information, please reach out to the person listed under **FOR FURTHER INFORMATION CONTACT.**

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Monongahela National Forest Headquarters Building. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Julie Fosbender, RAC Coordinator, by phone at 304–635–4446 or via email at *julie.fosbender@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Review and discuss Title II projects; and
2. Allow project proponents to present their projects and answer questions from the committee.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by May 29, 2020, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Julie Fosbender, RAC Coordinator, Monongahela National Forest Headquarters Building 200 Sycamore Street, Elkins, West Virginia 26241; by email to *julie.fosbender@usda.gov;* or via facsimile to 304–637–0582.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: May 12, 2020.

Cikena Reid,

Committee Management Officer.

[FR Doc. 2020–10508 Filed 5–15–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Application Deadlines and Requirements for Section 313A Guarantees for Bonds and Notes Issued for Utility Infrastructure Loans for Fiscal Year (FY) 2020

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Solicitation of Applications (NOSA).

SUMMARY: The Rural Utilities Service (RUS), an agency of the United States Department of Agriculture (USDA), announces the application window and requirements and $750 million in loan funding that is available for Fiscal Year (FY) 2020 under the Guarantees for Bonds and Notes Issued for utility infrastructure loans (the 313A Program) authorized under the Rural Electrification Act of 1936, as amended (the RE Act), and related terms. The Agriculture Improvement Act of 2018 (the 2018 Farm Bill), enacted on December 20, 2018, amended Section 313A of the RE Act. Applications under this NOSA will be considered under the new statutory provisions. Those provisions supersede any prior inconsistent policy, regulation or guidance. The 2018 Farm Bill instructs RUS to continue to carry out this program under a Notice until new regulations are implemented.

DATES: Complete applications must be received or post marked by RUS no later than 5:00 p.m. Eastern Daylight Time (EDT) July 17, 2020.

ADDRESSES: Applicants are required to submit one original and two copies of their loan application to the U.S. Department of Agriculture, Rural Utilities Service, Electric Program, ATTN: Amy McWilliams, Program Advisor, 1400 Independence Avenue SW, STOP 1560, Room 5165–S, Washington, DC 20250–1560.

FOR FURTHER INFORMATION CONTACT: For further information contact Amy McWilliams, Program Advisor, 1400 Independence Avenue SW, STOP 1560, Room 5165–S, Washington, DC 20250–1560. Telephone: (202) 205–8663; fax: (844) 749–0736; or email: *amy.mcwilliams@usda.gov.*

SUPPLEMENTARY INFORMATION: Under the 313A Program, in accordance with the 2018 Farm Bill, the Federal Financing Bank (FFB) will make loans to the selected applicant(s) and RUS will guarantee the applicant(s)'s repayment of the loans to FFB. The 2018 Farm Bill amended the RE Act to allow selected applicants to use the proceeds of loan funds made available under this NOSA for the 313A Program to make utility infrastructure loans (which includes broadband loans) or to refinance, subject to certain limitations, bonds or notes issued for such purposes to an applicant that has at any time received, or is eligible to receive, a loan under the RE Act. In addition, the 2018 Farm Bill amendments to the RE Act removed the prohibition against the use of proceeds of loan funds made available under the 313A Program for projects for the generation of electricity.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs in the Office of Management and Budget designated this action as a major rule, as defined by 5 U.S.C. 804(2), because it will result in an annual effect on the economy of $100,000,000 or more. Accordingly, there will be a mandatory 60-day delay in effectiveness to award loan funds. However, applications will be accepted for 60 days beginning May 18, 2020 as stated in the **DATES** section of this NOSA.

Overview

Federal Agency: Rural Utilities Service, USDA.

Funding Opportunity Title: Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes for Fiscal Year (FY) 2020.

Announcement Type: Guarantees for Bonds and Notes.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.850.

Due Date for Applications: Completed applications must be received or post marked by RUS no later than 5:00 p.m. Eastern Daylight Time (EDT) July 17, 2020.

Items in Supplementary Information

I. Funding Opportunity Description
II. Award Information
III. Eligibility Information
IV. Fiscal Year 2020 Application and Submission Information
V. Application Review Information
VI. Issuance of Guarantee
VII. Guarantee Agreement
VIII. Reporting Requirements
IX. Award Administration Information
X. National Environmental Policy Act Certification
XI. Other Information and Requirements
XII. Agency Contacts: Website, Phone, Fax, Email, Contact Name
XIII. Non-Discrimination Statement: USDA Non-Discrimination Statement, How To File a Complaint, Persons With Disabilities

I. Funding Opportunity Description

A. Purpose and Objectives of the 313A Program

The purpose of the 313A Program is to make guaranteed loans to selected applicants (each referred to as ''Guaranteed Lender'' in this NOSA and in the Program Regulations) that are to be used (i) to make utility infrastructure loans or (ii) to refinance bonds or notes issued for such purposes to a borrower that has at any time received, or is eligible to receive, a loan under the RE Act. Each applicant must provide a statement on how it proposes to use the proceeds of the guaranteed bonds, and the financial benefit it anticipates deriving from participating in the program pursuant to 7 CFR 1720.6(a)(3). Objectives may include, but are not limited to the annual savings to be realized by the ultimate borrower(s) as a result of the applicant's use of lower cost loan funds provided by FFB and guaranteed by RUS.

The 2018 Farm Bill modified the 313A Program by amending the RE Act to allow proceeds of guaranteed bonds awarded under this NOSA to be used to make broadband loans, or to refinance broadband loans, made to a borrower that has received, or is eligible to receive, a broadband loan under Title VI of the RE Act. As a result, to the extent that the proceeds of guaranteed bonds are to be used to fund or refinance broadband loans that were not made by RUS (''Non Broadband Loans''), such proceeds may only be used for Non Broadband Loans that would meet the amended eligibility requirements of Title VI pursuant to the 2018 Farm Bill.

The 2018 Farm Bill has also modified the 313A Program to allow the proceeds of guaranteed loans made under this NOSA to be used by the Guaranteed Lender to fund projects for the generation of electricity.

B. Statutory Authority

The 313A Program is authorized by Section 313A of the Rural Electrification Act of 1936, as amended (7 U.S.C. 940c–1) (the RE Act) and is implemented by regulations located at 7 CFR part 1720, in accordance with the 2018 Farm Bill. The Administrator of RUS (the Administrator) has been delegated responsibility for administering the 313A Program.

C. Definition of Terms

The definitions applicable to this NOSA are published at 7 CFR 1720.3.

D. Application Awards

RUS will review and evaluate applications received in response to this NOSA based on the regulations at 7 CFR 1720.7, and as provided in this NOSA.

II. Award Information

Type of Awards: Guaranteed Loans.

Fiscal Year Funds: FY 2020.

Available Funds: $750 million. Should additional funding become available this fiscal year, the RUS reserves the right to increase the total funds available under this notice.

Award Amounts: RUS anticipates making multiple guarantees under this NOSA. The number, amount and terms of awards under this NOSA will depend in part on the number of eligible applications and the amount of funds requested. In determining whether or not to make an award, RUS will take overall program policy objectives into account.

Due Date for Applications: See **SUPPLEMENTARY INFORMATION** above.

Award Date: Awards will be made on or before September 30, 2020, but no earlier than July 17, 2020.

Schedule of Loan Repayment: The amortization method for the repayment of the guaranteed loan shall be repaid by the Guaranteed Lender: (i) In periodic installments of principal and interest, (ii) in periodic installments of interest and, at the end of the term of the bond or note, as applicable, by the repayment of the outstanding principal, or (iii) through a combination of the methods described in (i) and (ii) above. The amortization method will be agreed to by RUS and the Guaranteed Lender.

III. Eligibility Information

A. Eligible Applicants

1. *To be eligible to participate in the 313A Program, a Guaranteed Lender must be:*

a. A bank or other lending institution organized as a private, not-for-profit cooperative association, or otherwise organized on a non-profit basis;

b. Able to demonstrate to the Administrator that it possesses the appropriate expertise, experience, and qualifications to make loans for utility infrastructure purposes (to the extent that the applicant intends to use the guaranteed loan funds for such purpose); and

c. Able to demonstrate to the Administrator that it has bonds or notes eligible for refinancing under the 313A Program (to the extent that the applicant intends to use the guaranteed loan funds for such purpose).

2. *To be eligible to receive a guarantee, a Guaranteed Lender's bond must meet the following criteria:*

a. The Guaranteed Lender must furnish the Administrator with a certified list of the principal balances of eligible loans outstanding and certify that such aggregate balance is at least equal to the sum of the proposed principal amount of guaranteed bonds to be issued, including any previously issued guaranteed bonds outstanding;

b. The guaranteed bonds to be issued by the Guaranteed Lender would receive an underlying investment grade rating from a Rating Agency, without regard to the guarantee; and

3. A lending institution's status as an eligible applicant does not assure that the Administrator will issue the guarantee sought in the amount or under the terms requested, or otherwise preclude the Administrator from declining to issue a guarantee.

B. Other Eligibility Requirements

Applications will only be accepted from lenders that serve rural areas defined in 7 CFR 1710.2(a) as (i) any area of the United States, its territories and insular possessions (including any area within the Federated States of Micronesia, the Marshall Islands, and the Republic of Palau) other than a city, town, or unincorporated area that has a population of greater than 20,000 inhabitants; and (ii) any area within a service area of a borrower for which a borrower has an outstanding loan as of June 18, 2008, made under titles I through V of the Rural Electrification Act of 1936, as amended (7 U.S.C. 901–950cc–2). For initial loans to a borrower made after June 18, 2008, the ''rural'' character of an area is determined at the time of the initial loan to furnish or improve service in the area.

IV. Fiscal Year 2020 Application and Submission Information

A. Applications

All applications must be prepared and submitted in accordance with this NOSA and 7 CFR part 1720 (available online at *http://www.ecfr.gov/cgi-bin/text-idx?SID=9295e45c9a0f6a857d800fbec5dde2fb&mc=true&node=pt7.11.1720&rgn=div5*).

B. Content and Form of Submission

In addition to the required application specified in 7 CFR 1720.6, all applicants must submit the following additional required documents and materials:

1. Form AD–1047, Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This form contains certain certifications relating to debarment and suspension, convictions, criminal charges, and the termination of public transactions (See 2 CFR part 417, and 7 CFR 1710.123.) This form is available at *https://www.ocio.usda.gov/document/ad-1047.*

2. Restrictions on Lobbying

Applicants must comply with the requirements relating to restrictions on lobbying activities. (See 2 CFR part 418, and 7 CFR 1710.125.) This form is available at *https://www.gsa.gov/forms-library/disclosure-lobbying-activities;*

3. Uniform Relocation Act Assurance Statement

Applicants must comply with 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. (See 7 CFR 1710.124.) This form is available at *http://www.rd.usda.gov/publications/regulations-guidelines/electric-sample-documents;*

4. Federal Debt Delinquency Requirements

This report indicates whether the applicants are delinquent on any Federal debt (See 7 CFR 1710.126 and 7 CFR 1710.501(a)(13)). This form (the Federal Debt Delinquency Certification) is available at *http://www.rd.usda.gov/publications/regulations-guidelines/electric-sample-documents;*

5. RUS Form 266, Compliance Assurance

Applicants must submit a non-discrimination assurance commitment to comply with certain regulations on non-discrimination in program services and benefits and on equal employment opportunity as set forth in 7 CFR parts 15 and 15b and 45 CFR part 90. This form is available at: *https://www.rd.usda.gov/files/UP_ET_form_266.pdf;*

6. Articles of Incorporation and Bylaws

See 7 CFR 1710.501(a)(14). These are required if either document has been amended since the last loan application was submitted to RUS, or if this is the applicant's first application for a loan under the RE Act; and

7. Form AD–3030, Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applications

Corporate applicants are required to complete and submit Form AD–3030 with their applications. This form is available at *https://www.ocio.usda.gov/document/ad3030.*

C. Supplemental Documents for Submission

1. Cash Flow Projections and Assumptions

Each applicant must include five-year pro-forma cash flow projections or business plans and clearly state the assumptions that underlie the projections, demonstrating that there is reasonable assurance that the applicant will be able to repay the guaranteed loan in accordance with its terms (See 7 CFR 1720.6(a)(4)).

2. Pending Litigation Statement

A statement from the applicant's counsel listing any pending litigation, including levels of related insurance coverage and the potential effect on the applicant, must be submitted to RUS.

V. Application Review Information

A. Application Evaluation

1. Administrator Review

a. Each application will be reviewed by the Administrator to determine whether it is eligible under 7 CFR 1720.5, the information required under 7 CFR 1720.6 is complete, and the proposed guaranteed bond complies with applicable statutes and regulations. The Administrator can at any time reject an application that fails to meet these requirements.

b. Applications will be subject to a substantive review, on a competitive basis, by the Administrator based upon the evaluation factors listed in 7 CFR 1720.7(b).

2. Decisions by the Administrator

The Administrator may limit the number of guarantees made to a maximum of five per year, to ensure a sufficient examination is conducted of applicant requests. RUS will notify the applicant in writing of the Administrator's approval or denial of an application. Approvals for guarantees will be conditioned upon compliance with 7 CFR 1720.4 (in accordance with the 2018 Farm Bill) and 7 CFR 1720.6. The Administrator reserves the discretion to approve an application for an amount less than that requested.

B. Independent Assessment

Before a guarantee decision is made by the Administrator, the Administrator shall request that FFB review the rating agency determination required by 7 CFR 1720.5(b)(2) as to whether the bond or note to be issued would receive an investment grade rating without regard to the guarantee.

VI. Issuance of the Guarantee

The requirements under this section must be met by the applicant prior to the endorsement of a guarantee by the Administrator (See 7 CFR 1720.8.)

VII. Guarantee Agreement

Each Guaranteed Lender will be required to enter into a Guarantee Agreement with RUS that contains the provisions described in 7 CFR 1720.8 (Issuance of the Guarantee), 7 CFR 1720.9 (Guarantee Agreement), and 7 CFR 1720.12 (Reporting Requirements). The Guarantee Agreement will also obligate the Guaranteed Lender to pay, on an annual basis, a guarantee fee equal to 30 basis points (0.30 percent) of the outstanding principal amount of the guaranteed loan (See 7 CFR 1720.10).

VIII. Reporting Requirements

Guaranteed Lenders are required to comply with the financial reporting requirements and Pledged Collateral review and certification requirements set forth in 7 CFR 1720.12.

IX. Award Administration Information

Award Notices

RUS will send a commitment letter to an applicant once the loan is approved. Applicants must accept and commit to all terms and conditions of the loan which are requested by RUS and FFB as follows:

1. Compliance Conditions

In addition to the standard conditions placed on the 313A Program or conditions requested by RUS to ensure loan security and statutory compliance, applicants must comply with the following conditions:

a. Each Guaranteed Lender selected under the 313A Program will be required to post collateral for the benefit of RUS in an amount equal to the aggregate amount of loan advances made to the Guaranteed Lender under the 313A Program.

b. The pledged collateral (the Pledged Collateral) shall consist of outstanding notes or bonds payable to the Guaranteed Lender (the Eligible Securities) and shall be placed on deposit with a collateral agent for the benefit of RUS. To be deemed Eligible Securities that can be pledged as collateral, the notes or bonds to be pledged (i) cannot be classified as non-performing, impaired, or restructured under generally accepted accounting principles, (ii) must be free and clear of all liens other than the lien created for the benefit of RUS, (iii) cannot be comprised of more than 30% of bonds or notes from generation and transmission borrowers, (iv) cannot have more than 5% of notes and bonds be from any one particular borrower and (v) cannot be unsecured notes.

c. The Guaranteed Lender will be required to place a lien on the Pledged Collateral in favor of RUS (as secured party) at the time that the Pledged Collateral is deposited with the collateral agent. RUS will have the right, in its sole discretion, within 14 business days to reject and require the substitution of any Pledged Collateral that the Guaranteed Lender deposits as collateral with the collateral agent. Prior to receiving any advances under the 313A Program, the Guaranteed Lender will be required to enter into a pledge agreement, satisfactory to RUS, with a banking institution serving as collateral agent.

d. The Guaranteed Lender will be required to maintain Pledged Collateral at a level that is sufficient to ensure that in the event of default resources will be available to cover principal, interest, fees and reasonable expenses incurred by RUS as a result of a default or

incurred pursuant to RUS's obligation to make related payments to FFB on all guarantees issued by RUS to FFB for the benefit of the Guaranteed Lender under Section 313A of the RE Act. The Guaranteed Lender will also be required to agree that the Pledged Collateral can be used for such purposes.

e. The Guaranteed Lender will be required to agree to not to take any action that would have the effect of reducing the value of the pledged collateral below the level described above.

f. Applicants must certify to the RUS, the portion of their loan portfolio that is:

(1) Refinanced RUS debt;

(2) Debt of borrowers for whom both RUS and the applicants have outstanding loans; and

(3) Debt of borrowers for whom both RUS and the applicant have outstanding concurrent loans pursuant to Section 307 of the RE Act, and the amount of Eligible Loans.

2. Compliance With Federal Laws

Applicants must comply with all applicable Federal laws and regulations.

a. This obligation is subject to the provisions contained in the Consolidated Appropriations Act, 2020, Public Law 116–93, Division C, Title VII, Sections 744 and 745, as amended and/or subsequently enacted for USDA agencies and offices, regarding the prohibition against RUS making awards to applicants having corporate felony convictions within the past 24 months or to applicants having corporate federal tax delinquencies.

b. An authorized official within your organization must execute, date, and return the loan commitment letter and the Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants (Form AD–3031) to RUS within 14 calendar days from the date of the loan commitment letter, or by September 25, 2020, if the loan is approved after September 10, 2020; otherwise, the commitment will be void. This form is available at *https://www.ocio.usda.gov/document/ad3031.*

c. Uniform Commercial Code (UCC) Filing. The Borrower must provide RUS with evidence that the Borrower has filed the UCC financing statement required by 7 CFR 1720.8(a)(2). Upon filing of the appropriate UCC financing statement, the Guaranteed Lender will provide RUS with a perfection opinion by outside counsel which demonstrates that RUS's security interest in the pledged collateral under the Pledge Agreement is perfected.

d. Additional conditions may be instituted for future obligations.

X. National Environmental Policy Act Certification

For any proceeds to be used to refinance bonds and notes previously issued by the Guaranteed Lender for RE Act purposes that are not obligated for specific projects, RUS has determined that these financial actions will not individually or cumulatively have a significant effect on the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR parts 1500–1508. However, for any new projects funded through the 313A Program, applicants must consult with RUS and comply with the Agency regulations at 7 CFR part 1970.

XI. Other Information and Requirements

Applications must contain all the required elements of this NOSA and all standard requirements as required by 7 CFR part 1720. Additional supporting data or documents may be required by RUS depending on the individual application or financial conditions. All applicants must comply with all Federal laws and regulations.

XII. Agency Contacts

A. Website: https://www.rd.usda.gov/contact-us/national-office/rus.

B. Phone: (202) 720–9540.

C. Fax: None.

D. Email: jim.elliott@usda.gov.

E. Main point of contact: Amy McWilliams, Program Advisor; *amy.mcwilliams@usda.gov;* TEL: (202) 720 9540 or (202) 205–8663.

XIII. USDA Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating 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, AD–3027. Individuals wishing to file a discrimination complaint may use the form available at *http://www.ocio.usda.gov/policy-directives-records-forms/forms-management/approved-computer-generated-forms* and at any USDA office, or may 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:* U.S. 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.

Authority: 7 U.S.C. 940c–1.

Chad Rupe,

Administrator, Rural Utilities Service.

[FR Doc. 2020–10507 Filed 5–15–20; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Ohio Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Ohio Advisory Committee (Committee) will hold a meeting via teleconference on Thursday, June 4, 2020, at 10:00 a.m. Eastern Time for the purpose of discussing civil rights in the state.

DATES: The meeting will be held on Thursday, June 4, 2020, at 10:00 a.m. Eastern Time

Public Call Information: Dial: 800–367–2403, Confirmation Code: 9519806.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at

mwojnaroski@usccr.gov or 202 618–4158.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the above listed toll free number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and confirmation code.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Carolyn Allen at *callen@usccr.gov* in the Regional Programs Unit Office/Advisory Committee Management Unit. Persons who desire additional information may contact the Regional Programs Unit Office at 202 618–4158.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Ohio Advisory Committee link. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email address or phone number.

Agenda

Welcome and Roll Call
Approval of Minutes
Discussion: Civil Rights in Ohio
Public Comment
Adjournment

Dated: May 13, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–10613 Filed 5–15–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the West Virginia Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that a meeting of the West Virginia Advisory Committee to the Commission will convene by conference call at 11:30 a.m. (ET) on Tuesday, June 2, 2020. The purpose of the meeting is to discuss possible topics for the Committee's civil rights project.

DATES: Tuesday, June 2, 2020 at 11:30 a.m. (ET).

Public Call-In Information: Conference call-in number: 1–800–367–2403 and conference call ID number: 2629531.

FOR FURTHER INFORMATION CONTACT: Ivy Davis at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–800–367–2403 and conference call ID number: 2629531. Please be advised that before being placed into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–888–364–3109 and providing the operator with the toll-free conference call-in number: 1–800–367–2403 and conference call ID number: 2629531.

Members of the public are invited to make statements during the Public Comments section of the Agenda. They are also invited to submit written comments, which must be received in the regional office approximately 30 days after the scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425 or emailed to Corrine Sanders at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzmCAAQ;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda

June 2, 2020 at 11:30 a.m. (ET)

I. Rollcall
II. Welcome
III. Project Planning
IV. Other Business
V. Next Meeting
VI. Open Comments
VII. Adjourn

Dated: May 13, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–10567 Filed 5–15–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Kentucky Advisory Committee; Correction.

AGENCY: Commission on Civil Rights.

ACTION: Notice; revision to meeting time.

SUMMARY: The Commission on Civil Rights published a notice in the **Federal Register** of Tuesday, April 21, 2020, concerning a meeting of the Kentucky Advisory Committee. The document contained a time that is now changed to a new time.

FOR FURTHER INFORMATION CONTACT: Carolyn Allen, (202) 602–2375, *callen@usccr.gov*

Correction: In the **Federal Register** of Tuesday, April 21, 2020, in FR Doc. 2020–08430, on pages 22125–22126, third column of 22125, correct the time to read: Tuesday, May 19, 2020 at 3:00 p.m. (EDT).

Dated: May 13, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–10580 Filed 5–15–20; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2096]

Reorganization of Foreign-Trade Zone 32 (Expansion of Service Area) Under Alternative Site Framework, Miami, Florida

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, Greater Miami Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 32, submitted an application to the Board (FTZ Docket B–74–2019, docketed December 3, 2019) for authority to expand the service area of the zone to include all of Miami-Dade County, Florida, as described in the application, within and adjacent to the Miami U.S. Customs and Border Protection port of entry;

Whereas, notice inviting public comment was given in the **Federal Register** (84 FR 66873, December 6, 2019) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 32 to expand the service area under the ASF is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and to the Board's standard 2,000-acre activation limit for the zone.

Dated: May 12, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2020–10611 Filed 5–15–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Construction Safety Team Advisory Committee Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The National Construction Safety Team (NCST) Advisory Committee (Committee) will hold a virtual meeting via web conference on Tuesday, June 30, 2020, from 10:30 a.m. to 3:40 p.m. Eastern Time and Wednesday, July 1, 2020, from 11:00 a.m. to 1:00 p.m. Eastern Time. The primary purpose of this meeting is to update the Committee on the status of the NCST investigation focused on the impacts of Hurricane Maria on Puerto Rico, and the implementation of recommendations from previous NCST investigations, including the Joplin tornado investigation. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST website at *https://www.nist.gov/topics/disaster-failure-studies/national-construction-safety-team-ncst/advisory-committee-meetings.*

DATES: The NCST Advisory Committee will meet on Tuesday, June 30, 2020, from 10:30 a.m. to 3:40 p.m. Eastern Time and Wednesday, July 1, 2020, from 11:00 a.m. to 1:00 p.m. Eastern Time.

ADDRESSES: The meeting will be held via web conference. For instructions on how to participate in the meeting, please see the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Maria Dillard, Community Resilience Program, Engineering Laboratory, NIST, 100 Bureau Drive, Mail Stop 8615, Gaithersburg, Maryland 20899–8604. Maria Dillard's email address is *Maria.Dilard@nist.gov;* and her phone number is (202) 281–0908.

SUPPLEMENTARY INFORMATION: The Committee was established pursuant to Section 11 of the NCST Act (Pub. L. 107–231, codified at 15 U.S.C. 7301 *et seq.*). The Committee is currently composed of six members, appointed by the Director of NIST, who were selected on the basis of established records of distinguished service in their professional community and their knowledge of issues affecting the National Construction Safety Teams. The Committee advises the Director of NIST on carrying out the NCST Act; reviews the procedures developed for conducting investigations; and reviews the reports issued documenting investigations. Background information on the NCST Act and information on the NCST Advisory Committee is available at *https://www.nist.gov/topics/disaster-failure-studies/national-construction-safety-team-ncst/advisory-committee.*

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the NCST Advisory Committee will meet on Tuesday, June 30, 2020, from 10:30 a.m. to 3:40 p.m. Eastern Time and Wednesday, July 1, 2020, from 11:00 a.m. to 1:00 p.m. Eastern Time. The meeting will be open to the public, and will be held via web conference. Interested members of the public will be able to participate in the meeting from remote locations. The primary purpose of this meeting is to update the Committee on the status of the NCST investigation focused on the impacts of Hurricane Maria on Puerto Rico, and the implementation of recommendations from previous NCST investigations, including the Joplin tornado investigation. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST website at *https://www.nist.gov/topics/disaster-failure-studies/national-construction-safety-team-ncst/advisory-committee-meetings.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to items on the Committee's agenda for this meeting are invited to request a place on the agenda. Approximately fifteen minutes will be reserved for public comments and speaking times will be assigned on a first-come, first-served basis. Public comments can be provided via email or by web conference attendance. The amount of time per speaker will be determined by the number of requests received. Questions from the public will not be considered during this period. All those wishing to speak must submit their request by email to the attention of Gwynaeth Broome at *gwynaeth.broome@nist.gov* by 5:00 p.m. Eastern Time, Tuesday, June 9, 2020. Speakers who wish to expand upon their oral statements, those who wish to speak but cannot be accommodated on the agenda, and those who are unable to attend are invited to submit written statements to the NCST, National Institute of Standards and Technology, 100 Bureau Drive, MS 8604, Gaithersburg, Maryland 20899–8604, or electronically by email to *gwynaeth.broome@nist.gov.*

Anyone wishing to attend this meeting via web conference must register by 5:00 p.m. Eastern Time, Tuesday, June 9, 2020, to attend. Please submit your full name, email address, and phone number to Gwynaeth Broome at *gwynaeth.broome@nist.gov.*

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2020–10538 Filed 5–15–20; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2020–0026]

COVID–19 Prioritized Examination Pilot Program

Correction

In Notice document 2020–10372, appearing on pages 28932–28935, in the issue of Thursday, May 14, 2020, make the following correction:

On page 28933, in the first column, under the heading ''DATES:'', on the sixth line, the date reading ''July 13, 2020'' should read ''May 14, 2020''.

[FR Doc. C1–2020–10372 Filed 5–14–20; 4:15 pm]

BILLING CODE 1301–01–D

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before June 17, 2020.

ADDRESSES: Written comments regarding the burden estimated or any other aspect of the information collection should be submitted within 30 days of this notice's publication to OIRA, at *https://www.reginfo.gov/public/do/PRAMain.* Please find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the website's search function. Comments can be entered electronically by clicking on the ''comment'' button next to the information collection on the ''OIRA Information Collections Under Review'' page, or the ''View ICR—Agency Submission'' page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *https://www.reginfo.gov/public/do/PRAMain.*

In addition to the submission of comments to *https://Reginfo.gov* as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') by clicking on the ''Submit Comment'' box next to the descriptive entry for OMB Control No. 3038–0093, at *https://comments.cftc.gov/FederalRegister/PublicInfo.aspx.* Or by either of the following methods:

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Jeanette Curtis, Special Counsel, Division of Market Oversight, Commodity Futures Trading Commission, (202) 418–5660, email: *jcurtis@cftc.gov,* or Philip Raimondi, Special Counsel, Division of Market Oversight, Commodity Futures Trading Commission, (202) 418–5717; email: *praimondi@cftc.gov,* and refer to OMB Control No. 3038–0093.

SUPPLEMENTARY INFORMATION:

Title: Part 40, Provisions Common To Registered Entities (OMB Control No. 3038–0093). This is a request for extension of a currently approved information collection.

Abstract: This collection of information involves the collection and submission to the Commission of information from registered entities concerning new products, rules, and rule amendments pursuant to the procedures outlined in §§ 40.2, 40.3, 40.5, 40.6, and 40.10 found in 17 CFR part 40. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. On March 10, 2020, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 85 FR 13876 (''60-Day Notice''). The Commission did not receive any relevant comments on the 60-Day Notice.

Burden Statement: Registered entities must comply with certification and approval requirements which include an explanation and analysis when seeking to implement new products, rules, and rule amendments, including changes to product terms and conditions. The Commission's regulations §§ 40.2, 40.3, 40.5, 40.6 and 40.10 provide procedures for the submission of rules and rule amendments by designated contract markets, swap execution facilities, derivatives clearing organizations, and swap data repositories. They establish the procedures for submitting the ''written certification'' required by Section 5c of the Act. In connection with a product or rule certification, the registered entity must provide a concise explanation and analysis of the submission and its compliance with statutory provisions of the Act. Accordingly, new rules or rule amendments must be accompanied by concise explanations and analyses of the purposes, operations, and effects of the submissions. This information may be submitted as part of the same submission containing the required ''written certification.''

Respondents/Affected Entities: Designated Contract Markets, Swap Execution Facilities, Derivatives Clearing Organizations, and Swap Data Repositories.

[1] 17 CFR 145.9.

- Rules 40.2, 40.3, 40.5, and 40.6
  Estimated Number of Respondents: 70.
  Annual Responses by each Respondent: 100.
  Estimated Hours per Response: 2.
  Estimated Total Hours per Year: 14,000.
- Rule 40.10
  Estimated Number of Respondents: 3.
  Annual Responses by each Respondent: 2.
  Estimated Hours per Response: 5.
  Estimated Total Hours per Year: 30.

(Authority: 44 U.S.C. 3501 *et seq.*)

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2020–10540 Filed 5–15–20; 8:45 am]

BILLING CODE 6351–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2020–0015]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is requesting a renewal of the Office of Management and Budget's (OMB) approval for the information collection titled, ''Consumer Response Company Response Survey.''

DATES: Written comments are encouraged and must be received on or before June 17, 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. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.reginfo.gov* (this link becomes active on the day following publication of this notice). Select ''Information Collection Review,'' under ''Currently under Review,'' use the dropdown menu ''Select Agency'' and select ''Consumer Financial Protection Bureau'' (recent submissions to OMB will be at the top of the list). The same documentation is also available at *http://www.regulations.gov.* Requests for additional information should be directed to Darrin King, PRA Officer, at (202) 435–9575, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Consumer Response Company Response Survey.

OMB Control Number: 3170–0069.

Type of Review: Renewal without change of an existing information collection.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 47,900.

Estimated Total Annual Burden Hours: 3,830.

Abstract: The purpose of this information collection is to continue the collection of consumer feedback through an optional survey at the end of the consumer complaint process. Through the existing survey, consumers have the option to provide feedback on the company's response to and handling of their complaint. The results of this feedback are shared with the company that responded to the complaint to inform its complaint handling. The feedback is also used as one of several inputs to inform the Bureau's work to assess the accuracy, completeness, and timeliness of company responses to consumer complaints.

The consumer has the ability to answer three questions about the company's response to and handling of his or her complaint and provide a narrative description in support of each answer. Positive feedback about the company's handling of the consumer's complaint would be reflected by affirmative answers to each question and by the narrative in support of each answer. The Company Response Survey allows consumers to offer both positive and negative feedback on their complaint experience.

Request for Comments: The Bureau issued a 60-day **Federal Register** notice on January 24, 2020, 85 FR 4294, Docket Number: CFPB–2020–0009. Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the 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 respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be reviewed by OMB as part of its review of this request. All comments will become a matter of public record.

Dated May 13, 2020.

Darrin King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2020–10600 Filed 5–15–20; 8:45 am]

BILLING CODE 4810–AM–P

CONSUMER PRODUCT SAFETY COMMISSION

Commission Agenda and Priorities; Notice of Hearing

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Notice of Hearing.

SUMMARY: On March 5, 2020, the U.S. Consumer Product Safety Commission (CPSC or Commission) published a notice announcing a public hearing concerning the Commission's agenda and priorities for fiscal years 2021 and 2022, which was postponed due to the extraordinary circumstances surrounding COVID–19. The CPSC has now rescheduled the public hearing for May 27, 2020, at 10:00 a.m. EDT via CPSC Webinar. All attendees should pre-register for the Webinar. To pre-register for the Webinar, please visit *https://attendee.gotowebinar.com/register/3513228129651454990* and fill in the information. After registering you will receive a confirmation email containing information about joining the webinar. Detailed instructions for the hearing participants and other interested parties will be made available on the CPSC website on the public calendar: *https://cpsc.gov/newsroom/public-calendar.*

DATES: The hearing will begin at 10 a.m. EDT on May 27, 2020, and will conclude the same day.

FOR FURTHER INFORMATION CONTACT: Alberta E. Mills, Division of the Secretariat, U.S. Consumer Product

Safety Commission, 4330 East West Highway, Bethesda, MD 20814; email: *cpsc-os@cpsc.gov;* telephone: (301) 504–7479; facsimile: (301) 504–0127.

SUPPLEMENTARY INFORMATION:

Section 4(j) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2053(j)) requires the Commission to establish an agenda for action under the laws the Commission administers, and to the extent feasible, select priorities for action at least 30 days before the beginning of each fiscal year. Section 4(j) of the CPSA provides further that before establishing its agenda and priorities, the Commission shall conduct a public hearing and provide an opportunity for the submission of comments.

On March 5, 2020, the CPSC published a notice in the **Federal Register** to announce that a priorities hearing would be conducted on April 15, 2020 (85 FR 12908) and requested written comments. On April 3, 2020, the CPSC postponed the public hearing date until further notice and extended the comment period for written comments until May 1, 2020. (85 FR 18925). By this notice the Commission announces that the public hearing will be held on May 27, 2020, at 10:00 a.m. EDT via CPSC Webinar. All attendees should pre-register for the Webinar. To pre-register for the Webinar, please visit *https://attendee.gotowebinar.com/register/3513228129651454990* and fill in the information. After registering you will receive a confirmation email containing information about joining the webinar. Detailed instructions for the hearing participants and other interested parties will be made available on the CPSC website on the public calendar: *https://cpsc.gov/newsroom/public-calendar.* The FY 2021 Budget Request can be found at: *www.cpsc.gov/about-cpsc/agency-reports/performance-and-budget.*

Alberta E. Mills,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2020–10589 Filed 5–15–20; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Regents, Uniformed Services University of the Health Sciences; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Board of Regents, Uniformed Services University of the Health Sciences (Board, USU) will take place.

DATES: Friday, May 15, 2020 open to the public from 8:00 a.m. to 10:25 a.m. The closed session will follow from approximately 10:30 a.m. to 10:50 a.m.

ADDRESSES: Both the open and closed portions of the meeting will be held online. If you are interested in observing the open portion of the Board meeting online, please contact *usu_external_affairs@usuhs.edu* for connectivity information.

FOR FURTHER INFORMATION CONTACT: Mrs. Sarah Marshall, Designated Federal Officer (DFO), at (301) 295–3955 or *sarah.marshall@usuhs.edu.* Mailing address is 4301 Jones Bridge Road, Bethesda, MD 20814. Website: *https://www.usuhs.edu/vpe/bor.*

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the DoD and the DFO, the Board, USU was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its meeting on May 15, 2020. Accordingly, the Advisory Committee Management Officer for the DoD, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C., Appendix), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to provide advice and recommendations to the Secretary of Defense, through the USD(P&R), on academic and administrative matters critical to the full accreditation and successful operation of USU. These actions are necessary for USU to pursue its mission, which is to educate, train and comprehensively prepare uniformed services health professionals, officers, scientists, and leaders to support the Military and Public Health Systems, the National Security and National Defense Strategies of the United States, and the readiness of our Uniformed Services.

Agenda: The actions scheduled to occur include the review of any administrative matters of general consent (*e.g.,* degree conferrals, faculty appointments and promotions, award recommendations, etc.) that may have been electronically voted on since the previous Board meeting on February 5, 2020; Board actions, to include recommendations for degree conferrals, faculty appointments and promotions, and faculty/student awards presented by the deans of USU's schools and colleges; a report by the USU President; a report by the Office of the Assistant Secretary of Defense for Health Affairs; reports from the Hébert School of Medicine, the Daniel K. Inouye Graduate School of Nursing, the Postgraduate Dental College, and the College of Allied Health Sciences; a report from the Office of Accreditation and Organizational Assessment; a report from the Office of Finance and Administration; and a report from the Brigade Commander. A closed session will be held following the open session to discuss active investigations and personnel actions.

Meeting Accessibility: Pursuant to Federal statutes and regulations (5 U.S.C. Appendix, 5 U.S.C. 552b, and 41 CFR 102–3.140 through 102–3.165), the meeting will be held online and is open to the public from 8:00 a.m. to 10:25 a.m. Members of the public wishing to observe the meeting should contact External Affairs via email at *usu_external_affairs@usuhs.edu* no later than 2 business days prior to the meeting. Pursuant to 5 U.S.C. 552b(c)(2, 5–7), the DoD has determined that the portion of the meeting from 10:30 a.m. to 10:50 a.m. shall be closed to the public. The USD(P&R), in consultation with the DoD Office of General Counsel, has determined in writing that this portion of the Board's meeting will be closed as the discussion will disclose sensitive personnel information, will include matters that relate solely to the internal personnel rules and practices of the agency, will involve allegations of a person having committed a crime or censuring an individual, and may disclose investigatory records compiled for law enforcement purposes.

Written Statements: Pursuant to section 10(a)(3) of the FACA and 41 CFR 102–3.140, the public or interested organizations may submit written comments to the Board about its approved agenda pertaining to this meeting or at any time regarding the Board's mission. Individuals submitting a written statement must submit their statement to the USU External Affairs email address at *usu_external_affairs@usuhs.edu.* Written statements that do not pertain to a scheduled meeting of the Board may be submitted at any time. If individual comments pertain to a specific topic being discussed at the planned meeting, then these statements must be received at least 5 calendar days prior to the meeting. Otherwise,

the comments may not be provided to or considered by the Board until a later date. The DFO will compile all timely submissions with the Board's Chair and ensure such submissions are provided to Board Members before the meeting.

Dated: May 13, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–10628 Filed 5–15–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

National Wetland Plant List

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers (Corps), as part of an interagency effort with the U.S. Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (FWS) and the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), is announcing the availability of the final 2018 National Wetland Plant List (NWPL). The NWPL provides plant species indicator status ratings, which are used in determining whether the hydrophytic vegetation factor is met when conducting wetland delineations under the Clean Water Act and wetland determinations under the Wetland Conservation Provisions of the Food Security Act. Other applications of the NWPL include wetland restoration, establishment, and enhancement projects. The list will become effective on May 18, 2020 and will be used in any wetland delineations performed after this date. Delineations completed prior to this date may still use the 2016 NWPL. Completed wetland delineation/determination forms should reference the version of the NWPL used to complete the form.

DATES: The 2018 NWPL will become effective on May 18, 2020.

ADDRESSES: U.S. Army Corps of Engineers, Attn: CECW–CO–R, 441 G Street NW, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Brianne McGuffie, Headquarters, U.S. Army Corps of Engineers, Operations and Regulatory Community of Practice, Washington, DC 20314–1000, by phone at 202–761–4750 or by email at *brianne.e.mcguffie@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

Background

The U.S. Army Corps of Engineers (Corps) administers the National Wetland Plant List (NWPL) for the United States (U.S.) and its territories. Responsibility for the NWPL was transferred to the Corps from the U.S. Fish and Wildlife Service (FWS) in 2006. The NWPL has undergone several revisions since its inception in 1988. Additions or deletions to the NWPL represent new records, range extensions, nomenclatural and taxonomic changes, and newly proposed species. The latest review process began in 2018 and included review by Regional Panels (RPs), the National Panel (NP), and the public, who provided input on changes to the wetland indicator status of 20 species and 37 individual ratings. The proposed indicator changes were announced in a **Federal Register** Notice, 84 FR 26824, June 10, 2019, with the comment period ending on August 9, 2019. Two comments were received during that time.

Wetland Indicator Status Ratings

On the NWPL, there are five categories of wetland indicator status ratings, used to indicate a plant's likelihood for occurrence in wetlands versus non-wetlands: Obligate Wetland (OBL), Facultative Wetland (FACW), Facultative (FAC), Facultative Upland (FACU), and Upland (UPL). These rating categories are defined by the NP as follows: OBL—almost always occur in wetlands; FACW — usually occur in wetlands, but may occur in non-wetlands; FAC—occur in wetlands and non-wetlands; FACU—usually occur in non-wetlands, but may occur in wetlands; UPL—almost always occur in non-wetlands. These category definitions are qualitative descriptions that better reflect the qualitative supporting information, rather than numeric frequency ranges. The percentage frequency categories used in the older definitions are only used for testing problematic or contested species being recommended for indicator status changes. Plus and minus designations and wetland indicator designations such as No Indicator (NI), No Occurrence (NO), and No Agreement (NA) were removed in 2012 and are no longer used on the NWPL. More information on the specifics of how to use these ratings is available on the NWPL website at *http://wetland-plants.usace.army.mil/.*

The NWPL is utilized in conducting wetland determinations under the authority of the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*) and wetland delineations under the authority of Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*). For the purposes of determining how often a species occurs in wetlands, wetlands are defined as either (1) those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions (33 CFR 328.3) or (2) ''except when such term is part of the term 'converted wetland,' means land that has a predominance of hydric soils; is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and under normal circumstances does support a prevalence of such vegetation.'' (16 U.S.C. 3801(a)(27) and 7 CFR 12.2). Wetlands are identified using the three-factor approach. Because each species being evaluated occurs as part of a vegetation assemblage, examining the other species present in relation to their assigned wetland fidelity may be useful in assessing hydrophytic vegetation.

Discussion of Public Comments

For the 2018 NWPL update, the NWPL NP and RPs reviewed proposed wetland rating changes or additions for 20 species and 37 regional ratings (some species were reviewed for multiple regions) submitted by the general public. Eight of these species were proposed for addition to the NWPL, and 12 species were submitted for a rating change request in one or more regions. Submitted information was reviewed by the NP and RPs, and proposed 2018 ratings for these species were determined. Along with soliciting information on the species being evaluated, we also solicited comments on the overall NWPL process. This information was detailed in the **Federal Register** Notice, 84 FR 26824, June 10, 2019 and is provided in the table below.

In response to the initial **Federal Register** notice, two comments were received, each relating to a particular species: One recommending *Epilobium brachycarpum* to be FACU in the Arid West and one recommending *Hymenocallis occidentalis* to be ''OBL, or FACW at a minimum'' in the Atlantic and Gulf Coastal Plain and Great Plains. These recommendations were reviewed by the NWPL Regional Panels and National Panel, along with literature, specimen collection data, and professional experience and final ratings determined: FAC for *Epilobium*

brachycarpum (as originally proposed) and FACW for *Hymenocallis occidentalis* (FACW in the Great Plains and OBL in the Atlantic and Gulf Coastal Plain on the 2016 NWPL). Received comments, responses to those comments, and final ratings are detailed in the decision document. Three species were removed from this update. *Bassia hyssopifolia* and *Pycnanthemum muticum* were removed because in both cases, the requested indicator for the requested region, FACU in the Arid West and FAC in the Eastern Mountains and Piedmont, respectively, was already the existing indicator on the 2016 NWPL. *Pleopeltis polypodioides* is an epiphyte and upon additional review of its epiphytic nature and the position of epiphytes on the NWPL (Lichvar and Fertig 2011), it was determined that it should be removed from the NWPL.

SPECIES REVIEWED FOR NWPL 2018 UPDATE

Species	Region	2016 NWPL rating	Proposed 2018 NWPL rating	Final 2018 NWPL rating
Aristida palustris	AGCP	NOL *	FACW	FACW.
Artemisia dracunculus	AW	NOL	FACU	FACU.
Artemisia dracunculus	WMVC	NOL	FACU	FACU.
Bromus nottowayanus	MW	NOL	FACU	FACU.
Bromus nottowayanus	NCNE	NOL	FACU	FACU.
Delairea odorata	AW	NOL	FAC	FAC.
Delairea odorata	WMVC	NOL	FAC	FAC.
Dichanthelium wrightianum	AGCP	NOL	FACW	FACW.
Epilobium brachycarpum	AW	NOL	FAC	FAC.
Epilobium brachycarpum	WMVC	NOL	FAC	FAC.
Hymenocallis latifolia	AGCP	FACW	FACU	FACU.
Hymenocallis latifolia	CB	FACW	FACU	FACU.
Hymenocallis occidentalis	AGCP	OBL	FAC	FACW.
Hymenocallis occidentalis	EMP	OBL	FAC	FAC.
Hymenocallis occidentalis	GP	FACW	FAC	FACW.
Hymenocallis occidentalis	MW	OBL	FAC	FAC.
Ilex opaca	AGCP	FAC	FAC	FAC.
Iva axillaris	AW	FAC	FACU	FACU.
Iva axillaris	WMVC	FAC	FACU	FACU.
Liriodendron tulipifera	AGCP	FACU	FACU	FACU.
Liriodendron tulipifera	EMP	FACU	FACU	FACU.
Penstemon rydbergii	AW	FACU	FACU	FACU.
Penstemon rydbergii	WMVC	FACU	FACU	FACU.
Polymnia canadensis	EMP	NOL	FACU	FACU.
Polymnia canadensis	MW	NOL	FACU	FACU.
Polymnia canadensis	NCNE	NOL	FACU	FACU.
Quercus michauxii	AGCP	FACW	FACW	FACW.
Tussilago farfara	NCNE	FACU	FACU	FACU.
Verbena brasiliensis	AGCP	NOL	FACU	FACU.
Verbena brasiliensis	EMP	NOL	FACU	FACU.
Verbena brasiliensis	MW	NOL	FACU	FACU.
Verbena incompta	AGCP	FACW	FACU	FACU.
Verbena incompta	EMP	FACW	FACU	FACU.
Verbena incompta	MW	FAC	FACU	FACU.

* NOL = ''Not On List'' and indicates proposed additions.

The Corps believes we have adequately reviewed the comments and allowed for public and agency input for the proposal. Future updates to the NWPL will occur biennially. The public may provide input on future NWPL updates by utilizing the following procedures. A change in indicator status may be requested at any time at *http://wetland-plants.usace.army.mil/* by clicking on the ''Submit a NWPL Change Request'' link and submitting the appropriate data. Data includes ecological data, literature reviews, frequency and abundance data, testing descriptions, and geographic data for the taxon in wetlands and non-wetlands in the Corps wetland region or subregion for which the change is proposed.

In accordance with the Memorandum of Agreement signed in 2006 (2006 MOA),[1] the Corps, endorsed by the EPA, FWS and NRCS, is publishing final wetland indicator statuses for the 2018 NWPL. The final NWPL is available *at http://wetland-plants.usace.army.mil/.* State, regional, and national lists can also be downloaded from this site. This completes the review of the NWPL. All comments received have been evaluated and final indicator statuses have been set.

Detailed information on the update process, protocol, and technical issues can be found in the following documents (available on the NWPL Publications web page):

- Lichvar, Robert W. and Minkin, Paul. Concepts and Procedures for Updating the National Wetland Plant List. Sept 2008. ERDC/CRREL TN–08–3. Hanover, NH: U.S. Army Engineer Research and Development Center, Cold Regions Research and Engineering Laboratory.
- Lichvar, Robert W. and Gillrich, Jennifer J. Final Protocol for Assigning Wetland Indicator Status Ratings during National Wetland Plant List Update. Sept 2011. ERDC/CRREL TN–11–1. Hanover, NH: U.S. Army Engineer

[1] U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, the U.S. Fish & Wildlife Service and the Natural Resources Conservation Service. (December 12, 2006). *Memorandum of Agreement Among the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, the U.S. Fish & Wildlife Service and the Natural Resources Conservation Service for the Purpose of Transferring Responsibility for Updating and Maintaining the National List of Vascular Plant Species that Occur in Wetlands.*

Research and Development Center, Cold Regions Research and Engineering Laboratory.

Additional cited literature:

Lichvar R.W., N.C. Melvin, M.L. Butterwick, and W.N. Kirchner. 2012. National Wetland Plant List Indicator Rating Definitions. ERDC/CRREL TN–12–1. Hanover, NH: U.S. Army Engineer Research and Development Center Cold Regions Research and Engineering Laboratory

Lichvar R. and W. Fertig. Epiphytes and the National Wetland Plant List. Phytoneuron 2011–17:1–31

Environmental Documentation

A decision document has been prepared for this action after all comments received were evaluated. The decision document is available through Headquarters, U.S. Army Corps of Engineers, Operations and Regulatory Community of Practice, 441 G Street NW, Washington, DC 20314–1000.

Authority

The NWPL is utilized in conducting wetland determinations under the authority of the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*) and wetland delineations under the authority of Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*). The Corps has responsibility for issuing this update pursuant to the 2006 MOA.

R.D. James,

Assistant Secretary of the Army (Civil Works).

[FR Doc. 2020–10630 Filed 5–15–20; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0041]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; RSA–509, Annual Protection and Advocacy of Individual Rights Program Performance Report

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 June 17, 2025.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Samuel Pierre, 202–245–6488.

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: RSA–509, Annual Protection and Advocacy of Individual Rights Program Performance Report.

OMB Control Number: 1820–0627.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 57.

Total Estimated Number of Annual Burden Hours: 912.

Abstract: The Annual Protection and Advocacy of Individual Rights (PAIR) Program Performance Report (Form RSA–509) will be used to analyze and evaluate the PAIR Program administered by eligible systems in states. These systems provide services to eligible individuals with disabilities to protect their legal and human rights. RSA uses the form to meet specific data collection requirements of Section 509 of the Rehabilitation Act of 1973, as amended (the Act), and its implementing federal regulations at 34 CFR part 381. PAIR programs must report annually using the RSA–509, which is due on or before December 30 each year.

The collection of information through Form RSA–509 has enabled RSA to furnish the President and Congress with data on the provision of protection and advocacy services and has helped to establish a sound basis for future funding requests. Data from the form have been used to evaluate the effectiveness of eligible systems within individual states in meeting annual priorities and objectives. These data also have been used to indicate trends in the provision of services from year-to-year.

The respondents to the RSA–509 is the protection and advocacy system in each state. These organizations are private not-for-profit organizations. RSA included the respondents and the national organization that represents them (National Disability Rights Network (NDRN)) in the initial development of this collection of information in an effort to ensure that the information requested could be provided with minimal burden to the respondents.

Dated: May 13, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2020–10607 Filed 5–15–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Teacher Quality Partnership Grant Program

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

ACTION: Notice.

SUMMARY: The Department of Education is issuing a notice inviting applications for fiscal year (FY) 2020 for the Teacher Quality Partnership Grant (TQP) program, Catalog of Federal Domestic Assistance (CFDA) number 84.336S. This notice relates to the approved information collection under OMB control number 1894–0006.

DATES:

Applications Available: May 18, 2020.

Pre-Application Webinars: The Office of Elementary and Secondary Education intends to post pre-recorded

informational webinars designed to provide technical assistance to interested applicants for grants under the TQP program. These informational webinars will be available on the TQP web page shortly after this notice is published in the **Federal Register** at *https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/effective-educator-development-programs/teacher-quality-partnership/applicant-info-and-eligibility/.* A TQP Frequently Asked Questions document will also be published on the TQP program web page as soon as it is available at *https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/effective-educator-development-programs/teacher-quality-partnership/.*

Deadline for Notice of Intent to Apply: Applicants are strongly encouraged, but not required, to submit a notice of intent to apply by June 17, 2020.

Deadline for Transmittal of Applications: July 2, 2020.

Deadline for Intergovernmental Review: September 15, 2020.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

FOR FURTHER INFORMATION CONTACT: Mia Howerton, U.S. Department of Education, 400 Maryland Avenue SW, Room 3C152, Washington, DC 20202–5960. Telephone: (202) 205–0147. Email: *Mia.Howerton@ed.gov* or *TQPartnership@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:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of the TQP program are to improve student achievement; improve the quality of prospective and new teachers by improving the preparation of prospective teachers and enhancing professional development activities for new teachers; hold teacher preparation programs at institutions of higher education (IHEs) accountable for preparing teachers who meet applicable State certification and licensure requirements; and recruit highly qualified individuals, including minorities and individuals from other occupations, into the teaching force.

Background: The TQP program supports eligible partnerships that must include a high-need local educational agency (LEA), a high-need school served by the LEA, or a high-need early childhood education (ECE) program; a partner institution; a school, department, or program of education within such partner institution; and a school or department of arts and sciences within such partner institution. It may also include certain other entities. Under section 202(d) and (e) of the Higher Education Act of 1965, as amended (HEA), these partnerships must implement either (a) teacher preparation programs at the pre-baccalaureate or ''fifth-year'' level that include specific reforms in IHEs' existing teacher preparation programs; or (b) teacher residency programs for individuals who are recent graduates with strong academic backgrounds or are mid-career professionals from outside the field of education.

In the FY 2020 TQP competition, we will only support projects that prepare teachers through the implementation of teacher residency programs. The requirements for such a teacher residency program are further explained in this notice in the *Absolute Priority* section. We also include two competitive preference priorities: One for projects that propose to provide services in areas that overlap with a Qualified Opportunity Zone and another for applications from new potential grantees.

Competitive Preference Priority 1, Spurring Investment in Qualified Opportunity Zones, is aligned with the Department's mission to promote equity and excellence in education by giving competitive preference to projects providing services to educators serving students and schools located in distressed communities, known as Qualified Opportunity Zones (QOZs). Public law (Pub. L.) 115–97, colloquially known as the Tax Cuts and Jobs Act, authorized the designation of QOZs to promote economic development and job creation in distressed communities through preferential tax treatment for investors. A list of QOZs is available at *www.cdfifund.gov/Pages/Opportunity-Zones.aspx;* applicants may also determine whether a particular area overlaps with a QOZ using the National Center of Education Statistics' map located at *https://nces.ed.gov/programs/maped/LocaleLookup/.*

Finally, in seeking an array of potentially new ideas and perspectives, Competitive Preference Priority 2 encourages eligible partnerships that have not previously received grants under the TQP program to apply.

Priorities: This notice contains one absolute priority and two competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(iv), the absolute priority is from section 202(e) of the HEA. Competitive Preference Priority 1 is from the notice of final priority published in the **Federal Register** on November 27, 2019 (84 FR 65300) (Opportunity Zones NFP). Competitive Preference Priority 2 is from the notice of final priorities published in the **Federal Register** on March 9, 2020 (85 FR 13640) (Administrative Priorities).

Absolute Priority: For FY 2020 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Partnership Grants for the Establishment of Effective Teaching Residency Programs.

I. *In general.* Under this priority, an eligible partnership must carry out an effective teaching residency program that includes all of the following activities:

(a) Supporting a teaching residency program described in paragraph II for high-need subjects and areas, as determined by the needs of the high-need local educational agency (LEA) in the partnership.

(b) Placing graduates of the teaching residency program in cohorts that facilitate professional collaboration, both among graduates of the teaching residency program and between such graduates and mentor teachers in the receiving school.

(c) Ensuring that teaching residents who participate in the teaching residency program receive—

(1) Effective pre-service preparation as described in paragraph II;

(2) Teacher mentoring;

(3) Support required through the induction program as the teaching residents enter the classroom as new teachers; and

(4) The preparation described below:

(i) Incorporate year-long opportunities for enrichment, including—

(A) Clinical learning in classrooms in high-need schools served by the high-need LEA in the eligible partnership, and identified by the eligible partnership; and

(B) Closely supervised interaction between prospective teachers and faculty, experienced teachers, principals, other administrators, and school leaders at early childhood

education programs (as applicable), elementary schools, or secondary schools, and providing support for such interaction.

(ii) Integrate pedagogy and classroom practice and promote effective teaching skills in academic content areas.

(iii) Provide high-quality teacher mentoring.

II. *Teaching Residency Programs.*

(a) *Establishment and design.* A teaching residency program under this priority is a program based upon models of successful teaching residencies that serves as a mechanism to prepare teachers for success in the high-need schools in the eligible partnership, and must be designed to include the following characteristics of successful programs:

(1) The integration of pedagogy, classroom practice, and teacher mentoring.

(2) Engagement of teaching residents in rigorous graduate-level course work leading to a master's degree while undertaking a guided teaching apprenticeship.

(3) Experience and learning opportunities alongside a trained and experienced mentor teacher—

(i) Whose teaching must complement the residency program so that classroom clinical practice is tightly aligned with coursework;

(ii) Who must have extra responsibilities as a teacher leader of the teaching residency program, as a mentor for residents, and as a teacher coach during the induction program for new teachers; and for establishing, within the program, a learning community in which all individuals are expected to continually improve their capacity to advance student learning; and

(iii) Who may be relieved from teaching duties as a result of such additional responsibilities.

(4) The establishment of clear criteria for the selection of mentor teachers based on measures of teacher effectiveness and the appropriate subject area knowledge. Evaluation of teacher effectiveness must be based on, but not limited to, observations of the following—

(i) Planning and preparation, including demonstrated knowledge of content, pedagogy, and assessment, including the use of formative and diagnostic assessments to improve student learning.

(ii) Appropriate instruction that engages students with different learning styles.

(iii) Collaboration with colleagues to improve instruction.

(iv) Analysis of gains in student learning, based on multiple measures that are valid and reliable and that, when feasible, may include valid, reliable, and objective measures of the influence of teachers on the rate of student academic progress.

(v) In the case of mentor candidates who will be mentoring new or prospective literacy and mathematics coaches or instructors, appropriate skills in the essential components of reading instruction, teacher training in literacy instructional strategies across core subject areas, and teacher training in mathematics instructional strategies, as appropriate.

(5) Grouping of teaching residents in cohorts to facilitate professional collaboration among such residents.

(6) The development of admissions goals and priorities—

(i) That are aligned with the hiring objectives of the LEA partnering with the program, as well as the instructional initiatives and curriculum of such agency, in exchange for a commitment by such agency to hire qualified graduates from the teaching residency program; and

(ii) Which may include consideration of applicants who reflect the communities in which they will teach as well as consideration of individuals from underrepresented populations in the teaching profession.

(7) Support for residents, once the teaching residents are hired as teachers of record, through an induction program, professional development, and networking opportunities to support the residents through not less than the residents' first two years of teaching.

(b) *Selection of individuals as teacher residents.*

(1) *Eligible individual.* In order to be eligible to be a teacher resident in a teaching residency program under this priority, an individual must—

(i) Be a recent graduate of a four-year IHE or a mid-career professional from outside the field of education possessing strong content knowledge or a record of professional accomplishment; and

(ii) Submit an application to the teaching residency program.

(2) *Selection criteria for teaching residency program.* An eligible partnership carrying out a teaching residency program under this priority must establish criteria for the selection of eligible individuals to participate in the teaching residency program based on the following characteristics—

(i) Strong content knowledge or record of accomplishment in the field or subject area to be taught.

(ii) Strong verbal and written communication skills, which may be demonstrated by performance on appropriate tests.

(iii) Other attributes linked to effective teaching, which may be determined by interviews or performance assessments, as specified by the eligible partnership.

(c) *Stipends or salaries; applications; agreements; repayments.*

(1) *Stipends or salaries.* A teaching residency program under this priority must provide a one-year living stipend or salary to teaching residents during the teaching residency program.

(2) *Applications for stipends or salaries.* Each teacher residency candidate desiring a stipend or salary during the period of residency must submit an application to the eligible partnership at such time, and containing such information and assurances, as the eligible partnership may require.

(3) *Agreements to serve.* Each application submitted under paragraph II–(c)(2) of this priority must contain or be accompanied by an agreement that the applicant will—

(i) Serve as a full-time teacher for a total of not less than three academic years immediately after successfully completing the teaching residency program;

(ii) Fulfill the requirement under paragraph II–(c)(3)(i) of this priority by teaching in a high-need school served by the high-need LEA in the eligible partnership and teach a subject or area that is designated as high need by the partnership;

(iii) Provide to the eligible partnership a certificate, from the chief administrative officer of the LEA in which the resident is employed, of the employment required under paragraph II–(c)(3)(i) and (ii) of this priority at the beginning of, and upon completion of, each year or partial year of service;

(iv) Meet the applicable State certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification, or, with regard to special education teachers, the qualifications described in section 612(a)(14)(C) of the Individuals with Disabilities Education Act (IDEA), when the applicant begins to fulfill the service obligation under this clause; and

(v) Comply with the requirements set by the eligible partnership under paragraph II–(d) of this priority if the applicant is unable or unwilling to complete the service obligation required by paragraph II–(c)(3).

(d) *Repayments.*

(1) *In general.* A grantee carrying out a teaching residency program under this priority must require a recipient of a stipend or salary under paragraph II–(c)(1) of this priority who does not complete, or who notifies the

partnership that the recipient intends not to complete, the service obligation required by paragraph II–(c)(3) of this priority to repay such stipend or salary to the eligible partnership, together with interest, at a rate specified by the partnership in the agreement, and in accordance with such other terms and conditions specified by the eligible partnership, as necessary.

(2) *Other terms and conditions.* Any other terms and conditions specified by the eligible partnership may include reasonable provisions for pro-rata repayment of the stipend or salary described in paragraph II–(c)(1) of this priority or for deferral of a teaching resident's service obligation required by paragraph II–(c)(3) of this priority, on grounds of health, incapacitation, inability to secure employment in a school served by the eligible partnership, being called to active duty in the Armed Forces of the United States, or other extraordinary circumstances.

(3) *Use of repayments.* An eligible partnership must use any repayment received under this paragraph (d) to carry out additional activities that are consistent with the purpose of this priority.

Competitive Preference Priorities: For FY 2020 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we will award up to an additional three points to an application depending on how well the application Competitive Preference Priority 1, and we award an additional three points to an application that meets Competitive Preference Priority 2, for a maximum of six additional points.

If an applicant chooses to address one or both of the competitive preference priorities, the project narrative section of its application must identify its response to the competitive preference priorities it chooses to address. We will only review for the competitive preference priorities those applications which, after review and scoring for the absolute priority and selection criteria, are within potential funding range.

These priorities are:

Competitive Preference Priority 1—Spurring Investment in Qualified Opportunity Zones (Up to 3 points).

Under this priority, an applicant must demonstrate that the area in which the applicant proposes to provide services overlaps with a QOZ, as designated by the Secretary of the Treasury under section 1400Z–1 of the Internal Revenue Code. An applicant must—

(a) Provide the census tract number of the QOZ(s) in which it proposes to provide services; and

(b) Describe how the applicant will provide services in the QOZ(s).

Note: To receive competitive preference points under this priority, applicants must provide the Department with the census tract number of the Qualified Opportunity Zone(s) they plan to serve and describe the services they will provide. For the purposes of this TQP competition, applicants should consider the area where the partner LEA(s) serves to be the area that must overlap with a QOZ; an LEA may be considered to overlap with a QOZ even if only one high-need school included in the project in the proposed TQP grant application is located in a QOZ.

Competitive Preference Priority 2—Applications from New Potential Grantees (0 or 3 points).

Under this priority, an applicant must demonstrate that it has never received a grant, including through membership in a group application submitted in accordance with 34 CFR 75.127–75.129, under the program from which it seeks funds.

Definitions: The definitions for ''Arts and sciences,'' ''Core academic subjects,'' ''Early childhood educator,'' ''Essential components of reading instruction,'' ''Exemplary teacher,'' ''High-need early childhood education (ECE) program,'' ''High-need local educational agency (LEA),'' ''High-need school,'' ''Highly competent,'' ''Induction program,'' ''Partner institution,'' ''Principles of scientific research,'' ''Scientifically valid research,'' ''Teacher mentoring,'' ''Teaching residency program,'' and ''Teaching skills'' are from section 200 of the HEA. The definition of ''children from low-income families'' is from section 1124(c)(1)(A) of the Elementary and Secondary Education Act of 1965, as amended (ESEA). The definition of ''Charter school'' is from section 4310(2) of the ESEA. The definitions of ''Educational service agency,'' ''Limited English proficient,'' ''Parent,'' and ''Professional development'' are from section 8101 of the ESEA. The definitions for ''Demonstrates a rationale,'' ''Evidence-based,'' ''Experimental study,'' ''Logic model,'' ''Moderate evidence,'' ''Project component,'' ''Promising evidence,'' ''Quasi-experimental design study,'' ''Relevant outcome,'' ''Strong evidence,'' and ''What Works Clearinghouse Handbook (WWC Handbook)'' are from 34 CFR 77.1.

Arts and sciences means—

(a) When referring to an organizational unit of an IHE, any academic unit that offers one or more academic majors in disciplines or content areas corresponding to the academic subject matter areas in which teachers provide instruction; and

(b) When referring to a specific academic subject area, the disciplines or content areas in which academic majors are offered by the arts and sciences organizational unit.

Core academic subjects means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

Charter school means a public school that-

(a) In accordance with a specific State statute authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this paragraph;

(b) Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

(c) Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;

(d) Provides a program of elementary or secondary education, or both;

(e) Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;

(f) Does not charge tuition;

(g) Complies with the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), 20 U.S.C. 1232g (commonly referred to as the ''Family Educational Rights and Privacy Act of 1974''), and part B of the IDEA (20 U.S.C. 1411 *et seq.*);

(h) Is a school to which parents choose to send their children, and that—

(1) Admits students on the basis of a lottery, consistent with 20 U.S.C. 7221b(c)(3)(A) if more students apply for admission than can be accommodated; or

(2) In the case of a school that has an affiliated charter school (such as a school that is part of the same network of schools), automatically enrolls students who are enrolled in the immediate prior grade level of the affiliated charter school and, for any

additional student openings or student openings created through regular attrition in student enrollment in the affiliated charter school and the enrolling school, admits students on the basis of a lottery as described in clause (1);

(i) Agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such State audit requirements are waived by the State;

(j) Meets all applicable Federal, State, and local health and safety requirements;

(k) Operates in accordance with State law;

(l) Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school; and

(m) May serve students in early childhood education programs or postsecondary students.

Children from low-income families means children as described in section 1124(c)(1)(A) of the ESEA.

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

Early childhood educator means an individual with primary responsibility for the education of children in an ECE program.

Educational service agency means a regional public multiservice agency authorized by State statute to develop, manage, and provide services or programs to LEAs.

Essential components of reading instruction means explicit and systematic instruction in—

(a) Phonemic awareness;

(b) Phonics;

(c) Vocabulary development;

(d) Reading fluency, including oral reading skills; and

(e) Reading comprehension strategies.

Evidence-based means the proposed project component is supported by one or more of strong evidence, moderate evidence, promising evidence, or evidence that demonstrates a rationale.

Exemplary teacher means a teacher who—

(a) Is a highly qualified teacher such as a master teacher;

(b) Has been teaching for at least five years in a public or private school or IHE;

(c) Is recommended to be an exemplary teacher by administrators and other teachers who are knowledgeable about the individual's performance;

(d) Is currently teaching and based in a public school; and

(e) Assists other teachers in improving instructional strategies, improves the skills of other teachers, performs teacher mentoring, develops curricula, and offers other professional development.

Experimental study means a study that is designed to compare outcomes between two groups of individuals (such as students) that are otherwise equivalent except for their assignment to either a treatment group receiving a project component or a control group that does not. Randomized controlled trials, regression discontinuity design studies, and single-case design studies are the specific types of experimental studies that, depending on their design and implementation (*e.g.,* sample attrition in randomized controlled trials and regression discontinuity design studies), can meet What Works Clearinghouse (WWC) standards without reservations as described in the WWC Handbook:

(a) A randomized controlled trial employs random assignment of, for example, students, teachers, classrooms, or schools to receive the project component being evaluated (the treatment group) or not to receive the project component (the control group).

(b) A regression discontinuity design study assigns the project component being evaluated using a measured variable (*e.g.,* assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes.

(c) A single-case design study uses observations of a single case (*e.g.,* a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment.

High-need early childhood education (ECE) program means an ECE program serving children from low-income families that is located within the geographic area served by a high-need LEA.

High-need local educational agency (LEA) means an LEA-

(a)(1) For which not less than 20 percent of the children served by the agency are children from low-income families;

(2) That serves not fewer than 10,000 children from low-income families;

(3) That meets the eligibility requirements for funding under the Small, Rural School Achievement (SRSA) program under section 5211(b) of the ESEA; or

(4) That meets eligibility requirements for funding under the Rural and Low-Income School (RLIS) program under section 5221(b) of the ESEA; and—

(b)(1) For which there is a high percentage of teachers not teaching in the academic subject areas or grade levels in which the teachers were trained to teach; or

(2) For which there is a high teacher turnover rate or a high percentage of teachers with emergency, provisional, or temporary certification or licensure.

Note: Information on how an applicant may demonstrate that a partner LEA meets this definition is included in the application package.

High-need school means a school that, based on the most recent data available, meets one or both of the following:

(a) The school is in the highest quartile of schools in a ranking of all schools served by an LEA, ranked in descending order by percentage of students from low-income families enrolled in such schools, as determined by the LEA based on one of the following measures of poverty:

(1) The percentage of students aged 5 through 17 in poverty counted in the most recent census data approved by the Secretary.

(2) The percentage of students eligible for a free or reduced-price school lunch under the Richard B. Russell National School Lunch Act.

(3) The percentage of students in families receiving assistance under the State program funded under part A of title IV of the Social Security Act.

(4) The percentage of students eligible to receive medical assistance under the Medicaid program.

(5) A composite of two or more of the measures described in paragraphs (1) through (4).

(b) In the case of—

(1) An elementary school, the school serves students not less than 60 percent of whom are eligible for a free or reduced-price school lunch under the Richard B. Russell National School Lunch Act; or

(2) Any other school that is not an elementary school, the other school serves students not less than 45 percent of whom are eligible for a free or reduced-price school lunch under the Richard B. Russell National School Lunch Act.

(c) The Secretary may, upon approval of an application submitted by an

eligible partnership seeking a grant under title II of the HEA, designate a school that does not qualify as a high-need school under this definition, as a high-need school for the purpose of this competition. The Secretary must base the approval of an application for designation of a school under this clause on a consideration of the information required under section 200(11)(B)(ii) of the HEA and may also take into account other information submitted by the eligible partnership.

Note: Information on how an applicant may demonstrate that a partner school meets this definition is included in the application package.

Highly competent, when used with respect to an early childhood educator, means an educator—

(a) With specialized education and training in development and education of young children from birth until entry into kindergarten;

(b) With—

(i) A baccalaureate degree in an academic major in the arts and sciences; or

(ii) An associate's degree in a related educational area; and

(c) Who has demonstrated a high level of knowledge and use of content and pedagogy in the relevant areas associated with quality early childhood education.

Induction program means a formalized program for new teachers during not less than the teachers' first two years of teaching that is designed to provide support for, and improve the professional performance and advance the retention in the teaching field of, beginning teachers. Such program must promote effective teaching skills and must include the following components:

(a) High-quality teacher mentoring.

(b) Periodic, structured time for collaboration with teachers in the same department or field, including mentor teachers, as well as time for information-sharing among teachers, principals, administrators, other appropriate instructional staff, and participating faculty in the partner institution.

(c) The application of empirically-based practice and scientifically valid research on instructional practices.

(d) Opportunities for new teachers to draw directly on the expertise of teacher mentors, faculty, and researchers to support the integration of empirically-based practice and scientifically valid research with practice.

(e) The development of skills in instructional and behavioral interventions derived from empirically-based practice and, where applicable, scientifically valid research.

(f) Faculty who—

(1) Model the integration of research and practice in the classroom; and

(2) Assist new teachers with the effective use and integration of technology in the classroom.

(g) Interdisciplinary collaboration among exemplary teachers, faculty, researchers, and other staff who prepare new teachers with respect to the learning process and the assessment of learning.

(h) Assistance with the understanding of data, particularly student achievement data, and the applicability of such data in classroom instruction.

(i) Regular and structured observation and evaluation of new teachers by multiple evaluators, using valid and reliable measures of teaching skills.

Limited English proficient,[1] when used with respect to an individual, means an individual—

(a) Who is aged 3 through 21;

(b) Who is enrolled or preparing to enroll in an elementary school or secondary school;

(c)(1) Who was not born in the United States or whose native language is a language other than English;

(2)(i) Who is a Native American or Alaska Native, or a native resident of the outlying areas; and

(ii) Who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or

(3) Who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and

(d) Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual—

(1) The ability to meet the challenging State academic standards;

(2) The ability to successfully achieve in classrooms where the language of instruction is English; or

(3) The opportunity to participate fully in society.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Moderate evidence means that there is evidence of effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations or settings proposed to receive that component, based on a relevant finding from one of the following:

(a) A practice guide prepared by the WWC using version 2.1 or 3.0 of the WWC Handbook reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(b) An intervention report prepared by the WWC using version 2.1 or 3.0 of the WWC Handbook reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome based on a ''medium to large'' extent of evidence, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(c) A single experimental study or quasi-experimental design study reviewed and reported by the WWC using version 2.1 or 3.0 of the WWC Handbook, or otherwise assessed by the Department using version 3.0 of the WWC Handbook, as appropriate, and that—

(1) Meets WWC standards with or without reservations;

(2) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(3) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1 or 3.0 of the WWC Handbook; and

(4) Is based on a sample from more than one site (*e.g.,* State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (c)(1), (2), and (3) of this definition may together satisfy this requirement.

Parent includes a legal guardian or other person standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare).

Partner institution means an IHE, which may include a two-year IHE offering a dual program with a four-year IHE, participating in an eligible partnership that has a teacher preparation program—

(a) Whose graduates exhibit strong performance on State-determined qualifying assessments for new teachers through—

(1) Demonstrating that 80 percent or more of the graduates of the program

[1] ESEA uses the term ''English learner''; however, the term cross-referenced from the HEA is ''limited English proficient.''

who intend to enter the field of teaching have passed all of the applicable State qualification assessments for new teachers, which must include an assessment of each prospective teacher's subject matter knowledge in the content area in which the teacher intends to teach; or

(2) Being ranked among the highest-performing teacher preparation programs in the State as determined by the State—

(i) Using criteria consistent with the requirements for the State report card under section 205(b) of the HEA before the first publication of the report card; and

(ii) Using the State report card on teacher preparation required under section 205(b), after the first publication of such report card and for every year thereafter; and

(b) That requires—

(1) Each student in the program to meet high academic standards or demonstrate a record of success, as determined by the institution (including prior to entering and being accepted into a program), and participate in intensive clinical experience;

(2) Each student in the program preparing to become a teacher who meets the applicable State certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification, or, with regard to special education teachers, the qualifications described in section 612(a)(14)(C) of the IDEA; and

(3) Each student in the program preparing to become an early childhood educator to meet degree requirements, as established by the State, and become highly competent.

Principles of scientific research means principles of research that—

(a) Apply rigorous, systematic, and objective methodology to obtain reliable and valid knowledge relevant to education activities and programs;

(b) Present findings and make claims that are appropriate to, and supported by, the methods that have been employed; and

(c) Include, appropriate to the research being conducted—

(i) Use of systematic, empirical methods that draw on observation or experiment;

(ii) Use of data analyses that are adequate to support the general findings;

(iii) Reliance on measurements or observational methods that provide reliable and generalizable findings;

(iv) Strong claims of causal relationships, only with research designs that eliminate plausible competing explanations for observed results, such as, but not limited to, random-assignment experiments;

(v) Presentation of studies and methods in sufficient detail and clarity to allow for replication or, at a minimum, to offer the opportunity to build systematically on the findings of the research;

(vi) Acceptance by a peer-reviewed journal or critique by a panel of independent experts through a comparably rigorous, objective, and scientific review; and

(vii) Consistency of findings across multiple studies or sites to support the generality of results and conclusions.

Professional development means activities that—

(a) Are an integral part of school and LEA strategies for providing educators (including teachers, principals, other school leaders, specialized instructional support personnel, paraprofessionals, and, as applicable, early childhood educators) with the knowledge and skills necessary to enable students to succeed in a well-rounded education and to meet the challenging State academic standards; and

(b) Are sustained (not stand-alone, one-day, or short term workshops), intensive, collaborative, job-embedded, data-driven, and classroom-focused, and may include activities that—

(1) Improve and increase teachers'—

(i) Knowledge of the academic subjects the teachers teach;

(ii) Understanding of how students learn; and

(iii) Ability to analyze student work and achievement from multiple sources, including how to adjust instructional strategies, assessments, and materials based on such analysis;

(2) Are an integral part of broad schoolwide and districtwide educational improvement plans;

(3) Allow personalized plans for each educator to address the educator's specific needs identified in observation or other feedback;

(4) Improve classroom management skills;

(5) Support the recruitment, hiring, and training of effective teachers, including teachers who became certified through State and local alternative routes to certification;

(6) Advance teacher understanding of—

(i) Effective instructional strategies that are evidence-based; and

(ii) Strategies for improving student academic achievement or substantially increasing the knowledge and teaching skills of teachers;

(7) Are aligned with, and directly related to, academic goals of the school or LEA;

(8) Are developed with extensive participation of teachers, principals, other school leaders, parents, representatives of Indian Tribes (as applicable), and administrators of schools to be served under the ESEA;

(9) Are designed to give teachers of English learners, and other teachers and instructional staff, the knowledge and skills to provide instruction and appropriate language and academic support services to those children, including the appropriate use of curricula and assessments;

(10) To the extent appropriate, provide training for teachers, principals, and other school leaders in the use of technology (including education about the harms of copyright piracy), so that technology and technology applications are effectively used in the classroom to improve teaching and learning in the curricula and academic subjects in which the teachers teach;

(11) As a whole, are regularly evaluated for their impact on increased teacher effectiveness and improved student academic achievement, with the findings of the evaluations used to improve the quality of professional development;

(12) Are designed to give teachers of children with disabilities or children with developmental delays, and other teachers and instructional staff, the knowledge and skills to provide instruction and academic support services, to those children, including positive behavioral interventions and supports, multi-tier system of supports, and use of accommodations;

(13) Include instruction in the use of data and assessments to inform and instruct classroom practice;

(14) Include instruction in ways that teachers, principals, other school leaders, specialized instructional support personnel, and school administrators may work more effectively with parents and families;

(15) Involve the forming of partnerships with IHEs, including, as applicable, Tribal Colleges and Universities as defined in section 316(b) of the HEA (20 U.S.C. 1059c(b)), to establish school-based teacher, principal, and other school leader training programs that provide prospective teachers, novice teachers, principals, and other school leaders with an opportunity to work under the guidance of experienced teachers, principals, other school leaders, and faculty of such institutions;

(16) Create programs to enable paraprofessionals (assisting teachers employed by an LEA receiving assistance under part A of title I of the ESEA) to obtain the education necessary

for those paraprofessionals to become certified and licensed teachers;

(17) Provide follow-up training to teachers who have participated in activities described in this paragraph that are designed to ensure that the knowledge and skills learned by the teachers are implemented in the classroom; and

(18) Where practicable, provide jointly for school staff and other ECE program providers, to address the transition to elementary school, including issues related to school readiness.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Promising evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome, based on a relevant finding from one of the following:

(a) A practice guide prepared by WWC reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(b) An intervention report prepared by the WWC reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(c) A single study assessed by the Department, as appropriate, that—

(1) Is an experimental study, a quasi-experimental design study, or a well-designed and well-implemented correlational study with statistical controls for selection bias (*e.g.,* a study using regression methods to account for differences between a treatment group and a comparison group); and

(2) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome.

Quasi-experimental design study means a study using a design that attempts to approximate an experimental study by identifying a comparison group that is similar to the treatment group in important respects. This type of study, depending on design and implementation (*e.g.,* establishment of baseline equivalence of the groups being compared), can meet WWC standards with reservations, but cannot meet WWC standards without reservations, as described in the WWC Handbook.

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Scientifically valid research means applied research, basic research, and field-initiated research in which the rationale, design, and interpretation are soundly developed in accordance with principles of scientific research.

Strong evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations and settings proposed to receive that component, based on a relevant finding from one of the following:

(a) A practice guide prepared by the WWC using version 2.1 or 3.0 of the WWC Handbook reporting a ''strong evidence base'' for the corresponding practice guide recommendation;

(b) An intervention report prepared by the WWC using version 2.1 or 3.0 of the WWC Handbook reporting a ''positive effect'' on a relevant outcome based on a ''medium to large'' extent of evidence, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(c) A single experimental study reviewed and reported by the WWC using version 2.1 or 3.0 of the WWC Handbook, or otherwise assessed by the Department using version 3.0 of the WWC Handbook, as appropriate, and that—

(1) Meets WWC standards without reservations;

(2) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(3) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1 or 3.0 of the WWC Handbook; and

(4) Is based on a sample from more than one site (*e.g.,* State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (c)(1), (2), and (3) of this definition may together satisfy this requirement.

Teacher mentoring means the mentoring of new or prospective teachers through a program that—

(a) Includes clear criteria for the selection of teacher mentors who will provide role model relationships for mentees, which criteria must be developed by the eligible partnership and based on measures of teacher effectiveness;

(b) Provides high-quality training for such mentors, including instructional strategies for literacy instruction and classroom management (including approaches that improve the schoolwide climate for learning, which may include positive behavioral interventions and supports);

(c) Provides regular and ongoing opportunities for mentors and mentees to observe each other's teaching methods in classroom settings during the day in a high-need school in the high-need LEA in the eligible partnership;

(d) Provides paid release time for mentors, as applicable;

(e) Provides mentoring to each mentee by a colleague who teaches in the same field, grade, or subject as the mentee;

(f) Promotes empirically-based practice of, and scientifically valid research on, where applicable—

(1) Teaching and learning;

(2) Assessment of student learning;

(3) The development of teaching skills through the use of instructional and behavioral interventions; and

(4) The improvement of the mentees' capacity to measurably advance student learning; and

(g) Includes—

(1) Common planning time or regularly scheduled collaboration for the mentor and mentee; and

(2) Joint professional development opportunities.

Teaching residency program means a school-based teacher preparation program in which a prospective teacher—

(a) For one academic year, teaches alongside a mentor teacher, who is the teacher of record;

(b) Receives concurrent instruction during the year described in paragraph (a) from the partner institution, which courses may be taught by LEA personnel or residency program faculty, in the teaching of the content area in which the teacher will become certified or licensed;

(c) Acquires effective teaching skills; and

(d) Prior to completion of the program—

(i) Attains full State certification or licensure and, with respect to special education teachers, meets the qualifications described in section 612(a)(14)(C) of the IDEA; and

(ii) Acquires a master's degree not later than 18 months after beginning the program.

Teaching skills means skills that enable a teacher to—

(a) Increase student learning, achievement, and the ability to apply knowledge;

(b) Effectively convey and explain academic subject matter;

(c) Effectively teach higher-order analytical, evaluation, problem-solving, and communication skills;

(d) Employ strategies grounded in the disciplines of teaching and learning that—

(i) Are based on empirically-based practice and scientifically valid research, where applicable, related to teaching and learning;

(ii) Are specific to academic subject matter; and

(iii) Focus on the identification of students' specific learning needs, particularly students with disabilities, students who are limited English proficient, students who are gifted and talented, and students with low literacy levels, and the tailoring of academic instruction to such needs;

(e) Conduct an ongoing assessment of student learning, which may include the use of formative assessments, performance-based assessments, project-based assessments, or portfolio assessments, that measures higher-order thinking skills (including application, analysis, synthesis, and evaluation);

(f) Effectively manage a classroom, including the ability to implement positive behavioral interventions and support strategies;

(g) Communicate and work with parents, and involve parents in their children's education; and

(h) Use, in the case of an early childhood educator, age-appropriate and developmentally appropriate strategies and practices for children in early childhood education programs.

What Works Clearinghouse Handbook (WWC Handbook) means the standards and procedures set forth in the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (incorporated by reference, see 34 CFR 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides and intervention reports include findings from systematic reviews of evidence as described in the Handbook documentation.

Note: The What Works Clearinghouse Procedures and Standards Handbook (Version 3.0), as well as the more recent What Works Clearinghouse Handbooks released in October 2017 (Version 4.0) and January 2020 (Version 4.1), are available at *https://ies.ed.gov/ncee/wwc/Handbooks.*

Program Authority: 20 U.S.C. 1021–1022c.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474 (Uniform Guidance). (d) The Opportunity Zones NFP. (e) The Administrative Priorities.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $9,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $500,000–$1,500,000.

Estimated Average Size of Awards: $750,000 for the first year of the project. Funding for the second, third, fourth, and fifth years is subject to the availability of funds and the approval of continuation awards (see 34 CFR 75.253).

Maximum Award: We will not make an award exceeding $1,500,000 to any applicant per 12-month budget period.

Estimated Number of Awards: 10–15.

Note: The Department is not bound by any estimates in this notice.

Project Period: 60 months.

III. Eligibility Information

1. *Eligible Applicants:* An eligible applicant must be an ''eligible partnership'' as defined in section 200(6) of the HEA. The term ''eligible partnership'' means an entity that—

(1) Must include—

(i) A high-need LEA;

(ii) (A) A high-need school or a consortium of high-need schools served by the high-need LEA; or

(B) As applicable, a high-need ECE program;

(iii) A partner institution;

(iv) A school, department, or program of education within such partner institution, which may include an existing teacher professional development program with proven outcomes within a four-year IHE that provides intensive and sustained collaboration between faculty and LEAs consistent with the requirements of title II of the HEA; and

(v) A school or department of arts and sciences within such partner institution; and

(2) May include any of the following:

(i) The Governor of the State.

(ii) The State educational agency.

(iii) The State board of education.

(iv) The State agency for higher education.

(v) A business.

(vi) A public or private nonprofit educational organization.

(vii) An educational service agency.

(viii) A teacher organization.

(ix) A high-performing LEA, or a consortium of such LEAs, that can serve as a resource to the partnership.

(x) A charter school.

(xi) A school or department within the partner institution that focuses on psychology and human development.

(xii) A school or department within the partner institution with comparable expertise in the disciplines of teaching, learning, and child and adolescent development.

(xiii) An entity operating a program that provides alternative routes to State certification of teachers.

Note: So that the Department can confirm the eligibility of the LEA(s) that an applicant proposes to serve, applicants must include information in their applications that demonstrates that each LEA to potentially be served by the project is a ''high-need LEA'' (as defined in this notice). Applicants should review the application package for additional information on determining whether an LEA meets the definition of ''high-need LEA.''

Note: An LEA includes a public charter school that operates as an LEA.

Note: As required by HEA section 203(a)(2), an eligible partnership may not receive more than one grant during a five-year period.

More information on eligible partnerships can be found in the TQP FAQ document on the program website at *https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/effective-educator-development-programs/teacher-quality-partnership/applicant-info-and-eligibility/.*

2. a. *Cost Sharing or Matching:* Under section 203(c) of the HEA (20 U.S.C. 1022b(c)), each grant recipient must provide, from non-Federal sources, an amount equal to 100 percent of the amount of the grant, which may be provided in cash or in-kind, to carry out the activities supported by the grant. Applicants should budget their cost share or matching contributions on an

annual basis for the entire five-year project period. Applicants must use the TQP Budget Worksheet to provide evidence of how they propose to meet their cost share or matching contributions for the entire five-year project period.

Consistent with 2 CFR 200.306(b) of the Uniform Guidance, any cost share or matching funds must be an allowable use of funds consistent with the cost principles detailed in Subpart E of the Uniform Guidance, and not included as a contribution for any other Federal award.

Section 203(c) of the HEA authorizes the Secretary to waive this cost share or matching requirement for any fiscal year for an eligible partnership if the Secretary determines that applying the cost share or matching requirement to the eligible partnership would result in serious hardship or an inability to carry out authorized TQP program activities. The Secretary does not, as a general matter, anticipate waiving this requirement in the future. Furthermore, given the importance of cost share or matching funds to the long-term success of the project, eligible entities must identify appropriate cost share or matching funds for the proposed five-year project period. Finally, the selection criteria include factors such as ''the adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization'' and ''the extent to which the applicant demonstrates that it has the resources to operate the project beyond the length of the grant, including a multi-year financial and operating model and accompanying plan; the demonstrated commitment of any partners; evidence of broad support from stakeholders (*e.g.,* State educational agencies, teachers' unions) critical to the project's long term success; or more than one of these types of evidence'' which may include a consideration of demonstrated cost share or matching support.

Note: The combination of Federal and non-Federal funds should equal the total cost of the project. Therefore, grantees are required to support no less than 50 percent of the total cost of the project with non-Federal funds. Grantees are strongly encouraged to take this requirement into account when requesting Federal funds. Grantees must budget their requests accordingly and must verify that their budgets reflect the costs allocations appropriately. (Cost Share or Matching Formula: Total Project Cost divided by two equals Federal Award Amount).

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. In accordance with section 202(k) of the HEA (20 U.S.C. 1022a(k)), funds made available under this program must be used to supplement, and not supplant, other Federal, State, and local funds that would otherwise be expended to carry out activities under this program. Additionally, the supplement-not-supplant requirement applies to all cost share or matching funds under the program.

c. *Indirect Cost Rate:* This program uses a training indirect cost rate. This limits indirect cost reimbursement to an entity's actual indirect costs, as determined in its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. For more information regarding training indirect cost rates, see 34 CFR 75.562. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *https://www2.ed.gov/about/offices/list/ocfo/intro.html.*

3. *Subgrantees:* Under 34 CFR 75.708(b) and (c), a grantee under this competition may award subgrants to directly carry out project activities described in its application to the following types of entities: LEAs, SEAs, nonprofit organizations, or a business. The grantee may award subgrants to entities it has identified in an approved application.

4. *Other:*

a. *Limitation on Administrative Expenses:*

Under HEA section 203(d) (20 U.S.C. 1022b(d)), an eligible partnership that receives a grant under this program may not use more than two percent of the funds provided to administer the grant.

b. *General Application Requirements:*

All applicants must meet the following general application requirements in order to be considered for funding. Except as specifically noted, the general application requirements are from HEA section 202(b) (20 U.S.C. 1022a(b)).

Each eligible partnership desiring a grant under this program must submit an application that contains—

(a) A needs assessment of the partners in the eligible partnership with respect to the preparation, ongoing training, professional development, and retention of general education and special education teachers, principals, and, as applicable, early childhood educators;

(b) A description of the extent to which the program to be carried out with grant funds, as described in the absolute priority in this notice, will prepare prospective and new teachers with strong teaching skills;

(c) A description of how such a program will prepare prospective and new teachers to understand and use research and data to modify and improve classroom instruction;

(d) A description of—

(1) How the eligible partnership will coordinate strategies and activities assisted under the grant with other teacher preparation or professional development programs, including programs funded under the ESEA and the IDEA, and through the National Science Foundation; and

(2) How the activities of the partnership will be consistent with State, local, and other education reform activities that promote teacher quality and student academic achievement;

(e) An assessment that describes the resources available to the eligible partnership, including—

(1) The integration of funds from other related sources;

(2) The intended use of the grant funds; and

(3) The commitment of the resources of the partnership to the activities assisted under this program, including financial support, faculty participation, and time commitments, and to the continuation of the activities when the grant ends;

(f) A description of—

(1) How the eligible partnership will meet the purposes of the TQP program as specified in section 201 of the HEA;

(2) How the partnership will carry out the activities required under the absolute priority, as described in this notice, based on the needs identified in paragraph (a), with the goal of improving student academic achievement;

(3) If the partnership chooses to use funds under this section for a project or activities under section 202(f) of the HEA, how the partnership will carry out such project or required activities based on the needs identified in paragraph (a), with the goal of improving student academic achievement;

(4) The partnership's evaluation plan under section 204(a) of the HEA;

(5) How the partnership will align the teacher preparation program with the—

(i) State early learning standards for ECE programs, as appropriate, and with the relevant domains of early childhood development; and

(ii) Challenging State academic standards under section 1111(b)(1) of the ESEA, established by the State in which the partnership is located;

(6) How the partnership will prepare general education teachers to teach students with disabilities, including training related to participation as a member of individualized education program teams, as defined in section 614(d)(1)(B) of the IDEA;

(7) How the partnership will prepare general education and special education teachers to teach students who are limited English proficient;

(8) How faculty at the partner institution will work during the term of the grant, with teachers who meet the applicable State certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification, or, with regard to special education teachers, the qualifications described in section 612(a)(14)(C) of the IDEA, in the classrooms of high-need schools served by the high-need LEA in the partnership to—

(i) Provide high-quality professional development activities to strengthen the content knowledge and teaching skills of elementary school and secondary school teachers; and

(ii) Train other classroom teachers to implement literacy programs that incorporate the essential components of reading instruction;

(9) How the partnership will design, implement, or enhance a year-long and rigorous teaching preservice clinical program component;

(10) How the partnership will support in-service professional development strategies and activities; and

(11) How the partnership will collect, analyze, and use data on the retention of all teachers and early childhood educators in schools and ECE programs located in the geographic area served by the partnership to evaluate the effectiveness of the partnership's teacher and educator support system; and

(g) With respect to the induction program required as part of the activities carried out under the absolute priority—

(1) A demonstration that the schools and departments within the IHE that are part of the induction program will effectively prepare teachers, including providing content expertise and expertise in teaching, as appropriate;

(2) A demonstration of the eligible partnership's capability and commitment to, and the accessibility to and involvement of faculty in, the use of empirically based practice and scientifically valid research on teaching and learning;

(3) A description of how the teacher preparation program will design and implement an induction program to support, though not less than the first two years of teaching, all new teachers who are prepared by the teacher preparation program in the partnership and who teach in the high-need LEA in the partnership, and, to the extent practicable, all new teachers who teach in such high-need LEA, in the further development of the new teachers' teaching skills, including the use of mentors who are trained and compensated by such program for the mentors' work with new teachers; and

(4) A description of how faculty involved in the induction program will be able to substantially participate in an ECE program or elementary school or secondary school classroom setting, as applicable, including release time and receiving workload credit for such participation.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768) and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contain requirements and information on how to submit an application. *Grants.gov* has relaxed the requirement for applicants to have an active registration in the System for Award Management (SAM) in order to apply for funding during the COVID–19 pandemic. An applicant that does not have an active SAM registration can still register with *Grants.gov*, but must contact the *Grants.gov* Support Desk, toll-free, at 1–800–518–4726, in order to take advantage of this flexibility.

Note: The Department has submitted to the Office of Management and Budget for its approval an Information Collection package that will require all TQP applicants to complete and submit all TQP program checklists at the time of application. This information collection also includes a required budget worksheet that will document applicants' requested Federal funds as well as their non-Federal cost share and matching funds.

Applications that do not include the TQP program checklists will be considered incomplete and may not be reviewed.

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the TQP program, your application may include business information that you consider proprietary. In 34 CFR 5.11, we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Funding Restrictions:* We specify unallowable costs in 2 CFR 200, subpart E. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

Note: Tuition is not an allowable use of funds under this program.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 50 pages and (2) use the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

Furthermore, applicants are strongly encouraged to include a table of contents that specifies where each required part of the application is located.

6. *Notice of Intent To Apply:* The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify the Department of its intent to submit an application for funding by sending an email to *TQPartnership@ed.gov* with *FY*

2020 TQP Intent to Apply in the subject line. Applicants that do not send a notice of intent to apply may still apply for funding.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210. An applicant may earn up to a total of 100 points based on the selection criteria. The maximum score for each criterion is indicated in parentheses. Each criterion also includes the sub-factors that the reviewers will consider in determining how well an application meets the criterion. The criteria are as follows:

(a) *Quality of the project design* (up to 30 points).

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project demonstrates a rationale.

(ii) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(iii) The extent to which the proposed project represents an exceptional approach for meeting statutory purposes and requirements.

(iv) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(b) *Quality of the project evaluation* (up to 20 points).

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation will provide valid and reliable performance data on relevant outcomes.

(ii) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(c) *Adequacy of resources* (up to 30 points).

The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(ii) The extent to which the budget is adequate to support the proposed project.

(iii) The extent to which costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(iv) The extent to which the applicant demonstrates that it has the resources to operate the project beyond the length of the grant, including a multi-year financial and operating model and accompanying plan; the demonstrated commitment of any partners; evidence of broad support from stakeholders (*e.g.,* State educational agencies, teachers' unions) critical to the project's long-term success; or more than one of these types of evidence.

(d) *Quality of the management plan* (up to 20 points).

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license must extend only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* The goal of the TQP program is to increase student achievement in K–12 schools by developing teachers who meet applicable State certification, including any requirements for certification obtained through alternative routes to certification, and licensure requirements.

Under the Government Performance and Results Act of 1993 (GPRA), the following measures will be used by the Department to evaluate the overall effectiveness of the grantee's project, as well as the TQP program as a whole:

(a) *Performance Measure 1: Certification/Licensure.* The percentage of program graduates who have attained initial State certification/licensure by passing all necessary licensure/certification assessments within one year of program completion.

(b) *Performance Measure 2: STEM Graduation.* The percentage of math/science program graduates that attain initial certification/licensure by passing all necessary licensure/certification assessments within one year of program completion, if applicable to the applicant or grantee's project.

(c) *Performance Measure 3: One-Year Persistence.* The percentage of program participants who were enrolled in the postsecondary program in the previous grant reporting period, did not graduate, and persisted in the postsecondary program in the current grant reporting period.

(d) *Performance Measure 4: One-Year Employment Retention.* The percentage of program completers who were employed for the first time as teachers of record in the preceding year by the partner high-need LEA or ECE program and were retained for the current school year.

(e) *Performance Measure 5: Three-Year Employment Retention.* The percentage of program completers who were employed by the partner high-need LEA or ECE program for three consecutive years after initial employment.

(f) *Performance Measure 6: Student Learning.* The percentage of grantees that report improved aggregate learning outcomes of students taught by new teachers. These data can be calculated using student growth, a teacher evaluation measure, or both. (This measure is optional and not required as part of GPRA reporting.)

(g) *Efficiency Measure:* The Federal cost per program completer. (This data will not be available until the final year of the project period.)

Note: If funded, grantees will be asked to collect and report data on these measures in their project's annual performance reports (34 CFR 75.590). Applicants are also advised to consider these measures in conceptualizing the design, implementation, and evaluation of their proposed projects because of their importance in the application review process. Collection of data on these measures should be a part of the evaluation plan, along with measures of progress on goals and objectives that are specific to your project.

All grantees will be expected to submit an annual performance report documenting their success in addressing these performance measures.

Applicants must also address the evaluation requirements in section 204(a) of the HEA (20 U.S.C. 1022c(a)). This section asks applicants to develop objectives and measures for increasing—

(1) Achievement for all prospective and new teachers, as measured by the eligible partnership;

(2) Teacher retention in the first three years of a teacher's career;

(3) Improvement in the pass rates and scaled scores for initial State certification or licensure of teachers; and

(4) The percentage of teachers who meet the applicable State certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification, or, with regard to special education teachers, the qualifications described in section 612(a)(14)(C) of the IDEA (20 U.S.C. 1412(a)(14)(C)), hired by the high-need LEA participating in the eligible partnership;

(5) The percentage of teachers who meet the applicable State certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification, or, with regard to special education teachers, the qualifications described in section 612(a)(14)(C) of the IDEA (20 U.S.C. 1412(a)(14)(C)), hired by the high-need LEA who are members of underrepresented groups;

(6) The percentage of teachers who meet the applicable State certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification, or, with regard to special education teachers, the qualifications described in section 612(a)(14)(C) of the IDEA (20 U.S.C. 1412(a)(14)(C)), hired by the high-need LEA who teach high-need academic subject areas (such as reading, mathematics, science, and foreign language, including less commonly taught languages and critical foreign languages);

(7) The percentage of teachers who meet the applicable State certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification, or, with regard to special education teachers, the qualifications described in section 612(a)(14)(C) of the IDEA (20 U.S.C. 1412(a)(14)(C)), hired by the high-need LEA who teach in high-need areas (including special education, language instruction educational programs for limited English proficient students, and early childhood education);

(8) The percentage of teachers who meet the applicable State certification and licensure requirements, including

any requirements for certification obtained through alternative routes to certification, or, with regard to special education teachers, the qualifications described in section 612(a)(14)(C) of the IDEA (20 U.S.C. 1412(a)(14)(C)), hired by the high-need LEA who teach in high-need schools, disaggregated by the elementary school and secondary school levels;

(9) As applicable, the percentage of ECE program classes in the geographic area served by the eligible partnership taught by early childhood educators who are highly competent; and

(10) As applicable, the percentage of teachers trained—

(i) To integrate technology effectively into curricula and instruction, including technology consistent with the principles of universal design for learning; and

(ii) To use technology effectively to collect, manage, and analyze data to improve teaching and learning for the purpose of improving student academic achievement.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; whether the grantee has met the required non-Federal cost share or matching requirement; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

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

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

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

Frank T. Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2020–10509 Filed 5–15–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Waivers Granted Under Section 3511 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act

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

ACTION: Notice.

SUMMARY: In this notice, we announce waivers that the U.S. Department of Education (Department) granted, within the last 30 days, under the CARES Act.

FOR FURTHER INFORMATION CONTACT: Patrick Rooney, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W202, Washington, DC 20202. Telephone: (202) 453–5514. Email: *Patrick.Rooney@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: Section 3511(d)(3) of the CARES Act requires the Secretary to publish, in the **Federal Register** and on the Department's website, a notice of the Secretary's decision to grant a waiver under that section. The Secretary must publish this notice no later than 30 days after granting the waiver and the notice must include which waiver was granted and the reason for granting the waiver. This notice fulfills the Department's obligation under section 3511(d)(3).

Waiver Data

As described in more detail below, the Department waived, for State educational agencies (SEAs) from each of the 50 States, Puerto Rico, and the District of Columbia, and for the Bureau of Indian Education (BIE), some or all of the following requirements:

- Section 1127(b) of Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended (ESEA), so that an SEA may waive, more than once every three years, if necessary, the 15 percent carryover limitation in ESEA section 1127(a) for fiscal year (FY) 2019 Title I, Part A funds.
- Section 421(b) of the General Education Provisions Act (GEPA) to extend the period of availability of FY 2018 funds for programs in which an SEA participates under its approved consolidated State plan until September 30, 2021. The programs include:
  - Title I, Part A of the ESEA (Improving Basic Programs Operated by LEAs), including the portions of an SEA's Title I, Part A award used to carry out section 1003 school improvement, section 1003A direct student services, if applicable, and Title I, Part D, Subpart 2.
  - Title I, Part B of the ESEA (State Assessment Formula Grants).
  - Title I, Part C of the ESEA (Education of Migratory Children).
  - Title I, Part D, Subpart 1 of the ESEA (Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At Risk).
  - Title II, Part A of the ESEA (Supporting Effective Instruction).
  - Title III, Part A of the ESEA (English Language Acquisition, Language Enhancement, and Academic Achievement).
  - Title IV, Part A of the ESEA (Student Support and Academic Enrichment Grants).
  - Title IV, Part B of the ESEA (21st Century Community Learning Centers).
  - Title V, Part B, Subpart 2 of the ESEA (Rural and Low-Income School Program).
  - McKinney-Vento Education for Homeless Children and Youth Program.
- Section 4106(d) of Title IV, Part A of the ESEA related to local educational agency (LEA) needs assessments for the 2019–2020 school year.
- Section 4106(e)(2)(C), (D), and (E) of Title IV, Part A of the ESEA with respect to content-area spending requirements for FYs 2018 and 2019 Title IV, Part A funds.
- Section 4109(b) of Title IV, Part A of the ESEA with respect to the spending limitation for technology infrastructure for FYs 2018 and 2019 Title IV, Part A funds.
- Section 8101(42) of the ESEA, which defines ''professional development,'' for activities funded for the 2019–2020 school year.

Reasons: Due to the extraordinary circumstances caused by the COVID–19 pandemic and resulting school closures, the Department invited SEAs to request waivers to provide fiscal and operational flexibility and to help SEAs and LEAs in their planning for how to resume education. The waivers provide an SEA the ability to approve an LEA to carry over more than 15 percent of its Title I, Part A funds, even if the LEA had received approval to exceed this limitation in the past three years. An SEA would be able to extend for itself and its subgrantees the period of availability of FY 2018 funds for programs included in its consolidated State plan to allow additional time to obligate those funds. An SEA would also be able to permit an LEA or consortium of LEAs to use its Title IV, Part A funds to best meet its needs without regard to content-area spending requirements, spending limits on technology infrastructure, or completing a needs assessment. Finally, by waiving the definition of professional development, an SEA and its subgrantees would be able to conduct time-sensitive, one-time or stand-alone professional development focused on supporting educators to provide effective distance learning.

Waiver Applicants:

SEAs from all 50 States, the District of Columbia, Puerto Rico, and BIE requested and received these waivers. Each received all of the waivers listed above, with the following exceptions:

- Title I, Part B: Vermont did not request a waiver under section 421(b) of GEPA to extend the period of availability of FY 2018 funds.
- Title I, Part C: BIE, Connecticut, the District of Columbia, Puerto Rico, Rhode Island, West Virginia, and Wyoming did not request a waiver under section 421(b) of GEPA to extend the period of availability of FY 2018 funds.
- Title I, Part D, Subpart 1: BIE, South Dakota, and Vermont did not request a waiver under section 421(b) of GEPA to extend the period of availability of FY 2018 funds.
- Title III, Part A: BIE did not request a waiver under section 421(b) of GEPA to extend the period of availability of FY 2018 funds.
- Title V, Part B, Subpart 2: Alaska, Connecticut, Delaware, the District of Columbia, Hawaii, Puerto Rico, and Rhode Island did not receive a waiver under section 421(b) of GEPA to extend the period of availability of FY 2018 funds.

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

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

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

Frank T. Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2020–10563 Filed 5–15–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0070]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Fiscal Year 2020 Application for Grants Under the International Research and Studies Program

AGENCY: Office of Postsecondary Education (OPE), 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 June 17, 2025.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Cheryl Gibbs, 202–453–5690.

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: Fiscal Year 2020 Application for Grants under the International Research and Studies Program.

OMB Control Number: 1840–0795.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 25.

Total Estimated Number of Annual Burden Hours: 5,000.

Abstract: The U.S. Department of Education, International and Foreign Language Education office intends to use this information collection to invite Fiscal Year 2020 grant applications from eligible institutions, public and private agencies, organizations, and individuals who propose to conduct research and studies to improve and strengthen instruction in modern foreign languages, area studies, and other international fields. This information collection is integral to the pre-award phase of our grant-making activities because external peer review panels review the

information in grant applications to evaluate the competitive quality in a comparative context. By extension, the collection is also significant because the peer reviewers' evaluations inform which applications are selected for funding. This information collection, which constitutes a potential grantee's approved project for a three-year period, is also necessary for our post-award activities which include annual performance reports, non-competing continuation awards, technical assistance, project monitoring, risk assessment, identifying best practices, and assessing project and program impact.

Dated: May 13, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2020–10603 Filed 5–15–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

List of Correspondence From January 1, 2019, Through March 31, 2020

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary is publishing the following list of correspondence from the U.S. Department of Education (Department) received by individuals during all four quarters of calendar year 2019 and the first quarter of calendar year 2020. The correspondence describes the Department's interpretations of the Individuals with Disabilities Education Act (IDEA) or the regulations that implement IDEA. This list and the letters or other documents described in this list, with personally identifiable information redacted, as appropriate, can be found at *www2.ed.gov/policy/speced/guid/idea/index.html.*

FOR FURTHER INFORMATION CONTACT: Jessica Spataro, U.S. Department of Education, 400 Maryland Avenue SW., Room 5112, Potomac Center Plaza, Washington, DC 20202–2500. Telephone: (202) 245–6493. Email: *Jessica.Spataro@ed.gov.*

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

Individuals with disabilities can obtain a copy of this list and the letters or other documents described in this list in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) by contacting Jessica Spataro at (202) 245–6493.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence for five quarters, January 1, 2019, through March 31, 2020. Under section 607(f) of IDEA, the Secretary is required to publish this list quarterly in the **Federal Register**. The list includes those letters that contain interpretations of the requirements of IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law. The list identifies the date and topic of each letter and provides summary information, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been redacted, as appropriate.

2019—First Quarter Letters

PART B—ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES

SECTION 612—STATE ELIGIBILITY

TOPIC ADDRESSED: CHILD FIND

○ Letter dated January 29, 2019, to District of Columbia Public Schools, Non-Public Unit Director, Joshua Wayne, regarding local educational agencies' (LEAs) obligation to provide a free appropriate public education (FAPE) to children with disabilities parentally placed in private school.

TOPIC ADDRESSED: FAPE

○ Letter dated January 29, 2019, to Legal Aid Society of Palm Beach County, Melissa Duncan, regarding whether a department of corrections fails to provide FAPE under IDEA when it only offers students the ability to graduate with a General Education Development credential.

SECTION 614—EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS

TOPIC ADDRESSED: EVALUATION PROCEDURES

○ Letter dated January 29, 2019, to Pennsylvania attorney Perry A. Zirkel, answering a series of questions about response to intervention and multi-tiered systems of support.

TOPIC ADDRESSED: INDIVIDUALIZED EDUCATION PROGRAMS (IEPs)

○ Letter dated February 21, 2019, to California attorney Lawrence Siegel, addressing several questions about a child with a disability who transfers to a new LEA during the summer.

TOPIC ADDRESSED: EVALUATIONS, PARENTAL CONSENT, AND REEVALUATIONS

○ Letter dated February 22, 2019, to Oakland Schools, Executive Director for Special Populations, Karen J. Olex, regarding parental consent prior to conducting transition assessments.

SECTION 615—PROCEDURAL SAFEGUARDS

TOPIC ADDRESSED: PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES

○ Letter dated January 29, 2019, to New York Office of Legal Services, Executive Deputy Counsel for Risk Management and Litigation, Judy Nathan, clarifying several questions on the protections of children not yet determined eligible for special education and related services under IDEA.

2019—Second Quarter Letters

PART B—ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES

SECTION 614—EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS

TOPIC ADDRESSED: IEPs

○ Letter dated May 2, 2019, to Massachusetts advocate Craig Haller, regarding IEP Team membership.

TOPIC ADDRESSED: EVALUATIONS AND REEVALUATIONS

○ Letter dated May 2, 2019, to California attorney Brittany N. Mills, addressing a series of questions about functional vision assessments.

SECTION 615—PROCEDURAL SAFEGUARDS

TOPIC ADDRESSED: INDEPENDENT EDUCATIONAL EVALUATIONS

○ Letter dated May 2, 2019, to Pennsylvania attorney Perry A. Zirkel, addressing a series of questions about independent educational evaluations.

TOPIC ADDRESSED: IMPARTIAL DUE PROCESS HEARINGS

○ Letter dated May 13, 2019, to Pennsylvania attorney Perry A. Zirkel, addressing a series of questions about State complaint and due process hearing procedures.

2019—Third Quarter Letters

PART B—ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES

SECTION 612—STATE ELIGIBILITY

TOPIC ADDRESSED: STATE EDUCATIONAL AGENCY (SEA) GENERAL SUPERVISORY AUTHORITY

○ Letter dated July 3, 2019, to Pennsylvania attorney Perry A. Zirkel, addressing a series of questions regarding an SEA's complaint procedures process, in particular, about enforcement actions and resolution of State complaints.

TOPIC ADDRESSED: FAPE

○ Letter dated September 9, 2019, to California attorney Jill C. Rowland, addressing a series of questions about FAPE provided at a preschool day program.

SECTION 614—EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS

TOPIC ADDRESSED: IEPs

○ Letter dated September 9, 2019, to individual (personally identifiable information redacted), regarding the attendance of a transition aged student with a disability at the student's IEP meeting where the results of assessments will be discussed.

2019—Fourth Quarter Letters

PART B—ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES

SECTION 612—STATE ELIGIBILITY

TOPIC ADDRESSED: SEA GENERAL SUPERVISORY AUTHORITY

○ Letter dated October 23, 2019, to individual (personally identifiable information redacted), regarding compensatory education when a family relocates to a different State.

SECTION 614—EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS

TOPIC ADDRESSED: IEPs

○ Letter dated November 22, 2019, to Colorado attorney Michael Breeskin, regarding parental involvement in the placement decisions for children with disabilities.

2020—First Quarter—No letters

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.

Mark Schultz,

Commissioner, Rehabilitation Services Administration. Delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2020–10542 Filed 5–15–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0045]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Health Education Assistance Loan (HEAL) Program: Lender's Application for Insurance Claim Form and Request for Collection Assistance Form

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before June 17, 2020.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Health Education Assistance Loan (HEAL) Program: Lender's Application for Insurance Claim Form and Request for Collection Assistance Form.

OMB Control Number: 1845–0127.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 296.

Total Estimated Number of Annual Burden Hours: 76.

Abstract: The HEAL Lender's Application for Insurance Claim and the Request for Collection Assistance forms are used in the administration of the Health Education Assistant Loan (HEAL) program. The HEAL program provided federally insured loans to students in certain health professions disciplines, and these forms are used in the administration of the HEAL program. The Lender's Application for Insurance Claim is used by the lending institution to request payment of a claim by the Federal Government. The Request for Collection Assistance form is used by the lender to request pre-claims assistance from the Department. Section 525 of the Consolidated Appropriations Act, 2014, transferred the collection of the Health Education Assistance Loan (HEAL) program loans from the U.S. Department of Health and Human Services to the U.S. Department of Education.

Dated: May 13, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2020–10602 Filed 5–15–20; 8:45 am]

BILLING CODE 4000–01–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: EC20–66–000.
Applicants: Northern States Power Company, a Minnesota corporation, Crowned Ridge Wind II, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Northern States Power Company, a Minnesota corporation, et al.
Filed Date: 5/8/20.
Accession Number: 20200508–5330.
Comments Due: 5 p.m. ET 6/22/20.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–155–000.
Applicants: High Majestic Wind I, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of High Majestic Wind I, LLC.
Filed Date: 5/12/20.
Accession Number: 20200512–5085.
Comments Due: 5 p.m. ET 6/2/20.

Docket Numbers: EG20–156–000.
Applicants: Soldier Creek Wind, LLC.
Description: Notice Self-Certification of Exempt Wholesale Generator Status of Soldier Creek Wind, LLC.
Filed Date: 5/12/20.
Accession Number: 20200512–5087.
Comments Due: 5 p.m. ET 6/2/20.

Docket Numbers: EG20–157–000.
Applicants: El Campo Wind, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of El Campo Wind, LLC.
Filed Date: 5/12/20.
Accession Number: 20200512–5099.
Comments Due: 5 p.m. ET 6/2/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–539–001.
Applicants: East Fork Wind Project, LLC.
Description: Notice of Change in Status of East Fork Wind Project, LLC.
Filed Date: 5/11/20.
Accession Number: 20200511–5203.
Comments Due: 5 p.m. ET 6/1/20.

Docket Numbers: ER20–936–000.
Applicants: Entergy Arkansas, LLC.
Description: Response of Entergy Services, LLC, on behalf of Entergy Arkansas LLC, to the April 10, 2020 Deficiency Letter for additional information.
Filed Date: 5/11/20.
Accession Number: 20200511–5193.
Comments Due: 5 p.m. ET 6/1/20.

Docket Numbers: ER20–1525–000.
Applicants: Eastern Landfill Gas, LLC.
Description: Clarifications to April 13, 2020 Amendment to April 8, 2020 Waiver Request of Eastern Landfill Gas, LLC.
Filed Date: 5/11/20.
Accession Number: 20200511–5205.
Comments Due: 5 p.m. ET 5/18/20.

Docket Numbers: ER20–1801–001.
Applicants: Techren Solar V LLC.
Description: Tariff Amendment: Amendment to MBR Application to be effective 10/1/2020.
Filed Date: 5/12/20.
Accession Number: 20200512–5000.
Comments Due: 5 p.m. ET 6/2/20.

Docket Numbers: ER20–1805–000.
Applicants: Ohio Edison Company, The Cleveland Electric Illuminating Comp, The Toledo Edison Company.
Description: Request for Waiver, et al. of the FirstEnergy Ohio Utilities.
Filed Date: 5/11/20.
Accession Number: 20200511–5190.
Comments Due: 5 p.m. ET 5/18/20.

Docket Numbers: ER20–1806–000.
Applicants: Catalyst Old River Hydroelectric Limited.
Description: Baseline eTariff Filing: Application For Market Based Rate Authority to be effective 7/12/2020.
Filed Date: 5/12/20.
Accession Number: 20200512–5044.
Comments Due: 5 p.m. ET 6/2/20.

Docket Numbers: ER20–1807–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: GIA and DSA Dutch Wind, LLC—Dutch Energy, SA No. 1104, 1105 to be effective 4/13/2020.
Filed Date: 5/12/20.
Accession Number: 20200512–5098.
Comments Due: 5 p.m. ET 6/2/20.

Docket Numbers: ER20–1808–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3670 West Texas A&M University and SPS Affected Systems FCA to be effective 5/4/2020.
Filed Date: 5/12/20.
Accession Number: 20200512–5101.
Comments Due: 5 p.m. ET 6/2/20.

Docket Numbers: ER20–1809–000.
Applicants: PJM Interconnection, L.L.C., Potomac Electric Power Company.
Description: § 205(d) Rate Filing: PEPCO submits Interconnection Agreement, SA No. 5610 with SMECO to be effective 4/23/2020.
Filed Date: 5/12/20.
Accession Number: 20200512–5114.
Comments Due: 5 p.m. ET 6/2/20.

Docket Numbers: ER20–1810–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2020–05–12_SA 3180 Dunns Bridge Solar-NIPSCO 2nd Rev GIA (J643 J847) to be effective 5/5/2020.
Filed Date: 5/12/20.
Accession Number: 20200512–5134.
Comments Due: 5 p.m. ET 6/2/20.

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: May 12, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–10575 Filed 5–15–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1933–113]

Southern California Edison Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-Capacity Amendment of License.
b. *Project No.:* 1933–113.
c. *Date Filed:* April 13, 2020.
d. *Applicant:* Southern California Edison Company.
e. *Name of Project:* Santa Ana River 1 and 3 Hydroelectric Project.
f. *Location:* The project is located primarily on the Santa Ana River in San Bernardino County, California. The

project occupies federal lands administered by the U.S. Forest Service within the San Bernardino National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Matthew Woodhall, Southern California Edison Company, 1515 Walnut Grove Avenue, Rosemead, CA 91770; telephone (626) 302–9596 and email *matthew.woodhall@sce.com.*

i. *FERC Contact:* Linda Stewart, (202) 502–8184, *linda.stewart@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance date of this notice by the Commission.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–1933–113. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, it must also serve a copy of the document on that resource agency.

k. *Description of Request:* Southern California Edison Company (licensee) proposes to remove from the project license the Breakneck Creek diversion, which is one of three diversions included as part of the Santa Ana River 1 (SAR 1) development. Located on private lands owned by the licensee, the Breakneck Creek diversion system includes a diversion dam, upstream intake gates to the settling basin, a walkway on the dam crest, a buried trash rack and intake, and a buried outlet tunnel. Since the diversion has become inoperable as the settling basin has filled with sediment, the licensee proposes to leave in place the underground or partially buried features, including the diversion dam, and to remove the aboveground ancillary features.

l. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified deadline date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting, or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: May 12, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–10578 Filed 5–15–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC20–106–000]

Florida Power & Light Company, Gulf Power Company; Notice of Petition for Waiver

Take notice that on May 1, 2020, Florida Power & Light Company (FPL) and Gulf Power Company (Gulf Power) filed a petition for a limited waiver of Part 101 and sections 141.1 and 141.400 of the Commission's regulations to allow FPL to (1) maintain separate books and records under the Uniform System of Accounts; and (2) make separate FERC Form No.1 and 3–Q submissions for two separate operating divisions corresponding to the current FPL and Gulf Power utilities for the 2021 reporting year, following the proposed legal merger of Gulf Power into FPL on January 1, 2021, as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene, or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Comments: 5:00 p.m. Eastern Time on May 31, 2020.

Dated: May 12, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–10579 Filed 5–15–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP20–864–000.
Applicants: Columbia Gas Transmission, LLC.
Description: § 4(d) Rate Filing: TCO NJR Negotiated Rate Agreement Amendment to be effective 5/8/2020.
Filed Date: 5/8/20.
Accession Number: 20200508–5200.
Comments Due: 5 p.m. ET 5/20/20.

Docket Numbers: RP20–850–001.
Applicants: Equitrans, L.P.
Description: Tariff Amendment: Negotiated Rate Capacity Release Agreements—5/1/2020—Correction to be effective 5/1/2020.
Filed Date: 5/11/20.
Accession Number: 20200511–5146.
Comments Due: 5 p.m. ET 5/26/20.

Docket Numbers: RP20–865–000.
Applicants: Leaf River Energy Center LLC.
Description: Compliance filing Leaf River Energy Center LLC NAESB Compliance Filing to be effective 5/6/2020.
Filed Date: 5/11/20.
Accession Number: 20200511–5094.
Comments Due: 5 p.m. ET 5/26/20.

Docket Numbers: RP20–866–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: § 4(d) Rate Filing: TPC 2020–05–11 Negotiated Rate Agreements Amendment to be effective 5/12/2020.
Filed Date: 5/11/20.
Accession Number: 20200511–5123.
Comments Due: 5 p.m. ET 5/26/20.

Docket Numbers: RP20–867–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Negotiated Capacity Release Agreements—5/10/2020 to be effective 5/10/2020.
Filed Date: 5/11/20.
Accession Number: 20200511–5147.
Comments Due: 5 p.m. ET 5/26/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 12, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–10573 Filed 5–15–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–1799–000]

Techren Solar III LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Techren Solar III LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 1, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: May 12, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–10570 Filed 5–15–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–1801–000]

Techren Solar V LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Techren Solar V LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 1, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: May 12, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–10574 Filed 5–15–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–1800–000]

Techren Solar IV LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Techren Solar IV LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 1, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: May 12, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–10572 Filed 5–15–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10009–57–OAR]

Allocations of Cross-State Air Pollution Rule Allowances From New Unit Set-Asides for 2020 Control Periods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice of the availability of data on emission allowance allocations to certain units under the Cross-State Air Pollution Rule (CSAPR) trading programs. EPA has completed preliminary calculations for the first round of allocations of allowances from the CSAPR new unit

set-asides (NUSAs) for the 2020 control periods and has posted spreadsheets containing the calculations on EPA's website. EPA will consider timely objections to the preliminary calculations (including objections concerning the identification of units eligible for allocations) before determining the final amounts of the first-round allocations.

DATES: Objections to the information referenced in this notice must be received on or before June 17, 2020.

ADDRESSES: Submit your objections via email to *CSAPR_NUSA@epa.gov.* Include ''2020 NUSA allocations'' in the email subject line and include your name, title, affiliation, address, phone number, and email address in the body of the email.

FOR FURTHER INFORMATION CONTACT: Questions concerning this action should be addressed to Jason Kuhns at (202) 564–3236 or *kuhns.jason@epa.gov* or Andrew Reighart at (202) 564–0418 or *reighart.andrew@epa.gov.*

SUPPLEMENTARY INFORMATION: Under each CSAPR trading program where EPA is responsible for determining emission allowance allocations, a portion of each state's emissions budget for the program for each control period is reserved in a NUSA (and in an additional Indian country NUSA in the case of states with Indian country within their borders) for allocation to certain units that would not otherwise receive allowance allocations. The procedures for identifying the eligible units for each control period and for allocating allowances from the NUSAs and Indian country NUSAs to these units are set forth in the CSAPR trading program regulations at 40 CFR 97.411(b) and 97.412 (NO_X Annual), 97.511(b) and 97.512 (NO_X Ozone Season Group 1), 97.611(b) and 97.612 (SO_2 Group 1), 97.711(b) and 97.712 (SO_2 Group 2), and 97.811(b) and 97.812 (NO_X Ozone Season Group 2). Each NUSA allowance allocation process involves up to two rounds of allocations to eligible units, termed ''new'' units, followed by the allocation to ''existing'' units of any allowances not allocated to new units.

This notice concerns preliminary calculations for the first round of NUSA allowance allocations for the 2020 control periods. Generally, the allocation procedures call for each eligible unit to receive a first-round 2020 NUSA allocation equal to its 2019 control period emissions as reported under 40 CFR part 75 unless the total of such allocations to all eligible units would exceed the amount of allowances in the NUSA, in which case the allocations are reduced on a pro-rata basis. EPA notes that, under 40 CFR 97.406(c)(3), 97.506(c)(3), 97.606(c)(3), 97.706(c)(3), and 97.806(c)(3), a unit's emissions occuring before its monitor certification deadline are not considered to have occurred during a control period and consequently are not included in the emission amounts used to determine NUSA allocations.

The detailed unit-by-unit data and preliminary allowance allocation calculations are set forth in Excel spreadsheets titled ''CSAPR_NUSA_2020_NO_X_Annual_1st_Round_Prelim_Data'', ''CSAPR_NUSA_2020_NO_X_OS_1st_Round_Prelim_Data'', and ''CSAPR_NUSA_2020_SO_2_1st_Round_Prelim_Data,'' available on EPA's website at *https://www.epa.gov/csapr/new-unit-set-aside-notices-data-availability-nusa-noda-cross-state-air-pollution-rule.* Each of the spreadsheets contains a separate worksheet for each state covered by that program showing, for each unit identified as eligible for a first-round NUSA allocation, (1) the unit's emissions in the 2019 control period (annual or ozone season as applicable), (2) the maximum first-round 2020 NUSA allowance allocation for which the unit is eligible (typically the unit's emissions in the 2019 control period), (3) various adjustments to the unit's maximum allocation, many of which are necessary only if the NUSA pool is oversubscribed, and (4) the preliminary calculation of the unit's first-round 2020 NUSA allowance allocation.

Each state worksheet also contains a summary showing (1) the quantity of allowances initially available in that state's 2020 NUSA, (2) the sum of the first-round 2020 NUSA allowance allocations that will be made to new units in that state, assuming there are no corrections to the data, and (3) the quantity of allowances that would remain in the 2020 NUSA for use in second-round allocations to new units (or ultimately for allocation to existing units), again assuming there are no corrections to the data.

Objections should be strictly limited to the data and calculations upon which the NUSA allowance allocations are based and should be emailed to the address identified in **ADDRESSES**. Objections must include: (1) Precise identification of the specific data and/or calculations the commenter believes are inaccurate, (2) new proposed data and/or calculations upon which the commenter believes EPA should rely instead to determine allowance allocations, and (3) the reasons why EPA should rely on the commenter's proposed data and/or calculations and not the data referenced in this notice.

EPA notes that an allocation or lack of allocation of allowances to a given unit does not constitute a determination that CSAPR does or does not apply to the unit. EPA also notes that, under 40 CFR 97.411(c), 97.511(c), 97.611(c), 97.711(c), and 97.811(c), allocations are subject to potential correction if a unit to which allowances have been allocated for a given control period is not actually an affected unit as of the start of that control period.

(*Authority:* 40 CFR 97.411(b), 97.511(b), 97.611(b), 97.711(b), and 97.811(b).)

Reid P. Harvey,

Director, Clean Air Markets Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 2020–10515 Filed 5–15–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0093; OMB 3060–1015; FRS 16763]

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to

any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before July 17, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0093.

Title: Application for Renewal of Radio Station License for Experimental Radio Service, FCC Form 405.

Form No.: FCC Form 405.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions and state, local or tribal government.

Number of Respondents and Responses: 520 respondents and 520 responses.

Estimated Time per Response: 2.25 hours.

Frequency of Response: On occasion, and every two year reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection (IC) is contained in sections 4(i), 301, 302, 303(e), 303(f), and 303(r), of the Communications Act of 1934, as amended; 47 U.S.C. Sections 154(i), 301, 302, 303(e), 303(f) and 303(r).

Total Annual Burden: 1,170 hours.

Total Annual Cost: $179,400.

Privacy Act Impact Assessment: This information collection affects individuals or households. The Commission has a System of Records, FCC/OET–1 ''Experimental Radio Station License Files'' which covers the personally identifiable information (PII) that individual applicants may include in their submissions for experimental radio authorizations. The system of records notice (SORN) was published in the **Federal Register** on June 11, 2019, *see* 84 FR 27115–27117. The SORN may be viewed at *https://www.fcc.gov/general/privacy-act-information*

Nature and Extent of Confidentiality: Applicants may request that any information supplied be withheld from public inspection, *e.g.,* granted confidentiality, pursuant to 47 CFR Section 0.459 of the Commission's rules.

Needs and Uses: This collection will be submitted as an extension after this 60 day comment period in order to obtain the full three year clearance from the OMB.

FCC Form 405 is used by the Experimental Radio Service to apply for renewal of radio station licenses at the FCC. Section 307 of the Communications Act of 1934, as amended, limits the term of radio licenses to five years and requires that written applications be submitted for renewal. The regular license period for stations in the Experimental Radio Service is either two or five years.

The information submitted on FCC Form 405 is used by the Commission staff to evaluate the applicant/licensee's need for a license renewal. In performing this function, staff performs analysis of the renewal request as compared to the original license grant to ascertain if any changes are requested. If so, additional analysis is performed to determine if such changes met the requirements of the rules of the Experimental Radio Service for interference free operation. If needed, the collected information is used to coordinate such operation with other Commission bureaus or other Federal Agencies. All applications are also analyzed on their merits regarding whether they meet the general requirements for an Experimental license. These requirements are set out in 47 CFR part 5.

OMB Control Number: 3060–1015

Title: Section 15.525—Ultra Wideband Transmission Systems Operating Under Part 15.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, Not-for-profit institutions.

Number of Respondents and Responses: 50 respondents; 50 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: One-time, on occasion reporting requirements; and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in the 47 U.S.C. 154, 302a, 303, 304, 307, 336, 544a. and 549.

Total Annual Burden: 50 hours.

Total Annual Cost: $2,500.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: This collection will be submitted as an extension after this 60-day comment period to the Office of Management and Budget (OMB) in order to obtain the full three-year clearance. The Commission rules in 47 CFR part 15, § 15.525 requires operators of the Ultra-Wideband (UWB) imaging systems to coordinate with other Federal agencies via the FCC and to obtain approval before the UWB equipment may be used. Initial operation in a particular area may not commence until the information has been sent to the Commission and no prior approval is required. The information will be used to coordinate the operation of the Ultra-Wideband transmission systems in order to avoid interference with sensitive U.S. government radio systems. The UWB operators will be required to provide name, address and other pertinent contact information of the user, the desired geographical area of operation, and the FCC ID number, and other nomenclature of the UWB device. This information will be collected by the Commission and forwarded to the National Telecommunications and Information Administration (NTIA) under the U.S. Department of Commerce. This information collection is essential to controlling potential interference to Federal radio communications. Since initial operation in a particular area does not require approval from the FCC to operate the equipment.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–10528 Filed 5–15–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FRS 16575]

Privacy Act of 1974; System of Records

AGENCY: Federal Communications Commission.

ACTION: Notice of a new system of records.

SUMMARY: The Federal Communications Commission (FCC, Commission, or Agency) proposes to add a new system of records, FCC/OMD–29, Motor Vehicle Management Program (MVMP), subject to the Privacy Act of 1974, as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the Agency. The FCC's

Office of Managing Director (OMD) will use this new system to cover the personally identifiable information (PII) that is contained in the forms, databases, and related documents, forms, and materials associated with the FCC's Motor Vehicles Management Program (MVMP).

DATES: This action will become effective on June 17, 2020. Written comments on the system's routine uses are due by June 17, 2020. The routine uses in this action will become effective on June 17, 2020 unless written comments are received that require a contrary determination.

ADDRESSES: Send comments to Leslie F. Smith, Privacy Manager, Information Technology (IT), Federal Communications Commission, 445 12th Street SW, Washington, DC 20554, or via the internet at *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Leslie F. Smith, (202) 418–0217, or *Leslie.Smith@fcc.gov* (and to obtain a copy of the Narrative Statement).

SUPPLEMENTARY INFORMATION:

The FCC's Administrative Services Center (ASC) in the Office of Managing Director (OMD) is responsible for the development and management of the MVMP, which is used by the FCC's bureaus and offices. The MVMP maintains and uses information that is necessary for the FCC to provide an adequate, efficient, safe, and economical transportation program for FCC officials and staff consistent with the FCC's policies and programs. The MVMP will do this by:

1. Managing the operation, maintenance, repair, and associated activities of the Commission's owned and/or leased motor vehicle pool that is used by FCC employees and contractors;

2. Monitoring vehicle uses to ensure against misuse, abuse, and/or unauthorized use (*e.g.,* personal use) by FCC employees and contractors;

3. Maintaining records on FCC employees and contractors who are authorized and/or required to operate FCC vehicles, including, but not limited to employees in the Enforcement Bureau (EB) and the Public Safety and Homeland Security Bureau (PSHSB) who must use a vehicle in the performance of their job duties, FCC headquarters contract drivers, and other FCC employees who use FCC-owned or leased vehicles on an occasional or infrequent basis; and

4. Submitting required periodic reports on the safety, emergency, and/or accident information, and related vehicular data to the FCC's Office of General Counsel (OGC) and the Office of Managing Director (OMD) and to the General Services Administration (GSA).

SYSTEM NAME AND NUMBER:

FCC/OMD–29, Motor Vehicle Management Program (MVMP).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Administrative Service Center (ASC), Office of Managing Director (OMD), Federal Communications Commission (FCC), 445 12th Street SW, Washington, DC 20554 and FCC facilities and field offices.

SYSTEM MANAGER(S):

Administrative Services Center (ASC), Office of Managing Director (OMD), Federal Communications Commission (FCC), 445 12th Street SW, Washington, DC 20554.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5733; 31 U.S.C. 1344, 1349; 5 CFR part 930, subpart A; 41 CFR part 102–5; 41 CFR 102–34.200, 34.220, 301–70.101(a).

PURPOSE(S) OF THE SYSTEM:

The FCC's Motor Vehicle Management Program (MVMP) is used to ensure that the Commission has an efficient, economical, and safe vehicle transportation program for Commission officials and staff, which is available to meet the FCC's mission requirements. The personally identifiable information (PII) in the MVMP system includes, but is not limited to the information that is contained in the forms, databases, and other, related information and materials associated with the MVMP, which include:

1. Information that includes, but is not limited to state drivers' licensing, certification, and related records[1] that are used to verify that FCC headquarters contract drivers (*e.g.,* chauffeur services) and FCC employees (authorized and/or required to use FCC or leased vehicles to perform their job duties) meet applicable state licensing and the Federal operating requirements that authorize use of Federal government owned/leased vehicles, as required by 5 CFR Sections 930.109 and 930.110.

2. Health, fitness, and driving records, and related information that include, but are not limited to meeting requirements to ensure that FCC employees and contractors meet the requisite driving and fitness standards, which include, but are not limited to ensuring that they are physically capable of operating motor vehicles; maintaining good driving records; and participating in driver safety training.

3. FCC vehicles and related operating and maintenance records and related information that include, but are not limited to the operation, maintenance, damages, repairs, losses, and associated functions and activities of the FCC owned and/or leased vehicles and related equipment to ensure that vehicles are only used for official FCC purposes and to guard against the misuse, abuse, and/or unauthorized use (*e.g.,* personal use) by employees (including the Enforcement Bureau's field operations staff)[2] and contractors;

4. Criminal, accident, and traffic citations, and related vehicular usage records, that include, but are not limited to emergencies, traffic and police reports, and related information about accidents, insurance claims, and damages that the FCC provides to the Office of General Counsel (OGC) as required; corrective actions required under 5 CFR Section 930.113 including, but not limited to situations resulting from improper use of a FCC owned/leased vehicle by an employee or contractor such as intoxication, accidents, disqualification to operate a motor vehicle due to physical, mental, emotional, or similar conditions, and/or revoked/suspended driver's license;

5. Information related to temporary usage of a vehicle by a FCC employee or contractor or non-FCC individual (*i.e.,* individuals who are participating in FCC-related activities and functions) in special circumstances limited to emergencies threatening loss of life or property.

6. Vehicle usage records that include, but are not limited to, FCC employees authorized or who volunteer to use their own vehicles on a reimbursable basis for official, job-related functions.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals in this system include, but are not limited to:

1. FCC officials and employees authorized to use FCC motor vehicles for job duties (*e.g.,* field work); authorized to use FCC owned and/or leased vehicles on infrequent or periodic basis; and/or who use personal motor vehicles (for reimbursement) for official, work-related out of town trips;

2. Authorized contract drivers at FCC headquarters (*i.e.,* chauffeur services);

[1] The state licensing, certification, and related records are destroyed once driver validation requirements are met.

[2] FCC/EB–5, Enforcement Bureau Activity Tracking System (EBATS), covers the PII that is collected, stored, and used as part of EB's enforcement functions, actions, and activities.

3. FCC officials, employees, and contractors, and non-FCC individuals (*i.e.,* individuals who are participating in FCC-related activities) at Headquarters and/or FCC Field Offices who may use FCC motor vehicles on a temporary basis in emergencies, safety of life situation(s), and/or damaged property situations; passengers in FCC owned or leased vehicle, including visitors to the FCC and other government officials or employees, for ''official business'' with the FCC; and/or are involved in traffic accidents with FCC vehicles; and

4. Traffic officials and police, accident witnesses, vehicle drivers and passengers, and pedestrians whose information is contained in accident reports.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in this system include, but are not limited to the information concerning:

1. Driver's physical fitness records that include, but are not limited to the driver's full name, date of birth, position title, home address, employing agency, physical limitations and current status (as applicable), vision and hearing current status, certifying official, and date.

2. Driving records that include, but are not limited to state driver/operator license data including, but not limited to license type: Operator, chauffeur, and other, issue/expiration dates, restrictions, road test data, defensive driving courses, traffic violations (except parking), suspensions, and/or accidents, and signature and date.

3. Accident and associated damage, injury, and death reporting records that include, but are not limited to police motor vehicle accident reports, drivers' information, witnesses' information, home and business addresses, home and office telephone numbers, account of traffic accident's date, time, location, injured and/or deceased individuals, private property and government property damages, insurance claim(s), traffic case number(s), government vehicles and private vehicles trip and accident details, accident diagram(s), and signatures and dates.[3]

4. Motor vehicle dispatch, trip request, and fiscal year vehicle operations records that include, but are not limited to vehicle trip and maintenance data including but not limited to passengers and signatures, trip dates, departure/return times, destination/nature of trips, vehicle fuel and maintenance records, odometer readings, credit card purchases, and driver's instructions, notes, and signature. The MVMP uses a commercial software application to manage these records.

RECORD SOURCE CATEGORIES:

The sources for the information in the MVMP system include, but are not limited to FCC Forms A–45, A–45–A, A–344, FCC Fiscal Year Motor Vehicle Operations Report, FCC Vehicle Request Form, Vehicle Dispatch Record, FCC Driver's Past Performance Record, FCC Request for a Private Vehicle, Federal Forms SF 91, SF 94, SF 95, OF–345, FOH–6 ME 0426, and associated state motor vehicle records, and licensing and certification documents and forms; police and transportation safety officials' reports and forms detailing safety, emergency, and/or accident information and related vehicular data and activities with associated forms, certifications, exhibits, and authorizations concerning the operation of FCC vehicles.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside the FCC as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows.

1. Adjudication and Litigation—To disclose information to the Department of Justice (DOJ), or to other administrative or adjudicative body before which the FCC is authorized to appear, when: (a) The FCC or any component thereof; or (b) any employee of the FCC in his or her official capacity; or (c) any employee of the FCC in his or her individual capacity where the DOJ or the FCC have agreed to represent the employee; or (d) the United States is a party to litigation or have an interest in such litigation, and the use of such records by the DOJ or the FCC is deemed by the FCC to be relevant and necessary to the litigation.

2. Law Enforcement and Investigations—To disclose pertinent information to the appropriate Federal, State, and/or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the FCC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

3. Congressional Inquiries—To provide information to a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the written request of that individual.

4. Government-wide Program Management and Oversight—To disclose information to the National Archives and Records Administration (NARA) for use in its records management inspections; to the Government Accountability Office (GAO) for oversight purposes; to the Department of Justice (DOJ) to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); or to the Office of Management and Budget (OMB) to obtain that office's advice regarding obligations under the Privacy Act.

5. Contract Services, Grants, or Cooperative Agreements—To disclose information to FCC contractors, grantees, or volunteers who have been engaged to assist the FCC in the performance of a contract service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

6. Employment, Clearances, Licensing, Contract, Grant, or other Benefits Decisions by the FCC—To disclose information to a Federal, State, local, tribal, or other public agency or authority maintaining civil, criminal, or other relevant enforcement records, or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to an investigation concerning the hiring or retention of an employee or other personnel action, the issuance or retention of a license, grant, or other benefit by the Commission, to the extent that the information is relevant and necessary to the requesting agency's decisions on the matter.

7. For Certain Disclosures to Other Federal Agencies—To disclose information to a Federal agency, in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a suitability or security investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to

[3] FCC/OMD–31, Private or Civil Injury Claimants, covers the PII the Commission uses in determining whether a damage claim filed against the FCC should be paid and for reference purposes when similar cases arise.

the requesting agency's decision on the matter.

8. Labor Relations—To officials of labor organizations recognized under 5 U.S.C. Chapter 71 upon receipt of a formal request and in accord with the conditions of 5 U.S.C. 7114 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting conditions of employment.

9. Breach Notification—To appropriate agencies, entities, and persons when: (a) The Commission suspects or has confirmed that there has been a breach of the system of records; (b) the Commission has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Commission (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

10. Assistance to Federal Agencies and Entities—To another Federal agency or Federal entity, when the Commission determines that information from this system is reasonably necessary to assist the recipient agency or entity in: (a) Responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, program, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

REPORTING TO A CONSUMER REPORTING AGENCY:

In addition to the routine uses listed above, the Commission may share information from this system of records with a consumer reporting agency regarding an individual who has not paid a valid and overdue debt owed to the Commission, following the procedures set out in the Debt Collection Act, 31 U.S.C. 3711(e).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The information in the MVMP system includes electronic data, records, and files that are stored in the FCC's computer network databases; and paper documents, records, and files that are stored in file cabinets in the ASC office suite and in the EB office suite and field offices.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information in the electronic MVMP databases and the paper documents and files can be retrieved by the driver's name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The FCC maintains and disposes of these records in accordance with the requirements of General Records Schedule (GRS) 5.4 issued by the National Archives and Records Administration (NARA), under the following Disposition Authorities:

Item 010: DAA–GRS–2016–0011–0001: Facility, space, vehicle, equipment, stock, and supply administrative and operational records;

Item 030: DAA–GRS–2016–0011–0003: Vehicle and equipment ownership records and operation manual;

Item 040: DAA–GRS–2016–0011–0004: Excess personal property, equipment, and vehicle records;

Item 090: DAA–GRS–2016–0011–0011: Land vehicle and water vessel inspection, maintenance, and service records;

Item 110: DAA–GRS–2016–0011–0014: Vehicle and heavy equipment operator records; [4] and

Item 140: DAA–GRS–2016–0011–0017: Vehicle and vessel accident and incident records.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The electronic records, files, and data are stored within FCC accreditation boundaries. Access to the electronic files is restricted to authorized ASC supervisors, employees, and contractors in the Office of Managing Director; the supervisors, employees, and contractors in EB and OGC; and the IT staff, contractors, and vendors who maintain the networks and services. Other FCC employees, contractors, vendors, and users may be granted access on a need-to-know basis. The records in the FCC's computer network are protected by the FCC and third-party privacy safeguards, a comprehensive and dynamic set of IT safety and security protocols and features that are designed to meet all Federal IT privacy standards, including those required by the Federal Information Security Modernization Act of 2014 (FISMA), the Office of Management and Budget (OMB), and the National Institute of Standards and Technology (NIST).

The paper documents are maintained in file cabinets that are located in the ASC, EB, OGC, and OMD office suites. Access to the file cabinets in these office suites is through a card-coded main door. The file cabinets are locked at the end of the day, or when not in use. Access to these files is restricted to authorized ASC, EB, OGC, and OMD supervisors, employees, and contractors.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to and/or amendment of records about them should follow the Notification Procedure below.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request an amendment of records about them should follow the Notification Procedure below.

NOTIFICATION PROCEDURES:

Individuals wishing to determine whether this system of records contains information about them may do so by writing to Leslie F. Smith, Privacy Manager, Information Technology, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554, or email *Leslie.Smith@fcc.gov* and following the procedures set forth in the FCC's Privacy Act regulations regarding verification of identity and access to records, 47 CFR Part 0, Subpart E.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

This is a new system of records.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2020–10533 Filed 5–15–20; 8:45 am]

BILLING CODE 6712–01–P

[4] The FCC collects and uses state drivers' licensing and certification information only on a temporary basis to verify that FCC headquarters contract drivers (*i.e.,* chauffeur services) and FCC employees (authorized and/or required to use FCC owned or leased vehicles to perform their job duties) meet applicable state licensing and Federal operating requirements that authorize use of Federal government owned/leased vehicles, as required by 5 CFR Sections 930.109 and 930.110. This information is destroyed once each driver's information is validated.

FEDERAL COMMUNICATIONS COMMISSION

[FRS 16761]

Federal Advisory Committee Act; Technological Advisory Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that

the Federal Communications Commission's (FCC) Technological Advisory Council will hold a meeting on Thursday June 4, 2020 via conference call and available to the public via the internet at *http://www.fcc.gov/live,* from 10:00 a.m. to 3 p.m.

DATES: Thursday June 4, 2020.

ADDRESSES: Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael Ha, Deputy Chief, Policy and Rules Division 202–418–2099; *michael.ha@fcc.gov.*

SUPPLEMENTARY INFORMATION: At the June 4th meeting, the FCC Technological Advisory Council will hear presentations from its four working groups: 5G/IOT/V–RAN, Future of Unlicensed Operations, Artificial Intelligence, and 5G Radio Access Network Technology. Meetings are broadcast live with open captioning over the internet from the FCC Live web page at *http://www.fcc.gov/live/.* The public may submit written comments before the meeting to Michael Ha, the FCC's Designated Federal Officer for Technological Advisory Council by email: *michael.ha@fcc.gov* or U.S. Postal Service Mail (Michael Ha, Federal Communications Commission, Room 7–A134, 445 12th Street SW, Washington, DC 20554). Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Office of Engineering and Technology at 202–418–2470 (voice), (202) 418–1944 (fax). Such requests should include a detailed description of the accommodation needed. In addition, please include your contact information. Please allow at least five days advance notice; last minute requests will be accepted but may not be possible to fill.

Federal Communications Commission.

Ronald T. Repasi,

Acting Chief, Office of Engineering and Technology.

[FR Doc. 2020–10562 Filed 5–15–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX, FR No. 16767]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before July 17, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the PRA of 1995 (44 U.S.C. 3501–3520), the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control No.: 3060–XXXX.

Title: 3.7 GHz Band Relocation Payment Clearinghouse; 3.7 GHz Band Relocation Coordinator; 3.7 GHz Band Space Station Operators.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities; not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents and Responses: 3,007 respondents and 9,362 responses.

Estimated Time per Response: 0.5 hours—600 hours.

Frequency of Response: Recordkeeping requirement; on occasion, weekly, monthly, quarterly, semi-annual, and annual reporting requirements; third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in sections 1, 2, 4(i), 4(j), 5(c), 201, 302, 303, 304, 307(e), 309, and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 155(c), 201, 302, 303, 304, 307(e), 309, and 316.

Total Annual Burden: 77,754 hours.

Annual Cost Burden: $10,705,353.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The information collected under this collection will be made publicly available. However, to the extent information submitted pursuant to this information collection is determined to be confidential, it will be protected by the Commission. If a respondent seeks to have information collected pursuant to this information collection withheld from public inspection, the respondent may request confidential treatment

pursuant to section 0.459 of the Commission's rules for such information.

Needs and Uses: On February 28, 2020, in furtherance of the goal of releasing more mid-band spectrum into the market to support and enabling next-generation wireless networks, the Commission adopted a Report and Order, FCC 20–22, (3.7 GHz Report and Order), in which it reformed the use of the 3.7–4.2 GHz band, also known as the C-band. Currently, the 3.7–4.2 GHz band is allocated in the United States exclusively for non-Federal use on a primary basis for Fixed Satellite Service (FSS) and Fixed Service (FS). Domestically, space station operators use the 3.7–4.2 GHz band to provide downlink signals of various bandwidths to licensed transmit-receive, registered receive-only, and unregistered receive-only earth stations throughout the United States.

The 3.7 GHz Report and Order calls for the relocation of existing FSS operations in the band into the upper 200 megahertz of the band (4.0–4.2 GHz) and relocation of existing FS operations into other bands, making the lower 280 megahertz (3.7–3.98 GHz) available for flexible use throughout the contiguous United States through a Commission-administered public auction of overlay licenses that is scheduled to occur later this year. The Commission adopted a robust transition schedule to achieve a prompt relocation of FSS and FS operations so that a significant amount of spectrum could be made available quickly for next-generation wireless deployments. At the same time, the Commission sought to ensure the effective accommodation of relocated incumbent users. To facilitate an efficient transition, the Commission adopted a process for fully reimbursing existing operators for the costs of this relocation and for offering accelerated relocation payments to encourage a timely transition. Flexible-use licensees will be required to pay any accelerated relocation payments, if elected by eligible space station operators, and reimburse incumbent operators for their actual relocation costs associated with clearing the lower 300 megahertz of the band while ensuring continued operations for their customers. The 3.7 GHZ Report and Order establishes a Relocation Payment Clearinghouse to oversee the cost-related aspects of the transition and establishes a Relocation Coordinator to establish a timeline and take actions necessary to migrate and filter incumbent earth stations to ensure continued, uninterrupted service during and following the transition.

FCC staff will use this data to ensure that 3.7–4.2 GHz band stakeholders adopt practices and standards in their operations to ensure an effective, efficient, and streamlined transition. Status reports and other information required in this collection will be used to ensure that the process of clearing the lower portion of the band is efficient and timely, so that the spectrum can be auctioned for flexible-use service licenses and deployed for next-generation wireless services, including 5G, as quickly as possible. The collection is also necessary for the Commission to satisfy its oversight responsibilities and/or agency specific/government-wide reporting obligations.

The Commission concluded in the 3.7 GHz Report and Order that a Relocation Payment Clearinghouse and Relocation Coordinator are critical to ensuring that the reconfiguration is administered in a fair, transparent manner and that the transition occurs as expeditiously as possible. To accomplish these goals most effectively, the Commission is seeking approval for a new information collection to collect information from the Relocation Payment Clearinghouse, the Relocation Coordinator, and incumbent space station operators and allow the Relocation Payment Clearinghouse and Relocation Coordinator to collection information to ensure that the band is transitioned effectively.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2020–10529 Filed 5–15–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0773; FRS 16762]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before July 17, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0773.

Title: Sections 2.803 and 2.803(c)(2), Marketing of RF Devices Prior to Equipment Authorization.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents and Responses: 10,000 respondents and 10,000 responses.

Estimated Time per Response: 0.5 hours.

Frequency of Response: One-time reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 154(i), 302, 303, 303(r), and 307.

Total Annual Burden: 5,000 hours.

Total Annual Cost: No Cost.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60-day comment period in order to obtain the full three-year clearance from them.

The Commission has established rules for the marketing of radio frequency (RF) devices prior to equipment authorization under guidelines in 47 CFR Section 2.803. The general guidelines in Section 2.803 prohibit the marketing or sale of such equipment prior to a demonstration of compliance with the applicable equipment authorization and technical requirements in the case of a device subject to verification or Declaration of Conformity without special notification. Section 2.803(c)(2) permits limited marketing activities prior to equipment authorization, for devices that could be authorized under the current rules; could be authorized under waivers of such rules that are in effect at the time of marketing; or could be authorized under rules that have been adopted by the Commission but that have not yet become effective. These devices may be not operated unless permitted by section 2.805.

The following general guidelines apply for third party notifications:

(a) A RF device may be advertised and displayed at a trade show or exhibition prior to a demonstration of compliance with the applicable technical standards and compliance with the applicable equipment authorization procedure provided the advertising and display is accompanied by a conspicuous notice specified in Section 2.803(c)(2)(iii)(A) or Section 2.803(c)(2)(iii)(B).

(b) An offer for sale solely to business, commercial, industrial, scientific, or medical users of an RF device in the conceptual, developmental, design or pre-production stage prior to demonstration of compliance with the equipment authorization regulations may be permitted provided that the prospective buyer is advised in writing at the time of the offer for sale that the equipment is subject to FCC rules and that the equipment will comply with the appropriate rules before delivery to the buyer or centers of distribution.

(c) Equipment sold as evaluation kit may be sold to specific users with notice specified in Section 2.803(c)(2)(iv)(B). The information to be disclosed about marketing of the RF device is intended:

(1) To ensure the compliance of the proposed equipment with Commission rules; and

(2) To assist industry efforts to introduce new products to the marketplace more promptly.

The information disclosure applies to a variety of RF devices that:

(1) Is pending equipment authorization or verification of compliance;

(2) May be manufactured in the future;

(3) May be sold as kits; and

(4) Operates under varying technical standards.

The information disclosed is essential to ensuring that interference to radio communications is controlled.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–10535 Filed 5–15–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Temporary Suspension of In-Person Hearings

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Notice.

SUMMARY: The Federal Mine Safety and Health Review Commission (the ''Commission'') is suspending all in-person hearings, settlement judge conferences, and mediations until June 12, 2020.

DATES: Applicable: May 12, 2020.

FOR FURTHER INFORMATION CONTACT: Sarah Stewart, Deputy General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, at (202) 434–9935.

SUPPLEMENTARY INFORMATION: In view of the risks presented by the novel coronavirus COVID–19, the Commission's Office of the Chief Administrative Law Judges (''OCALJ'') is, effective May 12, 2020, suspending all in-person hearings, settlement judge conferences, and mediations until June 12, 2020.

At the discretion of the presiding administrative law judge and in coordination with the parties, hearings may proceed by videoconference or by telephone. Similarly, settlement judge conferences and mediations may be held by videoconference or by telephone. If the parties agree that an evidentiary hearing is not needed, cases may also be presented for a decision on the record.

The parties will be notified if the hearing needs to be rescheduled. OCALJ will reassess the risks presented by in-person hearings prior to June 12, 2020, and issue a subsequent order informing the public as to whether the suspension of in-person hearings will continue.

The presiding administrative law judge may be contacted with questions regarding this notice.

Authority: 30 U.S.C. 823.

Dated: May 13, 2020.

Sarah L. Stewart,

Deputy General Counsel, Federal Mine Safety and Health Review Commission.

[FR Doc. 2020–10595 Filed 5–15–20; 8:45 am]

BILLING CODE 6735–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sending Case Issuances Through Electronic Mail

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Notice.

SUMMARY: On a temporary basis, the Federal Mine Safety and Health Review Commission will be sending its issuances through electronic mail and will not be monitoring incoming physical mail or facsimile transmissions.

DATES: Applicable: May 12, 2020.

FOR FURTHER INFORMATION CONTACT: Sarah Stewart, Deputy General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, at (202) 434–9935; *sstewart@fmshrc.gov.*

SUPPLEMENTARY INFORMATION: Until June 12, 2020, case issuances of the Federal Mine Safety and Health Review Commission (FMSHRC), including inter alia notices, decisions, and orders, will be sent only through electronic mail. This includes notices, decisions, and orders described in 29 CFR 2700.4(b)(1), 2700.24(f)(1), 2700.45(e)(3), 2700.54, and 2700.66(a). Further, FMSHRC will not be monitoring incoming physical mail or facsimile described in 29 CFR 2700.5(c)(2). If possible, all filings should be e-filed as described in 29 CFR 2700.5(c)(1).

Authority: 30 U.S.C. 823.

Dated: May 13, 2020.

Sarah L. Stewart,

Deputy General Counsel, Federal Mine Safety and Health Review Commission.

[FR Doc. 2020–10597 Filed 5–15–20; 8:45 am]

BILLING CODE 6735–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

TIME AND DATE: 10:00 a.m., Wednesday, May 27, 2020.

PLACE: This argument will be conducted through a videoconference involving all Commissioners. Any person wishing to listen to the proceedings may call the number listed below.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument in the matter *Secretary of Labor* v. *Northshore Mining Co.,* Docket Nos. LAKE 2017–224, et al. (Issues include whether the Judge erred in concluding that a violation of the walkway standard resulted from an unwarrantable failure and the operator's reckless disregard.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

PHONE NUMBER FOR LISTENING TO MEETING: 1–(866) 236–7472, Passcode: 678–100.

Authority: 5 U.S.C. 552b.

Dated: May 14, 2020.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2020–10801 Filed 5–14–20; 4:15 pm]

BILLING CODE 6735–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

TIME AND DATE: 10:00 a.m., Thursday, May 28, 2020.

PLACE: This meeting will be conducted through a videoconference involving all Commissioners. Any person wishing to listen to the proceedings may call the phone number listed below.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *Northshore Mining Co.,* Docket Nos. LAKE 2017–224, et al. (Issues include whether the Judge erred in concluding that a violation of the walkway standard resulted from an unwarrantable failure and the operator's reckless disregard.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

PHONE NUMBER FOR LISTENING TO MEETING: 1–(866) 236–7472, Passcode: 678–100.

Authority: 5 U.S.C. 552b.

Dated: May 14, 2020.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2020–10798 Filed 5–14–20; 4:15 pm]

BILLING CODE 6735–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than June 2, 2020.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *C&D Family Holding II, LP, Chirag Patel, general partner; LKP Reserve, LP, Mital Patel, general partner; and Sagestar Family II, LP, Mehul Patel, general partner, all of Lewisville, Texas;* as a group acting in concert to acquire voting shares of Bright Force Holding GP, LLC, Lewisville, Texas, and thereby indirectly acquire voting shares of American Bank, National Association, Dallas, Texas.

Board of Governors of the Federal Reserve System, May 13, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–10615 Filed 5–15–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 85 FR 21008, dated April 15, 2020) is amended to reorganize the National Center for Immunization and Respiratory Diseases, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete mission statements for the *National Center for Immunization and Respiratory Diseases (CVG)* insert the following:

National Center for Immunization and Respiratory Diseases (CVG). The National Center for Immunization and Respiratory Diseases (NCIRD) prevents disease, disability, and death through immunization and by control of respiratory and related diseases. In carrying out its mission, NCIRD: (1) Provides leadership, expertise, and service in laboratory and epidemiological sciences, and in immunization program delivery; (2) conducts applied research on disease prevention and control; (3) translates research findings into public health policies and practices; (4) provides diagnostic and reference laboratory services to relevant partners; (5) conducts surveillance and research to determine disease distribution, determinants, and burden nationally and internationally; (6) responds to disease outbreaks domestically and abroad; (7) ensures that public health decisions are made objectively and based upon the highest quality of scientific data; (8) provides technical expertise, education, and training to domestic and international partners; (9) provides leadership to internal and external partners for establishing and

maintaining immunization, and other prevention and control programs; (10) develops, implements, and evaluates domestic and international public health policies; (11) communicates information to increase awareness, knowledge, and understanding of public health issues domestically and internationally, and to promote effective immunization programs; (12) aligns the national center focus with the overall strategic goals of CDC; (13) synchronizes all aspects of CDC's pandemic influenza preparedness and response from strategy through implementation and evaluation; and (14) implements, coordinates, and evaluates programs across NCIRD, Deputy Director for Infectious Diseases(DDID), and CDC to optimize public health impact.

Delete the functional statements for the *Office of the Director (CVG1)* and insert the following:

Office of the Director (CVG1). (1) Provides leadership, expertise, and service in laboratory and epidemiological sciences and in immunization program delivery; (2) provides diagnostic and reference laboratory services to relevant partnerships; (3) works with DDID to ensure spending plans, budget planning, and budget execution are in line with the overall infectious disease strategies and priorities; (4) ensures that the NCIRD strategy is executed by the divisions and aligned with overall CDC goals; (5) co-develops execution strategies for the center with the division directors; (6) provides program and science quality oversight; (7) builds leadership at the division and branch levels; (8) evaluates the strategies, focus, and prioritization of the division research, program, and budget activities; (9) identifies and coordinates synergies between center and relevant partners; (10) ensures that policy development is consistent and appropriate; (11) facilitates research and program activities by providing leadership support; (12) proposes resource priorities throughout the budget cycle; (13) ensures scientific quality, ethics, and regulatory compliance; (14) fosters an integrated approach to research, program, and policy activities; (15) liaises with HHS and other domestic and international immunization and respiratory disease partners as well as with NCIRD divisions; (16) coordinates center's emergency response activities related to immunization issues and complex acute respiratory infectious disease emergencies; (17) applies communication science, media principles, and web design to support NCIRD and CDC's efforts to reduce morbidity and mortality caused by vaccine-preventable and respiratory diseases; ensuring that communication distributed by the center is timely, accurate, clear and relevant to intended audiences; (18) provides guidance for key scientific and laboratory services in the functional areas of extramural research (research and non-research), human studies oversight and review, regulatory affairs; activities in the area of space planning, advising, coordination and evaluation, safety management and coordination, and shared services in controlled correspondence, and programmatic services in the area of workforce and career development; (19) provides and coordinates center-wide administrative, management, and support services in the areas of fiscal management, personnel, travel, procurement, facility management, the Vaccine Management Improvement Project and other administrative services; and (20) manages the coordination of workforce development and succession planning activities and provide human capital management, planning and training consultation services.

Delete the functional statements for the *Office of Informatics (CVG12)* and insert the following:

Office of Informatics (CVG12). (1) Manages all IT project costs, schedules, performances, and risks; (2) provides expertise in leading application development techniques in information science and technology to affect the best use of resources; (3) performs technical evaluation and/or integrated baseline reviews of all information systems' products and services prior to procurement to ensure software purchases align with DDID strategy; (4) provides access to quality data in support of programmatic data analysis; (5) coordinates all enterprise-wide IT security policies and procedures with the Office of the Chief Information Officer; (6) ensures operations are in accordance with CDC Capital Planning and Investment Control guidelines; (7) ensures adherence to CDC enterprise architecture guidelines and standards; (8) consults with users to determine IT needs and to develop strategic and action plans; and (9) participates in the evolution, identification, development, or adoption of appropriate informatics standards in conjunction with the DDID.

Delete in its entirety the title and functional statement for the *Office of Administrative Services (CVG16)* and insert the following:

Office of Management and Operations (CVG16). (1) Plans, coordinates, directs and provides advice and guidance on management and administrative operations of NCIRD in the areas of fiscal management, personnel, human capital, workforce training and development, travel, records management, facility management and other administrative related services; (2) prepares and distributes annual budget plans and provides overall programmatic direction for planning and management oversight of allocated resources; (3) provides guidance on NCIRD requirements related to contracts, grants, cooperative agreements, reimbursable agreements, interagency agreements, memorandums of agreement/understanding, and intergovernmental personnel act agreements; (4) reviews the effectiveness and efficiency of the operation and administration of all NCIRD programs; (5) develops and implements administrative policies and procedures; and (6) prepares special reports and studies in the administrative management areas.

Delete in its entirety the title and functional statement for the *Office of Science and Integrated Programs (CVG17)* and insert the following:

Office of Science (CVG17). (1) Links strategies and priorities of the primarily programmatic-focused NCIRD divisions with those of primarily disease-based divisions; (2) facilitates development and ongoing implementation of integrated infectious respiratory disease (including influenza) surveillance, research, and prevention and control activities across the divisions, both domestically and globally, including supporting implementation of NCIRD's respiratory diseases strategic prevention priorities; (3) interfaces with other CDC CIOs working in the area of respiratory diseases; (4) coordinates and facilitates the center's overall respiratory and vaccine preventable disease scientific/research agenda; (5) assumes responsibility for the protection of human research subjects, scientific review, clearance of manuscripts and other written materials; (6) provides planning and coordination of overall surveillance strategies, preparedness, response, and prevention effectiveness related to a center-wide public health scientific agenda and in quantifying how programs and activities promote cost-effective and high impact prevention strategies with respect to immunization and other vaccine preventable disease programs; (7) provides leadership (agency and center-wide) for vaccine preventable and respiratory disease surveillance to include guidance and coordination of NCIRD surveillance activities and systems, as well as leadership on issues related to internal and external integration of CDC surveillance

activities; (8) coordinates, facilitates and integrates domestic and international respiratory and vaccine preventable disease surveillance activities through existing methods while developing new approaches, tools and analyses for these activities; (9) fosters a multidisciplinary approach to epidemiology, statistics, informatics, laboratory methods and evaluation; (10) provides leadership, expertise and service in laboratory science; (11) represents NCIRD's interests in cross-cutting laboratory services in DDID which include, but are not limited to, laboratory information systems, quality management systems and bioinformatics; (12) ensures a safe working environment in NCIRD laboratories; (13) collaborates effectively with other centers and offices in carrying out its functions; and (14) manages CDC's intellectual property (*e.g.,* patents, trademarks, copyrights) and promotes the transfer of new technology from CDC research to the private sector to facilitate and enhance the development of diagnostic products, vaccines, and products to improve occupational safety.

After the functional statement for the *Influenza Coordination Unit (CVG18),* insert the following:

VTrckS Management Office (CVG19). Responsible for providing day-to-day management and support for VTrckS/NABIP internal and external customers including: (1) Co-chair and support of VTrckS PMO; (2) testing and troubleshooting of all VTrckS and NABIP functionality and break fixes; (3) OCM and communications for internal and external VTrckS and NABIP customers; (4) web-based and in person training for internal and external VTrckS and NABIP customers; (5) conducting annual VTrckS User Satisfaction survey; (6) Level 1 and Level 2 support for VTrckS and NABIP; and (7) managing contracts for Business Analysts, VTrckS operations and maintenance technical support, training and program support, and VTrckS contact center operations.

Delete in its entirety the title and functional statement for the *Division of Bacterial Diseases (CVGG)* and insert the following:

Division of Bacterial Diseases (CVGG). The Division of Bacterial Diseases (DBD) prevents respiratory and vaccine-preventable diseases caused by bacteria through strategic planning, coordination, scientific investigation, and leadership. In carrying out its mission, DBD: (1) Conducts and assists state and local health departments to conduct surveillance, including surveillance for antimicrobial resistance in the bacteria under the Division's purview, and prepares and distributes surveillance information; (2) conducts epidemiologic and laboratory studies to define etiology, patterns of disease, disease burden, and risk factors; determines safety, effectiveness, and cost effectiveness of vaccines, updates immunization policy, and evaluates other aspects of immunization practices; and identifies and evaluates other (non-vaccine) prevention strategies; (3) provides consultation on the use of bacterial vaccines and other measures to prevent infections; (4) participates, provides consultation, and supports investigations of outbreaks, epidemics, and other public health problems in the U.S. and internationally, and recommends and evaluates appropriate control measures; (5) provides scientific leadership for development and evaluation of immunization policy related to vaccines in the U.S. by compiling and analyzing information on vaccine-preventable diseases and helping prepare statements on bacterial vaccines for the ACIP and other groups to support the development and evaluation of immunization policy; in international settings, provides guidance and technical expertise on VPD policy development; (6) provides laboratory support for surveillance and epidemiologic studies and reference diagnostic services, to state and local health departments, other federal agencies, and national and international health organizations; (7) conducts studies of the biology, biochemical, genetic, and antigenic characteristics, immunology and pathogenesis of disease; (8) develops, analyzes, and improves diagnostic methods and reagents; (9) facilitates development and evaluation of immunologic compounds, vaccines and vaccination programs; (10) provides intramural and extramural assistance with professional training; (11) assists internal and external partners with other public health problems of national and international significance when needed; (12) provides technical support to state immunization programs for all aspects of vaccine-preventable diseases and their vaccines; (13) provides leadership in vaccine science; and (14) supports CDC's Immunization Safety Office in vaccine safety risk assessment and leadership in vaccine safety risk management.

Office of the Director (CVGG1). (1) Directs, coordinates, and manages the programs and activities of the division; (2) provides leadership and guidance on policy, program planning and development, program management, and operations; (3) coordinates or assures coordination with the appropriate CDC, CCID, and NCIRD offices on administrative and program matters; (4) reviews, prepares, and coordinates congressional testimony and briefing documents related to bacterial respiratory and vaccine preventable diseases, and analyzes programmatic and policy implications of legislative proposals; (5) serves as CDC, CCID, and NCIRD's primary internal and external communications contact regarding bacterial respiratory and vaccine-preventable disease issues; (6) advises CDC, CCID, and NCIRD on policy matters concerning the division's programs and activities; (7) assures the overall quality of the science conducted by the division; (8) guides and facilitates efficient coordination and cooperation for administrative, programmatic, and scientific activities within the division, and with other groups in and outside of CDC; (9) provides statistical methodology and participates in the division's outbreak investigations and disease reporting systems for ongoing surveillance; (10) develops new methods or adapts existing methods for statistical applications in epidemiologic or laboratory research studies for the division; (11) provides statistical consultation for epidemiologic and laboratory research studies conducted by the division; (12) assists researchers with statistical aspects of report writing and prepares statistical portions of papers, protocols, and reports written by staff of the division; (13) trains professional staff of the division in statistical methods; and (14) provides a center of excellence for the study of immunologic response to infection, vaccination, and therapeutic interventions against bacterial diseases, including Bacillus anthracis.

Respiratory Diseases Branch (CVGGB). (1) Provides assistance and control of epidemics and works to improve control and prevention of respiratory and other syndromes caused by Streptococcus pneumoniae, group A and group B streptococci, and atypical respiratory bacteria (Legionella, Mycoplasma, and Chlamydia species), as well as community-acquired drug resistant bacterial infections, community-acquired pneumonia, otitis media, and neonatal sepsis; (2) develops, implements, and evaluates prevention methods for these diseases, including vaccines and non-vaccine strategies; (3) provides consultation and support to domestic and international partners on use of vaccines and other prevention measures to reduce bacterial respiratory diseases; (4) coordinates activities within and outside the division related to Active Bacterial Core

surveillance with the Emerging Infections Program states, and assists with coordination of other surveillance platforms that include bacterial respiratory diseases; (5) provides reference and diagnostic activities for respiratory bacterial diseases and for the identification of unknown gram positive cocci; (6) develops and evaluates new diagnostic methods for bacterial respiratory pathogens; (7) develops, maintains, and implements genetic analyses of bacteria to enhance surveillance programs, outbreak investigations, and public health research; and (8) collaborates with other CDC groups, state and federal agencies, ministries of health, WHO, PAHO, private industry, academia, and other governmental organizations involved in public health.

Meningitis and Vaccine Preventable Disease Branch (CVGGC). (1) Provides assistance in control of endemic and epidemic disease and exploits opportunities to improve control and prevention of bacterial illness including: disease due to Neisseria meningitidis, Haemophilus influenzae infections, diphtheria, pertussis, tetanus, and bacterial meningitis syndrome; (2) provides reference and diagnostic activities for agents causing these diseases; (3) provides cross-cutting vaccine responsibilities for the division of bacterial diseases; and develops, implements and evaluates prevention strategies for these bacterial diseases; (4) develops, implements, and evaluates vaccines and vaccine candidates for these bacterial diseases; (5) conducts surveillance and epidemiological research for meningococcal disease, H. influenzae infections, diphtheria, pertussis, tetanus, and bacterial meningitis syndrome; (6) maintains WHO Collaborating Center for Control and Prevention of Epidemic Meningitis; and (7) collaborates with other CDC groups, state and federal agencies, ministries of health, WHO, PAHO, private industry, and other governmental organizations involved in public health

Sherri A. Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2020–10598 Filed 5–15–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3399–PN]

Medicare and Medicaid Programs: Application From DNV–GL Healthcare USA, Inc. for Continued Approval of its Critical Access Hospital Accreditation Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice with request for comment.

SUMMARY: This proposed notice acknowledges the receipt of an application from DNV–GL Healthcare USA, Inc. for continued recognition as a national accrediting organization for critical access hospitals that wish to participate in the Medicare or Medicaid programs.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 17, 2020.

ADDRESSES: In commenting, please refer to file code CMS–3399–PN

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov* . Follow the ''submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3399–PN, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3399–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

[Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by following the instructions at the end of the ''Collection of Information Requirements'' section in this document.]

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Caecilia Blondiaux, (410) 786–2190.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov* . Follow the search instructions on that website to view public comments.

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a critical access hospital (CAH), provided that certain requirements are met by the CAH. Section 1861(mm) of the Social Security Act (the Act), establishes distinct criteria for facilities seeking designation as a CAH. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 485, subpart F specify the conditions that a CAH must meet to participate in the Medicare program, the scope of covered services, and the conditions for Medicare payment for CAHs.

Generally, to enter into an agreement, a CAH must first be certified by a state survey agency as complying with the conditions or requirements set forth in part 485 of our regulations. Thereafter, the CAH is subject to regular surveys by a state survey agency to determine whether it continues to meet these requirements.

However, there is an alternative to surveys by state agencies. Section 1865(a)(1) of the Act states, if a provider entity demonstrates through accreditation by an approved national accrediting organization (AO) that all applicable Medicare conditions are met or exceeded, we will deem those provider entities as having met the requirements. Accreditation by an AO is voluntary and is not required for Medicare participation.

If an AO is recognized by the Centers for Medicare & Medicaid Services (CMS) as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national AO applying for approval of its accreditation program

under part 488, subpart A, must provide us with reasonable assurance that the AO requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of AO are set forth at § 488.5. The regulations at § 488.5(e)(2)(i) require an AO to reapply for continued approval of its accreditation program every 6 years or as determined by CMS.

The DNV–GL Healthcare USA, Inc. (DNV–GL) current term of approval for their hospital accreditation program expires December 23, 2020.

II. Approval of Accreditation Organizations

Section 1865(a)(2) of the Act and our regulations at § 488.5 require that our findings concerning review and approval of a national AO's requirements consider, among other factors, the applying AO's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide CMS with the necessary data for validation.

Section 1865(a)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of DNV–GL's request for continued approval of its CAH accreditation program. This notice also solicits public comment on whether the DNV–GL's requirements meet or exceed the Medicare conditions of participation (CoPs) for CAHs.

III. Evaluation of Deeming Authority Request

DNV–GL submitted all the necessary materials to enable us to make a determination concerning its request for continued approval of its CAH accreditation program. This application was determined to be complete on March 17, 2020. Under 1865(a)(2) of the Act and our regulations at § 488.5 (Application and re-application procedures for national AO), our review and evaluation of the DNV–GL will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of the DNV–GL's standards for hospitals as compared with CMS' CAH CoPs.
- The DNV–GL's survey process to determine the following:

++ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

++ The comparability of the DNV–GL's processes to those of state agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

++ DNV–GL's processes and procedures for monitoring a CAH found out of compliance with DNV–GL's program requirements. These monitoring procedures are used only when the DNV–GL identifies noncompliance. If noncompliance is identified through validation reviews or complaint surveys, the state survey agency monitors corrections as specified at § 488.9.

++ DNV–GL's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

++ DNV–GL's capacity to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

++ The adequacy of the DNV–GL's staff and other resources, and its financial viability.

++ DNV–GL's capacity to adequately fund required surveys.

++ DNV–GL's policies with respect to whether surveys are announced or unannounced, to assure that surveys are unannounced.

++ DNV–GL's policies and procedures to avoid conflicts of interest, including the appearance of conflicts of interest, involving individuals who conduct surveys or participate in accreditation decisions.

++ DNV–GL's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as we may require (including corrective action plans).

IV. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3501 *et seq.*).

V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Seema Verma, having reviewed and approved this document, authorizes Evell J. Barco Holland, who is the **Federal Register** Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: May 7, 2020.

Evell J. Barco Holland,

Federal Register Liaison, Department of Health and Human Services.

[FR Doc. 2020–10632 Filed 5–15–20; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by the Public Health Service (PHS) Act, as amended. While the Secretary of HHS is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact Lisa L. Reyes, Clerk of Court, United States Court of Federal Claims, 717 Madison Place NW, Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program,

5600 Fishers Lane, Room 08N146B, Rockville, Maryland 20857; (301) 443–6593, or visit our website at: *http://www.hrsa.gov/vaccinecompensation/index.html.*

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the United States Court of Federal Claims and to serve a copy of the petition to the Secretary of HHS, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on April 1, 2020, through April 30, 2020. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

a. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

b. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the United States Court of Federal Claims at the address listed above (under the heading ''For Further Information Contact''), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Healthcare Systems Bureau, 5600 Fishers Lane, 08N146B, Rockville, Maryland 20857. The Court's caption (Petitioner's Name v. Secretary of HHS) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Thomas J. Engels,

Administrator.

List of Petitions Filed

1. Fredrick Messer, Okmulgee, Oklahoma, Court of Federal Claims No: 20–0369V
2. Anne Marie Beachel, Newark, New York, Court of Federal Claims No: 20–0370V
3. Annette Hoops, Miamisburg, Ohio, Court of Federal Claims No: 20–0371V
4. Charles Motsett, Jacksonville, Florida, Court of Federal Claims No: 20–0374V
5. Thomisa Brown on behalf of B. F., Columbia, South Carolin, Court of Federal Claims No: 20–0375V
6. Kenneth Clark, Lakeland, Florida, Court of Federal Claims No: 20–0376V
7. David Butts, Lyons Falls, New York, Court of Federal Claims No: 20–0377V
8. Wade Green, Boulder, Colorado, Court of Federal Claims No: 20–0378V
9. Sheila Key, Edgewater, Colorado, Court of Federal Claims No: 20–0379V
10. Frady Fekete, Brooklyn, New York, Court of Federal Claims No: 20–0380V
11. Sharon Campbell, Stoneham, Massachusetts, Court of Federal Claims No: 20–0381V
12. Jana Logan, Greensburg, Pennsylvania, Court of Federal Claims No: 20–0382V
13. Shannah Game, Bessemer, Alabama, Court of Federal Claims No: 20–0383V
14. Kristin Kabanuk, Seaside, Oregon, Court of Federal Claims No: 20–0385V
15. Jennifer Cashion, High Point, North Carolina, Court of Federal Claims No: 20–0387V
16. Roxane Wise, Union, New Jersey, Court of Federal Claims No: 20–0389V
17. Mandy Remillard, Berlin, New Hampshire, Court of Federal Claims No: 20–0390V
18. Caitlin O'Donoghue, Crystal Lake, Illinois, Court of Federal Claims No: 20–0391V
19. Michael Auen, Southborough, Massachusetts, Court of Federal Claims No: 20–0392V
20. Alexandra Marcucci, Placerville, California, Court of Federal Claims No: 20–0393V
21. Anastacia Salcedo, Cambridge, Massachusetts, Court of Federal Claims No: 20–0394V
22. Ivelearis Teresa Colon Mercado, Carolina, Puerto Rico, Court of Federal Claims No: 20–0395V
23. Tamera Cursio, Uniontown, Ohio, Court of Federal Claims No: 20–0397V
24. Michael Washburn, Louisville, Kentucky, Court of Federal Claims No: 20–0398V
25. Lillian Robinson, Philadelphia, Pennsylvania, Court of Federal Claims No: 20–0400V
26. Mindy Botts, New Orleans, Louisiana, Court of Federal Claims No: 20–0402V
27. Kelsie Reynolds, Abilene, Texas, Court of Federal Claims No: 20–0403V
28. Shirley Underwood, Jonesboro, Arkansas, Court of Federal Claims No: 20–0404V
29. Neva Bernier, Hagerstown, Maryland, Court of Federal Claims No: 20–0405V

30. Eric Felland, Sartell, Minnesota, Court of Federal Claims No: 20–0406V
31. Deborah Ferry, Washington, District of Columbia, Court of Federal Claims No: 20–0407V
32. William Newman, St. Louis, Missouri, Court of Federal Claims No: 20–0408V
33. Mary Fiolek, White Lake, Michigan, Court of Federal Claims No: 20–0409V
34. Larry J. Parker, Scottsdale, Arizona, Court of Federal Claims No: 20–0411V
35. Christopher Gravens, New York, New York, Court of Federal Claims No: 20–0416V
36. Denise Summer, Columbia, Maryland, Court of Federal Claims No: 20–0418V
37. Gilda Jimenez, San Antonio, Texas, Court of Federal Claims No: 20–0419V
38. Michael Poole, Philadelphia, Pennsylvania, Court of Federal Claims No: 20–0420V
39. Ronnie Lacey, Massapequa, New York, Court of Federal Claims No: 20–0422V
40. Dawn Mack, Jonesboro, Georgia, Court of Federal Claims No: 20–0423V
41. Maria Lynn Myers on behalf of The Estate of Vincent Louis Matassa, Deceased, Millville, Delaware, Court of Federal Claims No: 20–0424V
42. Madeline Meehan, Wollaston, Massachusetts, Court of Federal Claims No: 20–0425V
43. Eugene Anthony Brown, Boston, Massachusetts, Court of Federal Claims No: 20–0426V
44. John W. Paola, East Providence, Rhode Island, Court of Federal Claims No: 20–0427V
45. Timothy Brophy, Wayne, New Jersey, Court of Federal Claims No: 20–0428V
46. Jacalyn Broze, Plymouth, Minnesota, Court of Federal Claims No: 20–0430V
47. Lisa Mathis, Holland, Michigan, Court of Federal Claims No: 20–0431V
48. David Alexander, Reston, Virginia, Court of Federal Claims No: 20–0432V
49. Heather Jarusewski on behalf of L. S. J., Carlisle, Pennsylvania, Court of Federal Claims No: 20–0433V
50. Tammy Berry, Searcy, Arkansas, Court of Federal Claims No: 20–0434V
51. Allison Trop, Wellesley Hills, Massachusetts, Court of Federal Claims No: 20–0435V
52. Maryam Ebrahimi, Denver, Colorado, Court of Federal Claims No: 20–0436V
53. Brenda G. Fritz, Atlanta, Georgia, Court of Federal Claims No: 20–0439V
54. Sheridan Anderson, Rancho Santa Margarita, California, Court of Federal Claims No: 20–0440V
55. Lawrence Hood, Dickson, Tennessee, Court of Federal Claims No: 20–0441V
56. Ellen Whitaker, Plainwell, Michigan, Court of Federal Claims No: 20–0442V
57. Brenda Helmandollar on behalf of The Estate of John Helmandollar, Deceased, El Dorado, Kansas, Court of Federal Claims No: 20–0443V
58. Mary Beth Neiman, Cherry Hill, New Jersey, Court of Federal Claims No: 20–0445V
59. Christina Wells, Faribault, Minnesota, Court of Federal Claims No: 20–0446V
60. Catharine Berglund, Caldwell, Idaho, Court of Federal Claims No: 20–0447V
61. Lesli Autumn Akers, Milan, Tennessee, Court of Federal Claims No: 20–0448V
62. Sandra Gillingham, Great Falls, Montana, Court of Federal Claims No: 20–0450V
63. Diane Hildebrandt, Virginia Beach, Virginia, Court of Federal Claims No: 20–0452V
64. Denissa Harte, Mobile, Alabama, Court of Federal Claims No: 20–0453V
65. Jori Baldwin, Atlanta, Georgia, Court of Federal Claims No: 20–0457V
66. Debra Crawford, Ocala, Florida, Court of Federal Claims No: 20–0460V
67. Kelly Mox, Washington, District of Columbia, Court of Federal Claims No: 20–0462V
68. Robert Payne on behalf of The Estate of Wanda Payne, Deceased, Fort Worth, Texas, Court of Federal Claims No: 20–0463V
69. Darrel W. Walters, Florence, South Carolina, Court of Federal Claims No: 20–0464V
70. Shoshana Robuck, New York, New York, Court of Federal Claims No: 20–0465V
71. Sally Johnson, Washington, District of Columbia, Court of Federal Claims No: 20–0466V
72. Nancy Otero, Washington, District of Columbia, Court of Federal Claims No: 20–0467V
73. Jaime Zoerman, Washington, District of Columbia, Court of Federal Claims No: 20–0468V
74. Robyn Zalecky, Washington, District of Columbia, Court of Federal Claims No: 20–0471V
75. Amy Lange, Washington, District of Columbia, Court of Federal Claims No: 20–0472V
76. John Bradberry, Washington, District of Columbia
Court of Federal Claims No: 20–0473V
77. Adrianne Hick, Washington, District of Columbia, Court of Federal Claims No: 20–0474V
78. Lorinne Taylor, Washington, District of Columbia, Court of Federal Claims No: 20–0475V
79. David Frank, Richmond, Virginia, Court of Federal Claims No: 20–0476V
80. Margaret Legum, Fairfax, Virginia, Court of Federal Claims No: 20–0477V
81. Scarlett Young on behalf of The Estate of Jimmie Vance, Paris, Kentucky, Court of Federal Claims No: 20–0478V
82. Wayne Santoro, Washington, District of Columbia, Court of Federal Claims No: 20–0479V
83. Timothy John Rawlings, Topeka, Kansas, Court of Federal Claims No: 20–0480V
84. Michelle Lehmann, Washington, District of Columbia, Court of Federal Claims No: 20–0481V
85. Chris McMullen, Lancaster, California, Court of Federal Claims No: 20–0482V
86. Virginia Flanagan, Olathe, Kansas, Court of Federal Claims No: 20–0484V
87. Kimberlee Winkle, Fountain Valley, California, Court of Federal Claims No: 20–0485V
88. Tammy Brannan, Golden, Colorado, Court of Federal Claims No: 20–0486V
89. Jennifer Wilson, Charleston, South Carolina, Court of Federal Claims No: 20–0487V
90. Ruth Vizcarra, Chandler, Arizona, Court of Federal Claims No: 20–0488V
91. Steven Corwin, Lihue, Hawaii, Court of Federal Claims No: 20–0491V
92. Glenn Smith, Jr., New Orleans, Louisiana, Court of Federal Claims No: 20–0492V
93. Junetta Justice, Marshville, North Carolina, Court of Federal Claims No: 20–0493V
94. Vincent Begay, Kayenta, Arizona, Court of Federal Claims No: 20–0494V
95. Kaitlin Babyak, Fort Washington, Pennsylvania, Court of Federal Claims No: 20–0495V
96. Holly Tigges, Cedar Rapids, Iowa, Court of Federal Claims No: 20–0496V
97. Ruby Williams, Houston, Texas, Court of Federal Claims No: 20–0498V

98. Pamela Bell, Jacksonville, Florida, Court of Federal Claims No: 20–0501V
99. Dean Piermattei, Harrisburg, Pennsylvania, Court of Federal Claims No: 20–0502V
100. Mayra Del Bosque on behalf of M. R., Laredo, Texas, Court of Federal Claims No: 20–0503V
101. Sarah L. Malone, Mesa, Arizona, Court of Federal Claims No: 20–0506V
102. Lisa A. Barno, Jefferson Hills, Pennsylvania, Court of Federal Claims No: 20–0507V
103. Jerry Taylor, Atlanta, Georgia, Court of Federal Claims No: 20–0508V
104. Erin Callahan, Kensington, Maryland, Court of Federal Claims No: 20–0510V
105. Jennifer Drees, Des Moines, Iowa, Court of Federal Claims No: 20–0511V
106. Carol Wagner, Cleveland, Ohio, Court of Federal Claims No: 20–0512V
107. Nadine Botelho, Sonora, California, Court of Federal Claims No: 20–0513V
108. Shawna Troxell, Rio Rancho, New Mexico, Court of Federal Claims No: 20–0515V
109. Brian Williams, Atlanta, Georgia, Court of Federal Claims No: 20–0516V
110. Jeanette Williams, Athens, Georgia, Court of Federal Claims No: 20–0519V
111. April Colon on behalf of C. L., Middletown, New York, Court of Federal Claims No: 20–0521V
112. Ana Quartarone on behalf of O. Q., Wellesley Hills, Massachusetts, Court of Federal Claims No: 20–0522V
113. Edgar Jones, Canton, Mississippi, Court of Federal Claims No: 20–0523V
114. Roberto A. Tejeda, San Antonio, Texas, Court of Federal Claims No: 20–0525V
115. Erwin Evans, Mount Morris, Michigan, Court of Federal Claims No: 20–0527V
116. Thomas Laha, Seattle, Washington, Court of Federal Claims No: 20–0528V
117. Michael Blackmon, Bronx, New York, Court of Federal Claims No: 20–0530V
118. Bonnie Miller, Glenview, Illinois, Court of Federal Claims No: 20–0531V
119. Pamela Gallus, Mt. Holly, New Jersey, Court of Federal Claims No: 20–0532V
120. Kathleen Puhi and Kawelolani Puhi on behalf of K. P., Sarasota, Florida,Court of Federal Claims No: 20–0533V
121. Kathryn Lungaro, Memphis, Tennessee,Court of Federal Claims No: 20–0534V
122. Daisy Parrish Seattle, Washington, Court of Federal Claims No: 20–0535V
123. Edward Diaz,Dresher, Pennsylvania,Court of Federal Claims No: 20–0536V
124. Ronald Tanski,Beverly Hills, California,Court of Federal Claims No: 20–0537V
125. David Dubriske,Beverly Hills, California,Court of Federal Claims No: 20–0538V
126. Sharon Spiegelglas,Beverly Hills, California, Court of Federal Claims No: 20–0539V

[FR Doc. 2020–10634 Filed 5–15–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0419]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before June 17, 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.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 795–7714. When submitting comments or requesting information, please include the document identifier 0990–0419–30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Acquisition Regulation Clause Patent Rights and Rights and Data.

Type of Collection: Extension.

OMB No.: 0990–0419.

Abstract: The Department of Health and Human Services; Office of the Assistant Secretary for Financial Resources and Office of Grants and Acquisition Policy and Accountability, Division of Acquisition is requesting an approval by OMB for an extension of a previously approved information collection request, Acquisition Regulation Clause Patent rights and Rights in Data. HHS found that systematically, over a period of several years, when Determination of Exceptional Circumstances (DEC) were executed, additional legal protection for the patent and data rights of third parties beyond those covered by FAR 27.306 were necessary A DEC is executed consistent with the policy and objectives of the Bayh-Dole Act, 35 U.S.C. 200, *et seq.,* to ensure that subject inventions made under contracts and subcontracts (at all tiers) are used in a manner to promote free competition and enterprise without unduly encumbering future research and discovery; to encourage maximum participation of small business firms in federally supported research and development efforts; to promote collaboration between commercial concerns and nonprofit organizations including universities; to ensure that the Government obtains sufficient rights in federally supported inventions to meet its needs; to protect the public against nonuse or unreasonable use of inventions; and in the case of fulfilling the mission of the U.S. Department of Health and Human Services, to ultimately to benefit the public health.

Likely Respondents: Administrative, technical, legal and management personnel.

ANNUALIZED BURDEN HOUR TABLE

Type of respondent and hours for each	Number of respondents	Number of responses per respondent	Average burden per response (hours)	Total burden hours
Technical (4), Legal (2), Management (2)	63	1	8	504
Technical (8), Legal (2), Management (2)	63	1	12	756
Technical (8), Legal (3), Management (1)	63	3	12	2,268
Technical (8), Legal (4), Management (2)	63	3	14	2,646
Technical (6), Legal (2), Management (2)	63	1	10	630
Technical (4), Legal (2), Management (2)	63	1	8	504
Administrative (8)	63	3	8	1,512
Administrative (2), Management (1)	63	3	3	567
Technical (4), Legal (2), Management (2)	63	3	8	1,512
Total				10,899

Dated: May 12, 2020.

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2020–10526 Filed 5–15–20; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Integrative Health Special Emphasis Panel; Exploratory Clinical Trials of Mind and Body Interventions (MB).

Date: June 16–17, 2020.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Pamela Jeter, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH, NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892–547, 301–435–2591, *pamela.jeter@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: May 12, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–10494 Filed 5–15–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting. The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; NHLBI Mentored Clinical and Basic Science Review Committee.

Date: June 25–26, 2020.

Time: 11:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Keith A. Mintzer, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6705 Rockledge Drive, Bethesda, MD 20892–7924, (301) 827–7949, *mintzerk@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 12, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–10497 Filed 5–15–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project III (P01).

Date: June 18–19, 2020.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove 9609 Medical Center Drive, Room

7W240 Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Hasan Siddiqui, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W240, Rockville, MD 20850 240–276–5122, *hasan.siddiqui@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; UH2/3 Assay Validation of High-Quality Markers for Clinical Studies in Cancer.

Date: June 24, 2020.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W244, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: John Paul Cairns, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, 9609 Medical Center Drive, Room 7W244, National Cancer Institute, NIH, Bethesda, MD 20892, 240–276–5415, *paul.cairns@nih.Gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–8: NCI Clinical and Translational R21 and Omnibus R03 Review.

Date: July 1–2, 2020.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W242, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Zhiqiang Zou, M.D., Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, 7W242, Bethesda, MD 20892 240–276–6372, *zouzhiq@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; HIV/AIDS and the Tumor Niche.

Date: July 9, 2020.

Time: 10:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W618, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Mukesh Kumar, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, 9609 Medical Center Drive, Room 7W618, National Cancer Institute, NIH, Rockville, MD 20850 240–276–6611, *mukesh.kumar3@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 12, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–10495 Filed 5–15–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: June 9, 2020.

Closed: 10:00 a.m. to 12:00 p.m.

Agenda: To Review and Evaluate Grant Applications.

Place: National Institutes of Health, 6705 Rockledge Drive Bethesda, MD 20892 (Virtual Meeting).

Open: 12:30 p.m. to 4:00 p.m.

Agenda: To Discuss Program Policies and Issues.

Place: National Institutes of Health, 6705 Rockledge Drive Bethesda, MD 20892 (Virtual Meeting).

Virtual Access: https://www.nhlbi.nih.gov/about/advisory-and-peer-review-committees/advisory-council. Please note, the link to the videocast meeting will be posted within a week of the meeting date. Any member of the public may submit written comments no later than 15 days after the meeting.

Contact Person: Laura K. Moen, Ph.D., Director, Division of Extramural Research Activities, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7100, Bethesda, MD 20892, 301–827–5517, *moenl@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/nhlbac/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 12, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–10499 Filed 5–15–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; BRAIN Initiative: Non-Invasive Neuromodulation—New Tools and Techniques (R01).

Date: June 9, 2020.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Rebecca Steiner Garcia, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9608, Bethesda, MD 20892–9608, 301–443–4525, *steinerr@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; NIMH Low-Resource Settings to Achieve Mental Health Equity.

Date: June 9, 2020.

Time: 12:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Karen Gavin-Evans, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6153, MSC 9606, Bethesda, MD 20892, 301–451–2356, *gavinevanskm@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Addressing Suicide Research Gaps Review Meeting.

Date: June 11, 2020.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Marcy Ellen Burstein, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6143, MSC 9606, Bethesda, MD 20892–9606, 301–443–9699, *bursteinme@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Preventive Interventions in Primary Care Settings Review Meeting.

Date: June 12, 2020.

Time: 1:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Marcy Ellen Burstein, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6143, MSC 9606, Bethesda, MD 20892–9606, 301–443–9699, *bursteinme@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: May 12, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–10504 Filed 5–15–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Initial Review Group; Mental Health Services Research Committee.

Date: June 4–5, 2020.

Time: June 4, 2020, 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Time: June 5, 2020, 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Aileen Schulte, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6136, MSC 9606, Bethesda, MD 20852, 301–443–1225, *aschulte@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: May 12, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–10502 Filed 5–15–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting. The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; Clinical Trials Review Committee.

Date: June 25–26, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge Centre I, 6705 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Keary A. Cope, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6705 Rockledge Drive, Room 209–A, Bethesda, MD 20892–7924, (301) 827–7912, *copeka@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 12, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–10496 Filed 5–15–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; RFA–AA20–001 & RFA–AA20–002 Alcohol Research Centers (P50 & P60).

Date: June 23, 2020.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Ranga Srinivas, Ph.D., Chief, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 6700 B Rockledge Drive Room 2114, Bethesda, MD 20892, (301) 451–2067, *srinivar@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: May 12, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–10500 Filed 5–15–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Early Psychosis Intervention Network (EPINET) Review Meeting.

Date: May 26, 2020.

Time: 12:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Marcy Ellen Burstein, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6143, MSC, 9606 Bethesda, MD 20892–9606, 301–443–9699, *bursteinme@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Clinical High Risk for Psychosis (U01, U24).

Date: May 27, 2020.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Rebecca Steiner Garcia, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC, 9608 Bethesda, MD 20892–9608, 301–443–4525, *steinerr@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; RFA Review: NIMH Instrumentation Program (S10).

Date: June 3, 2020.

Time: 11:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Nicholas Gaiano, Ph.D., Review Branch, Chief, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center/Room 6150/MSC 9606, 6001 Executive Boulevard, Bethesda, MD 20892–9606, 301–443–2742, *nick.gaiano@nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: May 12, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–10503 Filed 5–15–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Biobehavioral and Behavioral Sciences Subcommittee.

Date: June 16, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852 (Telephone Conference Call).

Contact Person: Clay Marsh, Scientific Review Officer, 6710B Rockledge Drive, Bethesda, MD 20892, 301–496–6866.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Obstetrics and Maternal-Fetal Biology Subcommittee.

Date: June 26, 2020.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NICHD Offices, 6710B, Rockledge Drive, Bethesda, MD 20892.

Contact Person: Peter Zelazowski, Ph.D., Scientific Review Officer, National Institutes of Health, NICHD, SRB, 6710B Rockledge Drive, Bethesda, MD 20892, 301–435–6902, *Peter.Zelazowski@nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Member Conflict SEP.

Date: June 30, 2020.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6710B Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Christiane M. Robbins, Scientific Review Officer, Scientific Review

Branch (SRB), DER, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, 6710B Rockledge Drive, Rm 2121A, Bethesda, MD 20817, 301–451–4989, *crobbins@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 12, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–10501 Filed 5–15–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting. The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; Single-Site and Pilot Clinical Trials Review Committee (SSPT).

Date: June 24–25, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health (NIH), Rockledge 1, 6705 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carol (Chang-Sook) Kim, Ph.D., Scientific Review Administrator, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6705 Rockledge Drive, Room 208–V, Bethesda, MD 20892–7924, (301) 827–7940, *carolko@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 12, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–10498 Filed 5–15–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Revocation of Customs Brokers' Licenses; Correction

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Revocation of customs brokers' licenses; correction.

SUMMARY: This document corrects six errors in the list of customs brokers' licenses revoked by operation of law, without prejudice, for failure to file a triennial status report that U.S. Customs and Border Protection (CBP) published in the **Federal Register** on February 20, 2019. The six errors consist of erroneously identified revocations.

DATES: As of May 18, 2020, CBP's records have been corrected to reflect that the licenses were not revoked.

FOR FURTHER INFORMATION CONTACT: Melba Hubbard, Branch Chief, Broker Management, Office of Trade, (202) 325–6986, *melba.hubbard@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), and section 111.30(d) of title 19 of the Code of Federal Regulations (19 CFR 111.30(d)), a customs broker's license will be revoked by operation of law, without prejudice, for failure to file a triennial status report. On February 20, 2019, U.S. Customs and Border Protection (CBP) published in the **Federal Register** (84 FR 5090) a list of customs brokers' licenses revoked under 19 CFR 111.30(d) in alphabetical order by name, with the names grouped according to the ports of issuance. That document contained six (6) errors in the list of revoked customs brokers' licenses. Specifically, six (6) customs brokers' names were erroneously included in the list. This correction is being issued to identify the customs brokers whose licenses were erroneously identified as revoked. CBP has corrected its records to reflect that the licenses were not revoked.

Correction

In the **Federal Register** of February 20, 2019, in the document at 84 FR 5090:

Beginning on page 5091, in the list of revoked customs broker licenses, remove the entries for the following customs brokers:

Generke	Ruth	30703	Atlanta.
Knight (formerly: Shubert)	Linda	17372	Baltimore.
Twomey	Robert	17023	Baltimore.

On page 5092, remove the entry for the following customs broker:

Faison	Michelle	30144	Charlotte.

Also on page 5097, remove the entries for the following customs brokers:

Okerman (formerly: Poe)	Rachel	29388	Otay Mesa.
Rader (formerly: Burrows)	Holly	28136	Philadelphia.

Dated: May 7, 2020.

Brenda B. Smith,

Executive Assistant Commissioner, Office of Trade.

[FR Doc. 2020–10395 Filed 5–15–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2019–0021; OMB No. 1660–NW75]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Facility Access Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before June 17, 2020.

ADDRESSES: 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 Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address *FEMA-Information-Collections-Management@fema.dhs.gov* or J'son Tyson; Chief, Identity Credential and Access Management; FEMA/OCSO/FOD; 202–412–5600; *j'son.tyson@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection previously published in the **Federal Register** on January 22, 2020 at 85 FR 3712 with a 60-day public comment period. No comments were received. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Facility Access Request.

Type of information collection: New information collection.

OMB Number: 1660–NW75.

Form Titles and Numbers: FEMA Form 121–3–1–3A and 121–3–1–3B.

Abstract: The purpose of these forms is to apply for access to all FEMA controlled facilities. This information is used to create a profile in the Physical Access Control System. The Personally Identifiable Information is used to authenticate the identity of Federal employees, contractors, and visitors who have entry authorization, and in the event of an emergency, to contact individuals. Respondents are typically all occupations.

Affected Public: Federal Government & State, local or Tribal Government.

Estimated Number of Respondents: 20,500.

Estimated Number of Responses: 20,500.

Estimated Total Annual Burden Hours: 3,485.

Estimated Total Annual Respondent Cost: $127,098.

Estimated Respondents' Operation and Maintenance Costs: None.

Estimated Respondents' Capital and Start-Up Costs: None.

Estimated Total Annual Cost to the Federal Government: $23,027.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (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.

Maile Arthur,

Acting Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2020–10513 Filed 5–15–20; 8:45 am]

BILLING CODE 9111–19–P

DEPARTMENT OF HOMELAND SECURITY

[Docket Number DHS–2020–0019]

Agency Information Collection Activities: Generic Clearance for Improving Customer Experience (OMB Circular A–11, Section 280 Implementation)

AGENCY: Department of Homeland Security (DHS).

ACTION: 60-Day Notice and request for comments; New Collection, 1601–NEW.

SUMMARY: The Department of Homeland Security (DHS) as part of its continuing effort to reduce paperwork and respondent burden, is announcing an opportunity for public comment on a new proposed collection of information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on new collection proposed by the Agency.

DATES: Comments are encouraged and will be accepted until July 17, 2020. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: You may submit comments, identified by docket number Docket Number DHS–2020–0019, at:

○ *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number Docket Number DHS–2020–0019. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION: On September 11, 1993, President Clinton issued Executive Order 12862, ''Setting Customer Service Standards'' which clearly define his vision that the Federal

agencies will put the people first. Executive Order 12862 directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. Section 1(b) of Executive Order 12862 requires government agencies to ''survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services'' and Section 1(e) requires agencies ''survey front-line employees on barriers to, and ideas for, matching the best in business.''

On March 30, 2016, President Obama established the Core Federal Services Council, which again emphasized the need to deliver world-class customer service to the American people. The Council, composed of the major high-volume, high-impact Federal programs that provide transactional services directly to the public, were encouraged ''to improve the customer experience by using public and private sector management best practices, such as conducting self-assessments and journey mapping, collecting transactional feedback data, and sharing such data with frontline and other staff.''

In March 2018, the Administration of President Trump launched the President's Management Agenda (PMA) and established new Cross-Agency Priority (CAP) Goals. Excellent service was established as a core component of the mission, service, stewardship model that frames the entire PMA, embedding a customer-focused approach in all of the PMA's initiatives. This model was also included in the 2018 update of the Federal Performance Framework in Circular A–11, ensuring 'excellent service' as a focus in future agency strategic planning efforts. The PMA included a CAP Goal on Improving Customer Experience with Federal Services, with a primary strategy to drive improvements within 25 of the nation's highest impact programs. This effort is supported by an interagency team and guidance in Circular A–11 requiring the collection of customer feedback data and increasing the use of industry best practices to conduct customer research.

These Presidential actions and requirements establish an ongoing process of collecting customer insights and using them to improve services. This new request will enable the Department of Homeland Security (hereafter ''the Agency'') to act in accordance with OMB Circular A–11 Section 280 to ultimately transform the experience of its customers to improve both efficiency and mission delivery, and increase accountability by communicating about these efforts with the public.

The Agency will collect, analyze, and interpret information gathered through this generic clearance to identify services' accessibility, navigation, and use by customers, and make improvements in service delivery based on customer insights gathered through developing an understanding of the user experience interacting with Government.

For the purposes of this request, ''customers'' are individuals, businesses, and organizations that interact with a Federal Government agency or program, either directly or via a Federal contractor.

''Service delivery'' or ''services'' refers to the multitude of diverse interactions between a customer and Federal agency such as applying for a benefit or loan, receiving a service such as healthcare or small business counseling, requesting a document such as a passport or social security card, complying with a rule or regulation such as filing taxes or declaring goods, utilizing resources such as a park or historical site, or seeking information such as public health or consumer protection notices.

Under this request, three types of activities will be conducted to generate customer insights:

Customer Research (E.g., User Persona and Journey Map Development): A critical first component of understanding customer experience is to develop customer personas and journey maps. This process enables the Agency to more deeply understand the customer segments they serve and to organize the processes customers interact with throughout their engagement with the Federal entity to accomplish a task or meet a need. In order to adequately capture the perspective of the customer and the barriers or supports that exist as they navigate these journeys, it is necessary to directly interact with customers rather than relying solely upon the Agency's stated policy of how a process should work or employees' interpretation of how services are delivered. This can occur through a variety of information collection mechanisms that include focus groups, individual intercept interviews at a service site, shadowing a user as they navigate a Federal service and documenting their reactions and frustrations, customer free-response comment cards, or informal small discussion groups.

Regardless of the format, the Agency will apply Human Centered Design (HCD) Discovery methods to generate personas and journey maps, ultimately identifying customer insights. An approach to recruiting participants, resources for preparing and structuring interviews, and a consent form for interviewees can be found at *https://www.gsa.gov/cdnstatic/HCD-Discovery-Guide-Interagency-v12-1.pdf.* This document is also included in the package.

Insights documented, summarized and presented in customer personas and journey maps can then be shared across the program, the Agency, other Federal, State, and Local government stakeholders and even with the public to validate and discuss common themes identified. These products can be used as ''indicator lights'' for where more rigorous qualitative and quantitative research can be conducted to improve Federal service delivery.

Publicly shared personas and journey maps will include language that qualifies their use (see question #16), and high-level, non-identifying descriptive statistics of the population(s) interviewed to develop it (ex. ''25 Service members that transitioned to civilian employment within the last decade, 14 female, 11 male, 21 enlisted and 4 officers) to ensure that the perspective represented is understood. Quotes or insights will never be associated with an actual individual unless they have signed a release form (see link above for template) and this was included in the specific collection request. Customer Feedback (Satisfaction Survey): Surveys to be considered under this generic clearance will only include those surveys modeled on the OMB Circular A–11 CX Feedback survey to improve customer service by collecting feedback at a specific point during a customer journey. This could include upon submitting a form online on a Federal website, speaking with a call center representative, paying off a loan, or visiting a Federal service center.

In an effort to develop comparable, government-wide scores that will enable cross-agency or industry benchmarking (when relevant) and a general indication of an agency's overall customer satisfaction, OMB Circular A–11 Section 280 requires high impact services to measure their touchpoint/transactional performance in as a real-time manner as possible, with respect to satisfaction and confidence/trust using the following questions, without modification. Responses will typically be assessed on a 5-point Likert scale (1 (strongly disagree) to 5 (strongly agree)). These questions align to drivers of experience developed in consultation with leading organizations in customer experience both in the private sector and industry

groups that study the most critical drivers of customer experience.

- 5 point Likert scale: *I am satisfied with the service I received from [Program/Service name].*
- 5 point Likert scale: *This interaction increased my confidence in [Program/Service name].* OR *I trust [Agency/Program/Service name] to fulfill our country's commitment to [relevant population].*
- Free response: *Any additional feedback on your scores above?*
- 5 point Likert scale: *My need was addressed* OR *My issue was resolved.* OR *I found what I was looking for.*
- 5 point Likert scale: *It was easy to complete what I needed to do.*
- 5 point Likert scale: *It took a reasonable amount of time to do what I needed to do.*
- 5 point Likert scale: *I was treated fairly.*
- 5 point Likert scale: *Employees I interacted with were helpful.*
- Free response: *Any additional feedback for [Program/Service name]?*

The surveys shall include no more than 15 questions in total. The Agency may add a few additional questions to those listed above to clarify type of service received, inquiry type, service center location, or other program-specific questions that can help program managers to filter and make use of the feedback data.

As part of the Customer Experience CAP goal's strategy to increase transparency to drive accountability, the feedback data collected through the A–11 Standard Feedback survey is meant to be shared with the public. This collection is part of the government-wide effort to embed standardized customer metrics within high-impact programs to create government-wide performance dashboards. Data collected from the questions listed above will be submitted by the Agency to OMB at a minimum quarterly for updating of customer experience dashboards on *performance.gov.* This dashboard will also include the total volume of customers that passed through the transaction point at which the survey was offered, the number of customers the survey was presented to, the number of responses, and the mode of presentation and response (online survey, in-person, post-call touchtone, mobile, email). This will help to qualify the data's representation by showing both the response rate and total number of actual responses.

User Testing of Services and Digital Products: Agencies should continually review, update and refine their service delivery, including communication materials, processes, supporting reference materials, and digital products associated with a Federal program. This often requires ''field testing'' program informational materials, process updates, forms, or digital products (such as websites or mobile applications) by interacting with past, existing, or future customers and soliciting feedback. These activities can include cognitive laboratory studies, such as those used to refine questions on a program form to ensure clarity, demo kiosks at a service center where customers can provide informal feedback while waiting for a service, or more formally scheduled in-person observation testing (*e.g.,* website or software usability tests). These information collection activities are more specific than broad customer research and related to a particular artifact/product of a Federal program. As such, there will be a more structured interview/set of questions than more open-ended customer research. Findings from these activities are meant to support the design and implementation of Federal program services and digital products, and may only be shared in an anonymized/in aggregate if a particular insight is useful to include as part of a customer persona, journey map, or common lesson learned for improving service delivery.

The Agency will only submit under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered is intended to be used for general service improvement and program management purposes.
- Upon agreement between OMB and the agency all or a subset of information may be released as part of A–11, Section 280 requirements only on *performance.gov.* Additionally, summaries of customer research and user testing activities may be included in public-facing customer journey maps and summaries.
- Additional release of data must be done coordinated with OMB.

This clearance will help the Agency to establish a process where customer experience is regularly monitored and measured. The results will assist the Agency in the planning and decision-making processes to improve the quality of the Agency's products and services.

Results from feedback activities and surveys will be used to measure against established baseline standards and for measuring the Agency's progress toward defined goals.

There are neither legal nor technical obstacles to the use of technology in these information collection activities. The determination to use technology, and which technology to use, will be based on the type of information collected and the utility and the availability of specific technology to each respondent in a proposed customer research activity or feedback survey.

The Agency will work to ensure the streamlining of all customer research and feedback surveys under this clearance. The Agency will also work to reduce existing customer feedback surveys and questions into alignment with the A–11 Standard CX Feedback survey as part of a coordinated Agency-wide customer program. The information to be supplied on these surveys will not be duplicated on any other information collection.

The information collected in these surveys will represent the minimum burden necessary to evaluate customer experience with the Agency's programs and processes. The Agency will minimize the burden on respondents by sampling as appropriate, asking for readily available information, and using short, easy-to-complete information collection instruments.

Without regular mechanisms for collecting and generating customer insights, the Agency is not able to provide the public with the highest level of service. These activities will be coordinated to ensure that most individual respondents will not be asked to respond to more than one survey instrument per transaction or to participate in more than one qualitative feedback or testing activity.

These surveys will be consistent with all the guidelines in 5 CFR 1320.5, especially those provisions in subsection (g) which require that a statistical survey be designed to produce results that can be generalized to the universe of study. There are no special circumstances that would cause this information collection to be conducted in an unusual or intrusive manner. All participation will be voluntary. Should the Agency need to deviate from the requirements outlined in 5 CFR 1320,

individual justification will be provided to OMB on a case-by-case basis.

No attempt will be made to generalize the findings from these three groups of activities to be nationally representative or statistically valid. They are meant to compliment and help to contextualize performance and evaluation data as part of a three-pronged approach to understanding Federal program implementation and opportunities for improvement (Performance, Evaluation, and ''Feedback'' data [1]).

Customer Research: Insights gleaned from qualitative customer research may be presented publicly in the format of a conceptual user persona or customer journey map. Customer research can take anywhere from 6 weeks for a short sprint to a full fiscal year, depending on the specific project. The Agency expects most journey mapping efforts to last approximately 6 months, with a user persona and journey maps ready for feedback (both from internal and external to government stakeholders) within one month of completing customer research.

Publicly available Journey maps will include specific language to contextualize their use and will be included in specific requests. This language can include something like:

What should I know about journey maps?

Journey maps are living documents—continually refined and revisited. There is never a ''final'' version, and these maps are meant to serve as a summary of the voices of actual customers of U.S. Government services. A map may not precisely document the way a Government program is meant to be navigated, accessed, or used. It might not capture every government program or resource available to a customer segment.

However, it is the product of a qualitative research approach to gather insights from customers' actual experiences. These findings can help us to identify areas for high-impact improvements across delivery channels and organizational silos.

Customer Feedback: Once touchpoint surveys are implemented at transaction points along the customer journey interacting with Federal services, data from the A–11 Standard CX Feedback survey will be submitted to OMB quarterly for review and publication in a summary dashboard on *performance.gov.*

This data will include:

- Specific transaction point at which the survey was administered
- Total volume of customers that interacted at this transaction point during the given quarter
- Total volume of customers that were presented the survey
- Total number of customers who completed the survey
- Mode(s) of collection (ex. online, over mobile, over the phone, paper form)
- Specific survey instrument that shows the Agency's wording of standard A–11 CX Feedback survey
- Distribution of the responses across the 5 point Likert scale for each of the standard questions

The purpose of collecting volume and response numbers is to share customer feedback measures in context of the response rate and total volume of responses to qualify interpretation of the CX feedback data.

Testing of Services and Digital Products: Similar to Customer Research, this can range from a short two-day rapid feedback from users within an Agile product development sprint or longer effort to gather more extensive feedback from multiple physical locations.

DHS is particularly interested in comments which:

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.

Analysis

Agency: Department of Homeland Security DHS.

Title: Generic Clearance for Improving Customer Experience (OMB Circular A–11, Section 280 Implementation).

OMB Number: 1601–NEW.

Frequency: On Occasion.

Affected Public: Individuals.

Number of Respondents: 2,001,550.

Estimated Time per Respondent: 3 mins or up to 2 hours.

Total Burden Hours: 101,125.

Dated: May 12, 2020.

Melissa Bruce,

Executive Director, Business Management Office.

[FR Doc. 2020–10546 Filed 5–15–20; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7027–N–13]

60-Day Notice of Proposed Information Collection: HUD Multifamily Rental Project Closing Documents; OMB Control No.: 2502–0598

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below in accordance with the Paperwork Reduction Act (PRA). The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* July 17, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this information collection. Comments should refer to the collection by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of the documents to be submitted to OMB may be provided by Ken Doresky.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is

seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: HUD Multifamily Rental Project Closing Documents.

OMB Approval Number: 2502–0598.

OMB Expiration Date: 09/30/2021.

Type of Request: Revision of currently approved collection.

Form Number Being Revised: HUD–92420M.

Description of the need for the information and proposed use: The form, Subordination Agreement, HUD–92420M, is used in FHA-insured multifamily rental project loan closings with secured, publicly financed secondary debt, often to promote affordable housing. The document is used to subordinate such secured, secondary financing to the lien of the FHA-insured mortgage, which must be in a first lien position as required by the National Housing Act (12 U.S.C. 1701 *et. seq.*), on terms and conditions that are legally and administratively acceptable to HUD.

The Subordination Agreement is part of a larger information collection (OMB Control No. 2502–0598) that consists of numerous other closing forms (Closing Documents) used in FHA-insured multifamily transactions. The Closing Documents, including the Subordination Agreement, were last updated pursuant to the Paperwork Reduction Act (PRA) in 2018. However, HUD was not able to complete its review of public comments received in connection with the 30-day **Federal Register** notice (83 FR 29815; 30-day notice) published for the previous PRA renewal for the Closing Documents prior to the OMB deadline. Therefore, when HUD initiates a new PRA process for the Closing Documents later this year, it will include, as a starting point, changes HUD anticipated making in response to the public comments received with the 30-day notice.

Notwithstanding, due to concerns that state and local housing finance agencies (HFAs) have expressed concerning certain terms and conditions in the 2018 Subordination Agreement, HUD is initiating this separate PRA renewal effort in order to allow HFAs and other interested members of the public an opportunity to comment on the form and HUD to make agreed upon changes on a more immediate timeline. It is HUD's goal that the PRA process for the Subordination Agreement will result in a form that is widely accepted by HFAs to promote greater efficiency and consistency in the FHA multifamily closing process, while also allowing flexibility for HFA requested changes necessary for state or local law, as discussed immediately below.

Revisions to the Subordination Agreement

HUD added the following instruction at the request of OMB given HUD's policy of considering requested Subordination Agreement changes to accommodate state or local law: ''HUD will consider requested changes to this form that are necessary to comply with state or local law. All such requests must be accompanied by a substantive explanation prepared by counsel to the Subordinate Lender. HUD's written acceptance of any changes for state or local law will result in a template Subordination Agreement—Public, for a given jurisdiction and program. Consistent with the PRA, permission to use any such HUD-approved template will expire upon implementation of the next OMB-approved version of this form. When a new OMB form is issued, public lenders may request HUD consideration of changes to the new form in accordance with the level of flexibility the new form provides.'' HUD notes that the underlying PRA burden estimate for the Subordination Agreement now accounts for any legal opinions that may be required to justify state or local law changes.

Similarly, HUD added an instruction in section 3(b) to ensure the Subordination Agreement is consistent with existing HUD policy allowing an exception (on a case-by-case basis) to the requirement that the subordinate loan mature no earlier than the FHA-insured senior loan for deal-specific situations where the resulting risk is appropriately underwritten. Outside of this allowance to permit maturity of the subordinate loan before the FHA-insured senior loan and other existing instructions allowing flexibility for certain other terms (*e.g.,* section 3(c)(4) exception to prohibition against compounding interest for LIHTC transactions), HUD does not anticipate accommodating deal-specific requests for additional changes to the form. HFAs and other interested parties are encouraged to request, and provide a rationale for, any changes deemed necessary during this PRA process.

In response to the 30-day notice, one commenter objected to section 3(c) that requires HUD language be inserted into the subordinate note because many subordinate lenders use pre-approved template documents. HUD rejects this comment because FHA-insured multifamily financing is a national program that requires uniformity to ensure fairness and efficiency in closings. Thus, it is critical that every subordinate loan contain the HUD required language in order to accomplish this goal. HUD is, however, sympathetic to the fact that various HFAs have templates that must go through an approval process; therefore, HUD will permit the HUD-required subordinate note language to be incorporated by reference into the subordinate note.

HUD also rejects a comment objecting to section 3(c)(3) that restricts a transfer of the subordinate note without HUD consent. Section 3(c)(3) reflects HUD's longstanding policy that Surplus Cash Notes are not negotiable instruments or transferable without HUD consent. This policy has been in existence since at least 2011, and since 2002 with the then applicable Secondary Financing Rider that was included in the 2002 MAP Guide The rationale behind this policy is that HUD needs to be able to assess whether such transfers will cause unacceptable risk to the project.

A commenter objected to the language in section 3(c)(6) that the terms and provisions of the subordinate lender's note are enforceable by HUD and cannot be amended without HUD's consent. HUD rejects this comment. This is standard language in several of the Closing Documents. Changing the terms of the subordinate loan without HUD consent could negatively impact HUD.

In response to an informal comment received from an outside party concerning the policy change previously made in in section 6(b) to allow subordinate lenders to exercise their remedies for subordinate loan defaults after a 180-day standstill, HUD proposes to explicitly clarify that such exercise of remedies is only available for covenant events of default, and not monetary events of default. This clarification is consistent with the rationale discussed in the 60-day **Federal Register** notice published on September 5, 2017 (82 FR 41977).

One commenter took issue with the section 7(b) prohibition against a cross-default provision in the subordinate loan documents. HUD rejects this comment as a cross-default prohibition has been in the form since its adoption in 2011. Numerous transactions with public secondary debt have closed without any objection to the prohibition, which can also be found in the MAP Guide. The FHA lender and HUD must control what happens to the property in the event of a default under the FHA-insured loan and whether to remove the borrower through a foreclosure, not the subordinate lender.

One commenter objected to the requirement in section 10(c) that the maturity on the subordinate loan automatically be extended if the FHA loan is extended due to a deferment of amortization or forbearance. HUD rejects this comment as the language in question reflects current MAP Guide policy to reserve this protection as insurer of the first mortgage loan to allow maximum flexibility in distressed project situations.

HUD agrees with an HFA's request to remove language in section 10(e) that would force a subordinate lender to allow an ownership change and assumption of its loan upon HUD approval. Further, HUD also agrees with an HFA's request to remove the requirement in section 10(f) that limits the funds the subordinate lender can receive upon transfer or sale of the property to 75% of net proceeds; HUD will be making a corresponding change to remove this requirement from the MAP Guide.

Respondents (i.e., affected public): FHA lenders, borrowers, housing finance agencies and other government agencies that support affordable housing, and HFA counsel.

Estimated Number of Respondents: 17,468.

Estimated Number of Responses: 17,468.

Frequency of Response: Once per annum.

Average Hours per Response: 1.5 hours.

Total Estimated Burden: 14,286.85.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information.

(3) Ways to enhance the quality, utility, and clarity of the information to be collected.

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD requests that commenters provide comments and proposed changes in narrative and/or bulleted form, accompanied by a detailed explanation and rationale for each requested change. Commenters may include in their detailed explanation and rationale the relevant excerpt(s) from the Subordination Agreement with redlines/strikeouts.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 3507.

Dated: May 12, 2020.

Nacheshia Foxx,

Federal Register Liaison for the Department for Housing and Urban Development.

[FR Doc. 2020–10516 Filed 5–15–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7027–N–14; OMB Control No.: 2502–0595]

60-Day Notice of Proposed Information Collection: FHA-Insured Mortgage Loan Servicing of Payments, Prepayments, Terminations, Assumptions, and Transfers

AGENCY: Office of the Assistant Secretary for Housing- Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* July 17, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: FHA-Insured Mortgage Loan Servicing of Payments, Prepayments, Terminations, Assumptions, and Transfers.

OMB Approval Number: 2502–0595.

Type of Request: Revision of currently approved collection.

Form Numbers: HUD–92210.1.

Description of the need for the information and proposed use: FHA insurance is an important source of mortgage credit for low and moderate-income borrowers. It is essential that the Federal Housing Administration (FHA) maintain a healthy mortgage insurance fund through premiums charged to the borrower by FHA. Providing policy and guidance to the single family housing mortgage industry regarding changes in FHA's program is essential to protect the fund. The information requests referred to in this PRA submission is to provide information to support HUD's policy and guidance.

Respondents: Business or other for profit and Individuals or households.

Estimated Number of Respondents: 182.

Estimated Number of Responses: 15,834.

Frequency of Response: On occasion.

Average Hours per Response: 60 minutes to 67 minutes.

Total Estimated Burdens: 17,813.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to

enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 2 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

The General Deputy Assistant Secretary for Housing, John L. Garvin, having reviewed and approved this document, is delegating the authority to electronically sign this document to submitter, Nacheshia Foxx, who is the **Federal Register** Liaison for HUD, for purposes of publication in the **Federal Register**.

Dated: May 13, 2020.

Nacheshia Foxx,

Federal Liaison for the Department of Housing and Urban Development.

[FR Doc. 2020–10612 Filed 5–15–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7027–N–12]

60-Day Notice of Proposed Information Collection: Rental Assistance Demonstration (RAD); Supporting Contracts and Processing Requirements; OMB Control No.: 2502–0612

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* July 17, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Rental Assistance Demonstration (RAD); Supporting Contracts and Processing Requirements.

OMB Approval Number: 2502–0612.

OMB Expiration Date: 04/30/2020.

Type of Request: Revision of a currently approved collection.

Form Numbers: 52611, 52614, 52617, 52619, 52620A, 52620B, 52621A, 52624, 52625, 5679, 5977, 5978.

Description of the need for the information and proposed use: RAD allows Public Housing, Mod Rehab, Rent Supp, RAP, and 202 PRAC properties to convert to long-term project-based Section 8 rental assistance contracts. Participation in the demonstration is voluntary and HUD approval is discretionary. Participating Public Housing Agencies (PHAs) and Multifamily Owners are required to submit documentation for processing and completing the conversion. Through these documents (collectively, the RAD documents), HUD evaluates whether the PHA or owner has met all of the requirements necessary to complete conversion as outlined in Housing Notice 2019–09/PIH Notice 2019–23 (HA) Rental Assistance Demonstration—Final Implementation Notice (RAD Notice) Revision 4 and Housing/PIH Notice 2016–17—Rental Assistance Demonstration (RAD) Notice Regarding Fair Housing and Civil Rights Requirements and Relocation Requirements Applicable to RAD First Component—Public Housing Conversions or successor notices. The RAD processing request is made through a Web-based portal. Overall, the RAD documents and information requested through such documents allow HUD to determine which applicants continue to meet the eligibility and conversion requirements. Finally, all applicants will be required to sign the appropriate contractual documents to complete conversion and bind both the applicant and HUD, as well as set forth the rights and duties of the applicant and HUD, with respect to the converted project and any payments under that project. This is a revision request of a currently approved collection. Several changes have been made under both components of RAD. The changes under the First Component of RAD are as follows: The inclusion of the RAD Application under this ICR (formerly under OMB Approval Number 2577–0278), the reorganization and streamlining of RAD Fair Housing, Civil Rights, and Relocation Submission Requirements, an update of all forms to reflect programmatic changes and improvements over the past three years, the replacement of a rider to an existing PBV HAP contract with a single contract form that incorporates all requirements into a single form, the creation of a survey of new contract voucher administrators to ensure that the amount of funding provided for converted properties is adequate, and the creation of a Post-Closing Completion Certification form for owners to document compliance with certain requirements. In addition, under the Second Component of RAD, the changes are as follows: The creation of the Submission of Interest for owners to connect with HUD for technical assistance, the creation of HAP contracts for the conversion of Project Rental Assistance Contract (PRAC) to PBRA and PBV as well as the new Elderly Housing Use Agreement to be recorded on PRAC properties that have converted through RAD, an update of all forms to reflect programmatic changes and improvements over the past three years, and the implementation of the Mod Rehab data, a collection of owner information requested. Both Components of RAD will now have the incorporation of a Conversion Plan under the Second Component, modeled after the Financing Plan used in the First Component. Both components will also now include a collection of a post-closing completion certification to monitor compliance with requirements

agreed to, as part of the conversion, and ensuring that any and all record-keeping that PHAs and owners must undertake to comply with requirements under the RAD Notice is acknowledged under this ICR.

Respondents (*i.e. affected public*): Public housing agencies and multifamily owners.

Estimated Number of Respondents: 370.

Estimated Number of Responses: 370.

Frequency of Response: Once per application.

Average Hours per Response: 23.

Total Estimated Burden: 5,919.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: May 12, 2020.

Nacheshia Foxx,

Federal Liaison for the Department of Housing and Urban Development.

[FR Doc. 2020–10521 Filed 5–15–20; 8:45 am]

BILLING CODE 4210–67–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–510 and 731–TA–1245 (Review)]

Calcium Hypochlorite From China; Scheduling of Expedited Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping and countervailing duty orders on calcium hypochlorite from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: March 6, 2020.

FOR FURTHER INFORMATION CONTACT: Tyler Berard (202–205–3354), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On March 6, 2020, the Commission determined that the domestic interested party group response to its notice of institution (84 FR 66002, December 2, 2019) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).[2]

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Staff report.—A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on May 18, 2020, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[3] and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before May 22, 2020 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by May 22, 2020. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules with respect to filing were revised effective July 25, 2014. *See* 79 FR 35920 (June 25, 2014). The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

[2] Commissioner Jason E. Kearns did not participate in these determinations.

[3] The Commission has found the response submitted by Innovative Water Care, LLC d/b/a Sigura to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: May 12, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–10537 Filed 5–15–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[Docket No. ATF 2018R–02]

International Trade Data System Test—Cessation of Voluntary Export Pilot Project

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice.

ACTION: Notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) announces cessation of its voluntary participation in a U.S. Customs and Border Protection (CBP) pilot test of the International Trade Data System (ITDS) for processing import and export-related ATF forms and data using the Partner Government Agency (PGA) Message Set and the Automated Commercial Environment (ACE). The Border Interagency Executive Counsel (which oversees ITDS implementation) requires each agency to announce the start and cessation of the required pilots. ATF's participation for the imports and exports requirements were done separately with the imports pilot being completed in 2015. *See* 81 FR 60022 (August 31, 2016). This notice now concludes ATF participation in the pilot for the exportation requirements. While this notice announces the cessation of the pilot program, CBP has not yet announced the date that filing entries in ACE will be mandatory. The pilot test allowed participating exporters to submit ATF Form 9, Application and Permit for Permanent Exportation of Firearms (Form 9), and additional information to CBP electronically to obtain CBP certification of exportation. During the pilot, CBP validated that information and electronically transmitted export information to ATF to satisfy CBP's certification requirements.

DATES: This notice is effective on the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: National Firearms Act, Industry Processing Branch Chief, 244 Needy Road, Martinsburg, WV, 25045, 304–616–4500, *IPB@atf.gov.*

SUPPLEMENTARY INFORMATION: ATF participated in a voluntary CBP pilot test of the ITDS involving the use of the PGA Message Set and ACE. *See* 81 FR 70441 (October 12, 2016). The pilot allowed exporters to submit required data to CBP through ACE for the purposes of obtaining CBP release and receipt. CBP validated that information electronically, and transmitted entry and release information to ATF to satisfy certification requirements. More than a dozen agencies participated in various pilots all of which are at different stages of testing and implementation.

In compliance with Executive Order 13659, Streamlining the Export/Import Process for America's Businesses (79 FR 10657, Feb. 25, 2014), ATF joined CBP's pilot test and encouraged voluntary participation of U.S. exporters of National Firearms Act (NFA) firearms, as defined under title 26, United States Code (U.S.C.), section 5845(a)). The NFA (and the implementing regulations in title 27, Code of Federal Regulations (CFR), part 479, require any person desiring to export a firearm without payment of transfer tax to apply for a permit (ATF Form 9). *See* 26 U.S.C. 5854; 27 CFR 479.114. The approval provides for deferment of tax liability. In accordance with Federal regulation, the exporter would furnish ATF evidence of the exportation of the firearm(s) within a six-month's period of the date of issuance of the permit to relieve the tax liability. *See* 27 CFR 479.115. After the merchandise is exported, CBP would execute the certificate of exportation (Part 3 of Form 9) and send a copy of the executed certificate to ATF. *See* 27 CFR 479.117. This pilot program allowed CBP to transmit the certificate to ATF electronically, with the exporter continuing to apply on Form 9 for the permit.

The Border Interagency Executive Council, Departments of Treasury and Homeland Security, which oversees ITDS implementation, asked ATF to end the pilot. Pilot participants can continue to function as they did while on the pilot. Participants will not notice any differences after the pilot has ended. At some point, CBP will mandate importers and exporters to use the ACE single window; however, DHS needs all pilots successfully completed to move to their next phase of implementation. The termination of the pilot will not cause any delays for participating exporters, and CBP will continue to transmit the certificate of exportation to ATF electronically.

Exporters should be aware that no changes have been made to the requirement that they submit their copy of ATF Form 9 to ATF within a six month period from the date of issuance of the permit to export firearms. *See* 27 CFR 479.118.

Regina Lombardo,

Acting Deputy Director.

[FR Doc. 2020–10581 Filed 5–15–20; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–610]

Bulk Manufacturer of Controlled Substances Application: SpecGx LLC

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before July 17, 2025.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration (DEA), Attention: DEA **Federal Register** Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on January 29, 2020, SpecGx LLC, 3600 North Second Street, Saint Louis, Missouri 63147–3457 applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substances:

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid	2010	I

Controlled substance	Drug code	Schedule
Tetrahydrocannabinols	7370	I
Codeine-N-oxide	9053	I
Dihydromorphine	9145	I
Difenoxin	9168	I
Morphine-N-oxide	9307	I
Normorphine	9313	I
Norlevorphanol	9634	I
Acetyl Fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide)	9821	I
Butyryl Fentanyl	9822	I
Fentanyl related-substances as defined in 21 CFR 1308.11(h)	9850	I
Amphetamine	1100	II
Methamphetamine	1105	II
Lisdexamfetamine	1205	II
Methylphenidate	1724	II
Nabilone	7379	II
4-Anilino-N-phenethyl-4-piperidine (ANPP)	8333	II
Codeine	9050	II
Dihydrocodeine	9120	II
Oxycodone	9143	II
Hydromorphone	9150	II
Diphenoxylate	9170	II
Ecgonine	9180	II
Hydrocodone	9193	II
Levorphanol	9220	II
Meperidine	9230	II
Methadone	9250	II
Methadone intermediate	9254	II
Dextropropoxyphene, bulk (non-dosage forms)	9273	II
Morphine	9300	II
Oripavine	9330	II
Thebaine	9333	II
Opium tincture	9630	II
Opium, powdered	9639	II
Oxymorphone	9652	II
Noroxymorphone	9668	II
Alfentanil	9737	II
Remifentanil	9739	II
Sufentanil	9740	II
Tapentadol	9780	II
Fentanyl	9801	II

The company plans to manufacture bulk active pharmaceutical ingredients (APIs) for distribution to its customers. In reference to drug code 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture this drug as synthetic. No other activities for this drug code is authorized for this registration.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2020–10601 Filed 5–15–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–646]

Importer of Controlled Substances Application: Scientific Botanical Pharmaceutical, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before June 17, 2020. Such persons may also file a written request for a hearing on the application on or before June 17, 2020

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA **Federal Register** Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on January 27, 2017, Scientific Botanical Pharmaceutical, Inc., 1225 West Deer Valley Road Phoenix, Arizona 85027, applied to be registered as an importer of the following basic class(es) of controlled substances:

Controlled substance	Drug Code	Schedule
Marihuana	7360	I

Controlled substance	Drug Code	Schedule
Tetrahydrocannabinols	7370	I

The company plans to import the listed controlled substances as seeds, cuttings, or other plant tissue material in order to conduct research on genetic development and manufacturing processes. This notice does not constitute an evaluation or determination of the merits of the company's application.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2020–10625 Filed 5–15–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0006]

Agency Information Collection Activities; Proposed eCollection, eComments Requested; Revision of a Previously Approved Collection; The National Forensic Laboratory Information System Collection of Analysis Data

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 60-Day Notice.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until July 17, 2020.

FOR FURTHER INFORMATION CONTACT: If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Scott A. Brinks, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–3261.

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 agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information proposed 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 forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *Title of the Form/Collection:* The National Forensic Laboratory Information System Collection of Analysis Data.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There are no form numbers for the collection. The applicable component within the Department of Justice is the Drug Enforcement Administration, Diversion Control Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected public (Primary): Forensic Science Laboratory Management.

Affected public (Other): None.

Abstract: This collection provides the Drug Enforcement Administration (DEA) with a national database on analyzed drug evidence from non-federal laboratories. Information from this database is combined with the other existing databases to develop more accurate, up-to-date information on abused drugs. This database represents a voluntary, cooperative effort on the part of participating laboratories to provide a centralized source of analyzed drug data.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The DEA estimates that 2,640 persons annually for this collection at 2.2 hour per respondent, for an annual burden of 5,812 hours.

6. *An estimate of the total public burden (in hours) associated with the proposed collection:* The DEA estimates this collection takes 5,812 annual burden hours.

If additional information is required, please 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, Suite 3E.405B, Washington, DC 20530.

Dated: May 12, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–10545 Filed 5–15–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB 1121–NEW]

Agency Information Collection Activities; Proposed Collection Comments Requested; New Data Collection: Office for Victims of Crime (OVC) Tribal Financial Management Center (TFMC) Needs Assessment and Evaluation OMB Package

AGENCY: Office for Victims of Crime, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice, Office of Justice Programs, Office for Victims of Crime will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

DATES: The purpose of this notice is to allow for an additional 60 days for public comment until July 17, 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 please contact James Simonson, Associate Director, (202) 353–9313, Office for Victims of Crime, Office of

Justice Programs, Department of Justice, 810 7th Street NW, Washington, DC 20530.

SUPPLEMENTARY INFORMATION:

This process is conducted in accordance with 5 CFR 1320.10. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

▪ Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

▪ Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

▪ 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 Data Collection.

2. *The title of the form/collection:* OVC TFMC Needs Assessment and Evaluation Package.

3. *The agency form number:* N/A. Office for Victims of Crime, Office of Justice Programs, Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary Respondents: Tribal agencies/entities. Other Possible Respondents: State, Local, and Federal Government; Not-for-profit institutions; other Businesses.

Abstract: OVC TFMC Needs Assessment and Evaluation Package is designed to collect the data necessary to address two objectives. First, to provide information about the capacity of American Indian and Alaska Native (AI/AN) communities to manage the financial aspects of federal awards. This information will help OVC TFMC tailor its resources to support AI/AN communities as they develop and maintain the capacity to successfully manage the financial aspects of their federal awards. Second, this data will allow for the continuous assessment of the satisfaction and outcomes of assistance provided through OVC TFMC for both monitoring and accountability purposes. OVC TFMC will give these forms to recipients of training and technical assistance, users of the website and the virtual support center, tribal advisory council, and other professionals assisting with, or receiving assistance from, OVC TFMC.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are an estimated 9,750 respondents who will require an average of 13 minutes to complete the needs assessment or evaluation forms (ranging from 1 to 60 minutes across evaluation forms, interview guides, and needs assessment surveys).

6. *An estimate of the total public burden (in hours) associated with the collection:* The total public burden hours for this information collection are estimated to be 3,063 hours (1,021 hours annually).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: May 12, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–10543 Filed 5–15–20; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0001]

Agency Information Collection Activities; Proposed eCollection, eComments Requested; Revision of a Previously Approved Collection Report of Theft or Loss of Controlled Substance DEA Form 106

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 30-day Notice.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until June 17, 2020.

FOR FURTHER INFORMATION CONTACT: 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.

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 agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information proposed 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 forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *Title of the Form/Collection:* Report of Theft or Loss of Controlled Substance.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* DEA Form 106. The applicable component within the Department of Justice is the Drug Enforcement Administration, Diversion Control Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected public (Primary): Business or other for-profit.

Affected public (Other): None.

Abstract: In accordance with current 21 CFR 1301.74, a DEA registrant must notify the Field Division Office of the Administration in writing, of any theft

or significant loss of any controlled substance within one business day of discovery of the theft or loss, and must complete and send to the DEA a DEA Form 106 upon determination of a theft or significant loss. The DEA Form 106 is designed to provide a uniform method of reporting and recording thefts and losses of controlled substances as required by 21 U.S.C. 827, 21 CFR 1301.74(c) and 1301.76(b). The form is entitled ''Report of Theft or Loss of Controlled Substances'' and it is used by the DEA to help determine the quantities and types of controlled substances that are stolen or lost. It may also serve as a record of the theft or loss for the registrant. The form is being revised to mirror the DEA Form 107, entitled ''Report of Theft or Loss of Listed Chemicals.''

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

Estimated Total Number of Respondents: 10,693.

Total Annual Responses: 37,047.

Average Burden per Collection: 0.3333 hour.

6. *An estimate of the total public burden (in hours) associated with the proposed collection:* The DEA estimates that this collection takes 12,349 annual burden hours.

If additional information is required please 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, Suite 3E.405B, Washington, DC 20530.

Dated: May 12, 2020.

Melody Braswell,

Department Clearance Officer for PRA,U.S. Department of Justice.

[FR Doc. 2020–10544 Filed 5–15–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of the Extended Benefit (EB) Program for New York

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

This notice announces a change in benefit payment status under the EB program for New York.

The following change has occurred since the publication of the last notice regarding New York's EB status:

New York's 13-week insured unemployment rate (IUR) for the week ending April 19, 2020 was 5.27 percent, which exceeds 120 percent of the corresponding rate in the prior two years. This IUR caused New York to be triggered ''on'' to an EB period that began May 4, 2020. The State will remain in an EB period for a minimum of 13 weeks.

The trigger notice covering state eligibility for the EB program can be found at: *http://oui.doleta.gov/unemploy/claims_arch.asp.*

Information for Claimants

The duration of benefits payable in the EB program and the terms and conditions on which they are payable are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13 (c) (1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance Room S–4524, Attn: Kevin Stapleton, 200 Constitution Avenue NW, Washington, DC 20210, telephone number: (202)-693–3009 (this is not a toll-free number) or by email: *Stapleton.Kevin@dol.gov.*

Signed in Washington, DC.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–10554 Filed 5–15–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of the Extended Benefit Program for Pennsylvania

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

This notice announces a change in benefit payment status under the EB program for Pennsylvania.

The following change has occurred since the publication of the last notice regarding Pennsylvania's EB status:

Pennsylvania's 13-week insured unemployment rate (IUR) for the week ending April 18, 2020 was 5.8 percent, which exceeds 120 percent of the corresponding rate in the prior two years. This IUR caused Pennsylvania to be triggered ''on'' to an EB period that began May 3, 2020. The State will remain in an EB period for a minimum of 13 weeks.

The trigger notice covering state eligibility for the EB program can be found at: *http://oui.doleta.gov/unemploy/claims_arch.asp.*

Information for Claimants

The duration of benefits payable in the EB program and the terms and conditions on which they are payable are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13 (c) (1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance Room S–4524, Attn: Kevin Stapleton, 200 Constitution Avenue NW, Washington, DC 20210, telephone number: (202)-693–3009 (this is not a toll-free number) or by email: *Stapleton.Kevin@dol.gov.*

Signed in Washington, DC.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–10555 Filed 5–15–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of the Extended Benefit (EB) Program for Puerto Rico

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

This notice announces a change in benefit payment status under the EB program for Puerto Rico.

The following change has occurred since the publication of the last notice regarding Puerto Rico's EB status:

Puerto Rico's 13-week insured unemployment rate (IUR) for the week ending April 18, 2020 was 5.20 percent, which exceeds 120 percent of the corresponding rate in the prior two years. This IUR caused Puerto Rico to be triggered ''on'' to an EB period that began May 3, 2020. The State will remain in an EB period for a minimum of 13 weeks.

The trigger notice covering state eligibility for the EB program can be found at: *http://oui.doleta.gov/unemploy/claims_arch.asp.*

Information for Claimants

The duration of benefits payable in the EB program and the terms and conditions on which they are payable are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13 (c) (1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance Room S–4524, Attn: Kevin Stapleton, 200 Constitution Avenue NW, Washington, DC 20210, telephone number: (202)-693–3009 (this is not a toll-free number) or by email: *Stapleton.Kevin@dol.gov.*

Signed in Washington, DC.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–10557 Filed 5–15–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of the Extended Benefit (EB) Program for Nevada

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

This notice announces a change in benefit payment status under the EB program for Nevada.

The following change has occurred since the publication of the last notice regarding Nevada's EB status:

Nevada's 13-week insured unemployment rate (IUR) for the week ending April 18, 2020 was 5.8 percent, which exceeds 120 percent of the corresponding rate in the prior two years. This IUR caused Nevada to be triggered ''on'' to an EB period that began May 3, 2020. The State will remain in an EB period for a minimum of 13 weeks.

The trigger notice covering state eligibility for the EB program can be found at: *http://oui.doleta.gov/unemploy/claims_arch.asp.*

Information for Claimants

The duration of benefits payable in the EB program and the terms and conditions on which they are payable are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13 (c) (1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance Room S–4524, Attn: Kevin Stapleton, 200 Constitution Avenue NW, Washington, DC 20210, telephone number: (202)-693–3009 (this is not a toll-free number) or by email: *Stapleton.Kevin@dol.gov.*

Signed in Washington, DC.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–10549 Filed 5–15–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of the Extended Benefit (EB) Program for Massachusetts

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

This notice announces a change in benefit payment status under the EB program for Massachusetts.

The following change has occurred since the publication of the last notice regarding Massachusetts' EB status:

Massachusetts' 13-week insured unemployment rate (IUR) for the week ending April 18, 2020 was 5.34 percent, which exceeds 120 percent of the corresponding rate in the prior two years. This IUR caused Massachusetts to be triggered ''on'' to an EB period that began May 3, 2020. The State will remain in an EB period for a minimum of 13 weeks.

The trigger notice covering state eligibility for the EB program can be found at: *http://oui.doleta.gov/unemploy/claims_arch.asp.*

Information for Claimants

The duration of benefits payable in the EB program and the terms and conditions on which they are payable are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13 (c) (1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance Room S–4524, Attn: Kevin Stapleton, 200 Constitution Avenue NW, Washington, DC 20210, telephone number: (202)-693–3009 (this is not a toll-free number) or by email: *Stapleton.Kevin@dol.gov.*

Signed in Washington, DC.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–10552 Filed 5–15–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of the Extended Benefit (EB) Program for West Virginia

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

This notice announces a change in benefit payment status under the EB program for West Virginia.

The following change has occurred since the publication of the last notice regarding West Virginia's EB status:

West Virginia's 13-week insured unemployment rate (IUR) for the week ending April 18, 2020 was 5.52 percent, which exceeds 120 percent of the corresponding rate in the prior two years. This IUR caused West Virginia to be triggered ''on'' to an EB period that began May 3, 2020. The State will remain in an EB period for a minimum of 13 weeks.

The trigger notice covering state eligibility for the EB program can be found at: *http://oui.doleta.gov/unemploy/claims_arch.asp.*

Information for Claimants

The duration of benefits payable in the EB program and the terms and conditions on which they are payable are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13 (c) (1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance Room S–4524, Attn: Kevin Stapleton, 200 Constitution Avenue NW, Washington, DC 20210, telephone number: (202)-693–3009 (this is not a toll-free number) or by email: *Stapleton.Kevin@dol.gov.*

Signed in Washington, DC.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–10556 Filed 5–15–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of the Extended Benefit (EB) Program for Alaska

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

This notice announces a change in benefit payment status under the EB program for Alaska.

The following change has occurred since the publication of the last notice regarding Alaska's EB status:

Alaska's 13-week insured unemployment rate (IUR) for the week ending April 18, 2020 was 5.93 percent, which exceeds 120 percent of the corresponding rate in the prior two years. This IUR caused Alaska to be triggered ''on'' to an EB period that began May 3, 2020. The State will remain in an EB period for a minimum of 13 weeks.

The trigger notice covering state eligibility for the EB program can be found at: *http://oui.doleta.gov/unemploy/claims_arch.asp.*

Information for Claimants

The duration of benefits payable in the EB program and the terms and conditions on which they are payable are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13 (c) (1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance Room S–4524, Attn: Kevin Stapleton, 200 Constitution Avenue NW, Washington, DC 20210, telephone number: (202) 693–3009 (this is not a toll-free number) or by email: *Stapleton.Kevin@dol.gov.*

Signed in Washington, DC.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–10547 Filed 5–15–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of the Extended Benefit (EB) Program for Montana

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

This notice announces a change in benefit payment status under the EB program for Montana.

The following change has occurred since the publication of the last notice regarding Montana's EB status:

Montana's 13-week insured unemployment rate (IUR) for the week ending April 18, 2020 was 5.56 percent, which exceeds 120 percent of the corresponding rate in the prior two years. This IUR caused Montana to be triggered ''on'' to an EB period that began May 3, 2020. The State will remain in an EB period for a minimum of 13 weeks.

The trigger notice covering state eligibility for the EB program can be found at: *http://oui.doleta.gov/unemploy/claims_arch.asp.*

Information for Claimants

The duration of benefits payable in the EB program and the terms and conditions on which they are payable are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13 (c) (1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance Room S–4524, Attn: Kevin Stapleton, 200 Constitution Avenue NW, Washington, DC 20210, telephone number: (202)-693–3009 (this is not a toll-free number) or by email: *Stapleton.Kevin@dol.gov.*

Signed in Washington, DC.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–10548 Filed 5–15–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of the Extended Benefit (EB) Program for Minnesota

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

This notice announces a change in benefit payment status under the EB program for Minnesota.

The following change has occurred since the publication of the last notice regarding Minnesota's EB status:

Minnesota's 13-week insured unemployment rate (IUR) for the week ending April 18, 2020 was 5.54 percent, which exceeds 120 percent of the corresponding rate in the prior two years. This IUR caused Minnesota to be triggered ''on'' to an EB period that began May 3, 2020. The State will remain in an EB period for a minimum of 13 weeks.

The trigger notice covering state eligibility for the EB program can be found at: *http://oui.doleta.gov/unemploy/claims_arch.asp.*

Information for Claimants

The duration of benefits payable in the EB program and the terms and conditions on which they are payable are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance Room S–4524, Attn: Kevin Stapleton, 200 Constitution Avenue NW, Washington, DC 20210, telephone number: (202) 693–3009 (this is not a toll-free number) or by email: *Stapleton.Kevin@dol.gov.*

Signed in Washington, DC.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–10551 Filed 5–15–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of the Extended Benefit (EB) Program for New Jersey

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

This notice announces a change in benefit payment status under the EB program for New Jersey.

The following change has occurred since the publication of the last notice regarding New Jersey's EB status:

New Jersey's 13-week insured unemployment rate (IUR) for the week ending April 18, 2020 was 5.55 percent, which exceeds 120 percent of the corresponding rate in the prior two years. This IUR caused New Jersey to be triggered ''on'' to an EB period that began May 3, 2020. The State will remain in an EB period for a minimum of 13 weeks.

The trigger notice covering state eligibility for the EB program can be found at: *http://oui.doleta.gov/unemploy/claims_arch.asp.*

Information for Claimants

The duration of benefits payable in the EB program and the terms and conditions on which they are payable are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13 (c) (1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance Room S–4524, Attn: Kevin Stapleton, 200 Constitution Avenue NW, Washington, DC 20210, telephone number: (202)-693–3009 (this is not a toll-free number) or by email: *Stapleton.Kevin@dol.gov.*

Signed in Washington, DC.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–10553 Filed 5–15–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of the Extended Benefit (EB) Program for Washington

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

This notice announces a change in benefit payment status under the EB program for Washington.

The following change has occurred since the publication of the last notice regarding Washington's EB status:

Washington's 13-week insured unemployment rate (IUR) for the week ending April 18, 2020 was 5.74 percent, which exceeds 120 percent of the corresponding rate in the prior two years. This IUR caused Washington to be triggered ''on'' to an EB period that began May 3, 2020. The State will remain in an EB period for a minimum of 13 weeks.

The trigger notice covering state eligibility for the EB program can be found at: *http://oui.doleta.gov/unemploy/claims_arch.asp.*

Information for Claimants

The duration of benefits payable in the EB program and the terms and conditions on which they are payable are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13 (c) (1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance Room S–4524, Attn: Kevin Stapleton, 200 Constitution Avenue NW, Washington, DC 20210, telephone number: (202)-693–3009 (this is not a toll-free number) or by email: *Stapleton.Kevin@dol.gov.*

Signed in Washington, DC.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–10550 Filed 5–15–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of the Extended Benefit (EB) Program for Vermont

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

This notice announces a change in benefit payment status under the EB program for Vermont.

The following change has occurred since the publication of the last notice regarding Vermont's EB status:

Vermont's 13-week insured unemployment rate (IUR) for the week ending April 18, 2020 was 6.27 percent, which exceeds 120 percent of the corresponding rate in the prior two years. This IUR caused Vermont to be triggered ''on'' to an EB period that began May 3, 2020. The State will remain in an EB period for a minimum of 13 weeks.

The trigger notice covering state eligibility for the EB program can be found at: *http://oui.doleta.gov/unemploy/claims_arch.asp.*

Information for Claimants

The duration of benefits payable in the EB program and the terms and conditions on which they are payable are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance Room S–4524, Attn: Kevin Stapleton, 200 Constitution Avenue NW, Washington, DC 20210, telephone number: (202)-693–3009 (this is not a toll-free number) or by email: *Stapleton.Kevin@dol.gov.*

Signed in Washington, DC.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–10558 Filed 5–15–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Benefit Appeals Report

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before June 17, 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.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie by telephone at 202–693–0456, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The ETA 5130, Benefit Appeals Report, contains information on the number of appeals and the resultant decisions classified by program, appeal level, cases filed and disposed of (workload flow), and decisions by level, appellant and issue. The data on this form are used to monitor the benefit appeals process in the state workforce agencies (SWAs). Data are also used for budgeting and workload data. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on October 28, 2019 (84 FR 57769).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–ETA.

Title of Collection: Benefit Appeals Report.

OMB Control Number: 1205–0172.

Affected Public: State, local and Tribal Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 1,272.

Total Estimated Annual Time Burden: 1,272 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: May 8, 2020.

Anthony May,

Acting Departmental Clearance Officer.

[FR Doc. 2020–10560 Filed 5–15–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Information Collection Activities; Comment Request

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed

and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''Current Population Survey (CPS).'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before July 17, 2020.

ADDRESSES: Send comments to Erin Good, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by email to *BLS_PRA_Public@bls.gov.*

FOR FURTHER INFORMATION CONTACT: Erin Good, BLS Clearance Officer, 202–691–7763 (this is not a toll-free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The CPS has been the principal source of the official Government statistics on employment and unemployment for over 75 years. The labor force information gathered through the survey is of paramount importance in keeping track of the economic health of the Nation. The survey is the only source of monthly data on total employment and unemployment. The Employment Situation news release contains data from this survey and is designated as a Principal Federal Economic Indicator (PFEI). Moreover, the survey also yields data on the characteristics of persons not in the labor force. The CPS data are used monthly, in conjunction with data from other sources, to analyze the extent to which, and with what success, the various components of the American population are participating in the economic life of the Nation.

The labor force data gathered through the CPS are provided to users in the greatest detail possible, in conjunction with the demographic information obtained in the survey. In brief, the labor force data can be broken down by sex, age, race, ethnicity, marital status, family composition, educational level, certification and licensing status, disability status, and other characteristics. Through such breakdowns, one can focus on the employment situation of specific population groups as well as on general trends in employment and unemployment. Information of this type can be obtained only through demographically oriented surveys such as the CPS.

The basic CPS data also are used as an important platform on which to base the data derived from the various supplemental questions that are administered in conjunction with the survey. By coupling the basic data from the monthly survey with the special data from the supplements, one can get valuable insights on the behavior of American workers and on the social and economic health of their families.

There is wide interest in the monthly CPS data among Government policymakers, legislators, economists, the media, and the general public. While the data from the CPS are used in conjunction with data from other surveys in assessing the economic health of the Nation, they are unique in various ways. Specifically, they are the basis for much of the monthly Employment Situation report, a PFEI. They provide a monthly, nationally representative measure of total employment, including farm work, self-employment, and unpaid family work; other surveys are generally restricted to the nonagricultural wage and salary sector, or provide less timely information. The CPS provides data on all job seekers, and on all persons outside the labor force, while payroll-based surveys cannot, by definition, cover these sectors of the population. Finally, the CPS data on employment, unemployment, and on persons not in the labor force can be linked to the demographic characteristics of the many groups that make up the Nation's population, while the data from other surveys often have limited demographic information. Many groups, both in the government and in the private sector, are eager to analyze this wealth of demographic and labor force data.

II. Current Action

Office of Management and Budget clearance is being sought for a revision of the Current Population Survey (CPS). This survey is being revised to temporarily add five questions to the Current Population Survey (CPS) to collect data on the effects of novel coronavirus (COVID–19) and the attempts to constrain the spread of the illness. These questions ask about responses to COVID–19 during the previous 4 weeks—specifically, whether respondents teleworked due to COVID–19, were unable to work because an employer closed or lost business, and were paid for hours not worked. A question for people not in the labor force will ask if respondents did not look for work in the previous 4 weeks because of COVID–19. In addition, respondents will be asked whether any household members needed non-coronavirus-related medical care in the previous 4 weeks but did not get it because of the pandemic.

Also, while letters are typically sent to households entering the CPS sample for the first time to inform them that they have been selected for the survey, those letters may be suspended during periods where the Census Bureau's National Processing Center, which handles mailings, is closed to help prevent the spread of COVID–19.

These data were approved for monthly collection for 180 days under Emergency OMB Clearance Package 1220–0194, which expires on October 31, 2020.

The revision of 1220–0100 requests approval to extend collection of the CPS for three years, but the additional COVID–19 data are not intended to be collected for that full timeframe. A non-substantive change request will be submitted to remove the COVID–19 questions and the associated respondent burden from the survey when the BLS determines they are no longer relevant to this collection.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Title: Current Population Survey (CPS).

OMB Number: 1220–0100.

Type of Review: Revision of a currently approved collection.

Affected Public: Households.

Total Respondents: 49,500 per month.

Frequency: Monthly.

Total Responses: 594,000.

Average Time per Response: 9.6 minutes.

Estimated Total Burden Hours: 95,040 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

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

Signed at Washington, DC, on May 8, 2020.

Mark Staniorski,

Chief, Division of Management Systems.

[FR Doc. 2020–10561 Filed 5–15–20; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of three petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below.

DATES: All comments on the petitions must be received by MSHA's Office of Standards, Regulations, and Variances on or before June 17, 2020.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.

2. *Facsimile:* 202–693–9441.

3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452, Attention: Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9557 (voice), *Noe.Song-Ae.A@dol.gov* (email), or 202–693–9441 (facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations Part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2019–067–C.

Petitioner: Peabody Twentymile Mining, LLC, 29515 Route County Road #27, Oak Creek, CO 80467.

Mine: Foidel Creek Mine, MSHA I.D. No. 05–03836, located in Routt County, Colorado.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests an amended petition for modification of the existing standard, 30 CFR 75.500(d), as it relates to the use of an alternative method of respirable dust protection at the Foidel Creek mine. The operator previously submitted a petition to use a battery powered respirable protection unit called a *Versaflo™ TR–800 Intrinsically Safe Powered Air Purifying Respirator (PAPR)* in or inby the last open crosscut, which was published by the **Federal Register** on January 27, 2020. The operator submitted the amended petition below to include in the previous petition the use of a powered respirable protection unit called the *CleanSpace EX Powered Respirator* in or inby the last open crosscut under the same conditions as was proposed for the *Versaflo™ TR–800 Intrinsically Safe Powered Air Purifying Respirator (PAPR)* product.

The petitioner states that:

(a) Peabody currently uses the 3M Airstream helmet to provide miners with respirable protection against coal mine dust, a protection with long-term health benefits.

(b) 3M is discontinuing the Airstream helmet by June 1, 2020 due to disruption in their component supply, but it will offer the *Versaflo™ TR–800 Intrinsically Safe Powered Air Purifying Respirator (PAPR).* February 2020 was the last opportunity to order the Airstream components.

(c) There are currently no replacement PAPRs that meet the MSHA standard for permissibility.

(d) The *Versaflo™ TR–800 Intrinsically Safe PAPR* qualifies as intrinsically safe in the US, Canada, and countries that accept the International Electrotechnical Commissions System for Certification to Standards Relating to Equipment for Use in Explosive Atmosphere (IECEx). However, it is not MSHA-approved and 3M is not pursuing MSHA approval.

(e) Another type of PAPR called the *CleanSpace EX Power Unit,* which is manufactured by CleanSpace is also determined to be intrinsically safe under IECEx and other countries' standards. However, the *Cleanspace EX Power Unit* is not approved by MSHA and CleanSpace is not pursuing MSHA approval.

The petitioner proposes the following alternative method:

(1) The operator is petitioning to use the *Versaflo™ TR–800 Intrinsically Safe PAPR* and the *CleanSpace EX Power Unit* in or inby the last open crosscut.

(2) The equipment will be examined at least weekly by a qualified person according to 30 CFR 75.512–2 and examination results will be recorded weekly and may be expunged after one year.

(3) The operator will comply with 30 CFR 75.323.

(4) A qualified person under 30 CFR 75.151 will monitor for methane as is required in the mine.

(5) Qualified miners will receive training regarding the information in the Decision and Order before using equipment in the relevant part of the mine. A record of the training will be kept and available upon request.

(6) Within 60 days of the Decision and Order becoming finalized, the operator will submit proposed revisions to 30 CFR 75.370, mine ventilation, to be approved under the 30 CFR part 48 training plan by the Coal Mine Safety and Health District Manager. The revisions will specify initial and refresher training and when the revisions are conducted, the MSHA Certificate of Training (Form 5000–23) will be completed. Comments will be made on the certificate to note non-permissible testing equipment training.

(7) The operator is responsible for all people, including contractors, using the above equipment. The petitioner asserts that the alternative method will guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Docket Number: M–2019–068–C.

Petitioner: Peabody Twentymile Mining, LLC, 29515 Route County Road #27, Oak Creek, CO 80467.

Mine: Foidel Creek Mine, MSHA I.D. No. 05–03836, located in Routt County, Colorado.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests an amended petition for modification of the existing standard, 30 CFR 75.507–1(a), as it relates to the use of an alternative method of respirable dust protection at the Foidel Creek mine. The operator previously submitted a petition to use a battery powered respirable protection unit called a *Versaflo™ TR–800 Intrinsically Safe Powered Air Purifying Respirator (PAPR)* in return airways, which was published by the **Federal Register** on January 27, 2020. The operator submitted the amended petition below to include in the previous petition the use of a powered respirable protection unit called the *CleanSpace EX Powered Respirator* in return airways under the same conditions as was proposed for the *Versaflo™ TR–800 Intrinsically Safe Powered Air Purifying Respirator (PAPR)* product.

The petitioner states that:

(a) Peabody currently uses the 3M Airstream helmet to provide miners with respirable protection against coal mine dust, a protection with long-term health benefits.

(b) 3M is discontinuing the Airstream helmet by June 1, 2020 due to disruption in their component supply but it will offer the *Versaflo™ TR–800 Intrinsically Safe Powered Air Purifying Respirator (PAPR).* February 2020 was the last opportunity to order the Airstream components.

(c) There are currently no replacement PAPRs that meet the MSHA standard for permissibility.

(d) The Versaflo™ TR–800 Intrinsically Safe PAPR qualifies as intrinsically safe in the US, Canada, and countries that accept the International Electrotechnical Commissions System for Certification to Standards Relating to Equipment for Use in Explosive Atmosphere (IECEx). It is not MSHA-approved and 3M is not currently pursuing approval.

(e) Another type of PAPR called the *CleanSpace EX Power Unit,* which is manufactured by CleanSpace, is also determined to be intrinsically safe under IECEx and other countries' standards. However, the *Cleanspace EX Power Unit* is not approved by MSHA and CleanSpace is not pursuing MSHA approval.

The petitioner proposes the following alternative method:

(1) The operator is petitioning to use the *Versaflo™ TR–800 Intrinsically Safe PAPR* and the *CleanSpace EX Power Unit* in return airways.

(2) The equipment will be examined at least weekly by a qualified person according to 30 CFR 75.512–2 and examination results will be recorded weekly and may be expunged after one year.

(3) The operator will comply with 30 CFR 75.323.

(4) A qualified person under 30 CFR 75.151 will monitor for methane as is required in the mine.

(5) Qualified miners will receive training regarding the information in the Decision and Order before using equipment in the relevant part of the mine. A record of the training will be kept and available upon request.

(6) Within 60 days of the Decision and Order becoming finalized, the operator will submit proposed revisions to 30 CFR 75.370, mine ventilation, to be approved under the 30 CFR part 48 training plan by the Coal Mine Safety and Health District Manager. The revisions will specify initial and refresher training and when the revisions are conducted, the MSHA Certificate of Training (Form 5000–23) will be completed. Comments will be made on the certificate to note non-permissible testing equipment training.

(7) The operator is responsible for all people, including contractors, using the above equipment. The petitioner asserts that the alternative method will guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Docket Number: M–2019–069–C.

Petitioner: Peabody Twentymile Mining, LLC, 29515 Route County Road #27, Oak Creek, CO 80467.

Mine: Foidel Creek Mine, MSHA I.D. No. 05–03836, located in Routt County, Colorado.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests an amended petition for modification of the existing standard, 30 CFR 75.1002(a), as it relates to the use of an alternative method of respirable dust protection at the Foidel Creek mine. The operator previously submitted a petition to use a battery powered respirable protection unit called a *Versaflo™ TR–800 Intrinsically Safe Powered Air Purifying Respirator (PAPR)* within 150 feet of pillar workings and longwall faces, which was published by the **Federal Register** on January 27, 2020. The operator submitted the amended petition below to include in the previous petition the use of a powered respirable protection unit called the *CleanSpace EX Powered Respirator* within 150 feet of pillar workings and longwall faces under the same conditions as was proposed for the *Versaflo™ TR–800 Intrinsically Safe Powered Air Purifying Respirator (PAPR)* product.

The petitioner states that:

(a) Peabody currently uses the 3M Airstream helmet to provide miners with respirable protection against coal mine dust, a protection with long-term health benefits.

(b) 3M is discontinuing the Airstream helmet by June 1, 2020 due to disruption in their component supply but it will offer the *Versaflo™ TR–800 Intrinsically Safe Powered Air Purifying Respirator (PAPR).* February 2020 was the last opportunity to order the Airstream components.

(c) There are currently no replacement PAPRs that meet the MSHA standard for permissibility.

(d) The *Versaflo™ TR–800 Intrinsically Safe PAPR* qualifies as intrinsically safe in the US, Canada, and countries that accept the International Electrotechnical Commissions System for Certification to Standards Relating to Equipment for Use in Explosive Atmosphere (IECEx). It is not MSHA-approved and 3M is not currently pursuing approval.

(e) Another type of PAPR called the *CleanSpace EX Power Unit,* which is manufactured by CleanSpace, is also determined to be intrinsically safe under IECEx and other countries' standards. However, the *Cleanspace EX Power Unit* is not approved by MSHA

and CleanSpace is not pursuing MSHA approval.

The petitioner proposes the following alternative method:

(1) The operator is petitioning to use the *Versaflo™ TR–800 Intrinsically Safe PAPR* and the *CleanSpace EX Power Unit* within 150 feet of pillar workings and longwall faces.

(2) The equipment will be examined at least weekly by a qualified person according to 30 CFR 75.512–2 and examination results will be recorded weekly and may be expunged after one year.

(3) The operator will comply with 30 CFR 75.323.

(4) A qualified person under 30 CFR 75.151 will monitor for methane as is required in the mine.

(5) Qualified miners will receive training regarding the information in the Decision and Order before using equipment in the relevant part of the mine. A record of the training will be kept and available upon request.

(6) Within 60 days of the Decision and Order becoming finalized, the operator will submit proposed revisions to 30 CFR 75.370, mine ventilation, to be approved under the 30 CFR part 48 training plan by the Coal Mine Safety and Health District Manager. The revisions will specify initial and refresher training and when the revisions are conducted, the MSHA Certificate of Training (Form 5000–23) will be completed. Comments will be made on the certificate to note non-permissible testing equipment training.

(7) The operator is responsible for all people, including contractors, using the above equipment. The petitioner asserts that the alternative method will guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Roslyn Fontaine,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2020–10559 Filed 5–15–20; 8:45 am]

BILLING CODE 4510–43–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 19–CRB–0011–SD (2018)]

Distribution of 2018 Satellite Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice requesting comments.

SUMMARY: The Copyright Royalty Judges solicit comments on a motion of Allocation Phase claimants for partial distribution of 2018 satellite royalty funds.

DATES: Comments are due on or before June 17, 2020.

ADDRESSES: Interested claimants must submit timely comments using eCRB, the Copyright Royalty Board's online electronic filing application, at *https://app.crb.gov/.*

Instructions: All submissions must include a reference to the CRB and this docket number. All submissions will be posted without change to eCRB at *https://app.crb.gov/* including any personal information provided.

Docket: For access to the docket to read submitted background documents or comments, go to eCRB, the Copyright Royalty Board's online electronic filing and case management system, at *https://app.crb.gov/,* and search for Docket No. 19–CRB–0011–SD (2018).

FOR FURTHER INFORMATION CONTACT: Anita Blaine, CRB Program Specialist, by telephone at (202) 707–7658 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: Each year satellite carriers must submit royalty payments to the Register of Copyrights as required by the statutory license set forth in section 119 of the Copyright Act for the retransmission to satellite subscribers of over-the-air television broadcast signals. *See* 17 U.S.C. 119(b). The Copyright Royalty Judges (Judges) oversee distribution of royalties to copyright owners whose works were included in a qualifying transmission and who timely filed a claim for royalties.

Allocation of the royalties collected occurs in one of two ways. In the first instance, the Judges may authorize distribution in accordance with a negotiated settlement among all claiming parties. 17 U.S.C. 119(b)(5)(A), 801(b)(3)(A). If all claimants do not reach an agreement with respect to the royalties, the Judges must conduct a proceeding to determine the distribution of any royalties that remain in controversy. 17 U.S.C. 119(b)(5)(B), 801(b)(3)(B). Alternatively, the Judges may, on motion of claimants and on notice to all interested parties, authorize a partial distribution of royalties, reserving on deposit sufficient funds to resolve identified disputes. 17 U.S.C. 119(b)(5)(C), 801(b)(3)(C).

On May 11, 2020, representatives of all the Allocation Phase (formerly ''Phase I'') claimant categories [1] filed with the Judges a motion requesting a partial distribution amounting to 40% of the 2018 satellite royalty funds on deposit pursuant to section 801(b)(3)(C) of the Copyright Act. That statutory section requires that, before ruling on the motion, the Judges publish a notice in the **Federal Register** seeking responses to the motion for partial distribution to ascertain whether any claimant entitled to receive the subject royalties has a reasonable objection to the requested distribution. 17 U.S.C. 801(b)(3)(C).

Accordingly, this notice seeks comments from interested claimants on whether any reasonable objection exists that would preclude the distribution of 40% of the 2018 satellite royalty funds to the Allocation Phase Claimants. Parties objecting to the proposed partial distribution must advise the Judges of the existence and extent of all their objections by the end of the comment period. The Judges will not consider any objections with respect to the partial distribution motion that come to their attention after the close of the comment period.

Members of the public may read the motion by accessing the Copyright Royalty Board's electronic filing and case management system at *https://app.crb.gov/and* searching for Docket No. 19–CRB–0011–SD (2018).

Dated: May 13, 2020.

Jesse M. Feder,

Chief U.S. Copyright Royalty Judge.

[FR Doc. 2020–10608 Filed 5–15–20; 8:45 am]

BILLING CODE 1410–72–P

[1] The representatives are Program Suppliers, Joint Sports Claimants, Broadcaster Claimants Group, Music Claimants (represented by American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc.), and Devotional Claimants, which represent traditionally recognized claimant categories. The Judges have not determined, and do not by this notice determine, the universe of claimant categories for 2018 satellite retransmission royalties.

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 19–CRB–0010–CD (2018)]

Distribution of 2018 Cable Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice requesting comments.

SUMMARY: The Copyright Royalty Judges solicit comments on a motion of Allocation Phase claimants for partial distribution of 2018 cable royalty funds.

DATES: Comments are due on or before June 17, 2020.

ADDRESSES: Interested claimants must submit timely comments using eCRB,

the Copyright Royalty Board's online electronic filing application, at *https://app.crb.gov/.*

Instructions: All submissions must include a reference to the CRB and this docket number. All submissions will be posted without change to eCRB at *https://app.crb.gov/* including any personal information provided.

Docket: For access to the docket to read submitted background documents or comments, go to eCRB, the Copyright Royalty Board's online electronic filing and case management system, at *https://app.crb.gov/,* and search for Docket No. 19–CRB–0010–CD (2018).

FOR FURTHER INFORMATION CONTACT: Anita Blaine, CRB Program Specialist, by telephone at (202) 707–7658 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: Each year cable systems must submit royalty payments to the Register of Copyrights as required by the statutory license detailed in section 111 of the Copyright Act for the retransmission to cable subscribers of over-the-air television and radio broadcast signals. *See* 17 U.S.C. 111(d). The Copyright Royalty Judges (Judges) oversee distribution of royalties to copyright owners whose works were included in a qualifying transmission and who file a timely claim for royalties.

Allocation of the royalties collected occurs in one of two ways. In the first instance, the Judges may authorize distribution in accordance with a negotiated settlement among all claiming parties. 17 U.S.C. 111(d)(4)(A), 801(b)(3)(A). If all claimants do not reach agreement with respect to the royalties, the Judges must conduct a proceeding to determine the distribution of any royalties that remain in controversy. 17 U.S.C. 111(d)(4)(B), 801(b)(3)(B). Alternatively, the Judges may, on motion of claimants and on notice to all interested parties, authorize a partial distribution of royalties, reserving on deposit sufficient funds to resolve identified disputes. 17 U.S.C. 111(d)(4)(C), 801(b)(3)(C).

On May 11, 2020, representatives of all the Allocation Phase (formerly ''Phase I'') claimant categories [1] filed with the Judges a motion pursuant to section 801(b)(3)(C) of the Copyright Act requesting a partial distribution amounting to 40% of the 2018 cable royalty funds on deposit. That statutory section requires that, before ruling on the motion, the Judges publish a notice in the **Federal Register** seeking responses to the motion for partial distribution to ascertain whether any claimant entitled to receive the subject royalties has a reasonable objection to the requested distribution. 17 U.S.C. 801(b)(3)(C).

Accordingly, this notice seeks comments from interested claimants on whether any reasonable objection exists that would preclude the distribution of 40% of the 2018 cable royalty funds to the requesting claimant representatives. Parties objecting to the proposed partial distribution must advise the Judges of the existence and extent of all objections by the end of the comment period. The Judges will not consider any objections with respect to the partial distribution that come to their attention after the close of the comment period.

Members of the public may read the motion by accessing the Copyright Royalty Board's electronic filing and case management system at *https://app.crb.gov/and* searching for Docket No. 19–CRB–0010–CD (2018).

Dated: May 13, 2020.

Jesse M. Feder,

Chief U.S. Copyright Royalty Judge.

[FR Doc. 2020–10609 Filed 5–15–20; 8:45 am]

BILLING CODE 1410–72–P

[1] The representatives are Program Suppliers; Joint Sports Claimants; Public Television Claimants; National Association of Broadcasters; American Society of Composers, Authors and Publishers; Broadcast Music, Inc.; SESAC, Inc.; Canadian Claimants Group; Devotional Claimants; and National Public Radio, which represent traditionally recognized claimant categories. The Judges have not determined, and do not by this notice determine, the universe of claimant categories for 2018 cable retransmission royalties.

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act: Notice of Agency Meeting

TIME AND DATE: 10:00 a.m., Thursday, May 21, 2020

Recess: 11:30 a.m.

11:45 a.m., Thursday, May 21, 2020.

PLACE: Due to the COVID–19 Pandemic, the meeting will be open to the public via live webcast only. Visit the agency's homepage (*www.ncua.gov.*) and access the provided webcast link.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions Open to the Public:

1. Board Briefing, Share Insurance Fund Quarterly Report.
2. NCUA Rules and Regulations, Joint Ownership Share Accounts.
3. NCUA Rules and Regulations, Overdraft Policy.
4. NCUA Rules and Regulations, Prompt Corrective Action.

Portions Closed to the Public:

1. Board Appeal. Closed pursuant to Exemption (8).

CONTACT PERSON FOR MORE INFORMATION: Gerard Poliquin, Secretary of the Board, Telephone: 703–518–6304.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2020–10729 Filed 5–14–20; 11:15 am]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meeting of Humanities Panel

AGENCY: National Endowment for the Humanities; National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: The National Endowment for the Humanities (NEH) will hold two meetings of the Humanities Panel, a federal advisory committee, during June 2020. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965.

DATES: See **SUPPLEMENTARY INFORMATION** for meeting dates. The meetings will open at 8:30 a.m. and will adjourn by 5:00 p.m. on the dates specified below.

ADDRESSES: The meetings will take place by videoconference originating at Constitution Center, 400 7th Street SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, Room 4060, Washington, DC 20506; (202) 606–8322; *evoyatzis@neh.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given of the following meetings:

1. DATE: June 23, 2020

This video meeting will discuss applications on the topics of the U.S. and the Americas, for NEH-Mellon Fellowships for Digital Publication, submitted to the Division of Research Programs.

2. DATE: June 24, 2020

This video meeting will discuss applications on the topics of Literature, Arts, and Global Studies, for NEH-Mellon Fellowships for Digital Publication, submitted to the Division of Research Programs.

Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated April 15, 2016.

Dated: May 13, 2020.

Caitlin Cater,

Attorney-Advisor, National Endowment for the Humanities.

[FR Doc. 2020–10610 Filed 5–15–20; 8:45 am]

BILLING CODE 7536–01–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 dockets 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 ''ADAMS Public Documents'' and then 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.

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 § 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.iv (35), 2.1.02.12a.ix (61), 2.1.03.02a (69), 2.2.03.08c.i.02 (178), 3.3.00.06a (787), and E.3.9.05.01.04 (852).

VEGP Unit 4 ITAAC

2.1.02.08d.iv (35), 2.1.02.12a.ix (61), 2.1.03.02a (69), 2.2.03.08b.02 (176), 2.2.03.08c.iv.04 (186), 2.5.02.11 (550), 3.3.00.06a (787), and 2.2.05.07e (880).

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: May 13, 2020.

For the Nuclear Regulatory Commission.

Victor E. Hall,

Chief, Vogtle Project Office, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–10584 Filed 5–15–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of May 18, 25, June 1, 8, 15, 22, 2020.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

Week of May 18, 2020

There are no meetings scheduled for the week of May 18, 2020.

Week of May 25, 2020—Tentative

There are no meetings scheduled for the week of May 25, 2020.

Week of June 1, 2020—Tentative

There are no meetings scheduled for the week of June 1, 2020.

Week of June 8, 2020—Tentative

There are no meetings scheduled for the week of June 8, 2020.

Week of June 15, 2020—Tentative

There are no meetings scheduled for the week of June 15, 2020.

Week of June 22, 2020—Tentative

There are no meetings scheduled for the week of June 22, 2020.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or by email at *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: May 14, 2020.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2020–10743 Filed 5–14–20; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440; NRC–2020–0114]

Energy Harbor Nuclear Corp.; Energy Harbor Nuclear Generation LLC; Perry Nuclear Power Plant, Unit No. 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued a temporary exemption from certain periodic training and requalification requirements for security personnel at the Perry Nuclear Power Plant, Unit No. 1, in response to an April 24, 2020, request, as supplemented on May 6, 2020, from Energy Harbor Nuclear Corp.

DATES: The temporary exemption was issued on May 11, 2020.

ADDRESSES: Please refer to Docket ID NRC–2020–0114. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0114. 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 (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The NRC staff's approval is available in ADAMS under Accession No. ML20119A051.

FOR FURTHER INFORMATION CONTACT: Scott P. Wall, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–2855, email: *Scott.Wall@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: May 12, 2020.

For the Nuclear Regulatory Commission.

Scott P. Wall,

Project Manager, Plant Licensing Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—Exemption

NUCLEAR REGULATORY COMMISSION

Docket No. 50–440

Energy Harbor Nuclear Corp.; Energy Harbor Nuclear Generation LLC; Perry Nuclear Power Plant, Unit No. 1

Exemption

I. Background

Energy Harbor Nuclear Corp. (EHNC) and Energy Harbor Nuclear Generation LLC (collectively, the licensees) are the holders of the Facility Operating License No. NPF–58 for Perry Nuclear Power Plant, Unit No. 1 (PNPP), which consists of a boiling-water reactor (BWR) located near Lake Erie in Lake County, Ohio. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, Commission) now or hereafter in effect.

II. Request/Action

By letter dated April 24, 2020 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML20115E551), as supplemented by letter dated May 6, 2020 (ADAMS Accession No. ML20128J218), EHNC requested a temporary exemption from certain periodic requalification requirements for security personnel in Title 10 of the *Code of Federal Regulations* (10 CFR), part 73, Appendix B, Section VI, ''Nuclear Power Reactor Training and Qualification Plan for Personnel Performing Security Program Duties,'' pursuant to 10 CFR 73.5, ''Specific exemptions.'' Specifically, due to the Coronavirus Disease 2019 (COVID–19) public health emergency (PHE) currently affecting the United States and the state of emergency declared by the State of Ohio on March 9, 2020, EHNC requests a temporary exemption from the following requirements in 10 CFR part 73, Appendix B, Section VI, related to periodic training and requalification of security personnel at PNPP:

- Paragraph B.5.(a): ''At least annually, armed and unarmed individuals shall be required to demonstrate the capability to meet the physical requirements of this appendix [10 CFR part 73, Appendix B] and the licensee training and qualification plan.''
- Paragraph C.3.(l)(1) in part: ''Each member of each shift who is assigned duties and responsibilities required to implement the safeguards contingency plan and licensee protective strategy participates in at least one (1) tactical response drill on a quarterly basis and one (1) force-on-force exercise on an annual basis.''
- Paragraph D.1.(b)(3) in part: ''Armed individuals shall be administered an annual written exam that demonstrates the required knowledge, skills, and abilities to carry out assigned duties and responsibilities as an armed member of the security organization.''
- Paragraph D.2.(a): ''Armed and unarmed individuals shall be requalified at least annually in accordance with the requirements of this appendix [10 CFR part 73, Appendix B] and the Commission-approved training and qualification plan.''
- Paragraph E.1.(c): ''The licensee shall conduct annual firearms familiarization training in accordance with the Commission-approved training and qualification plan.''
- Paragraph E.1.(f) in part: ''Armed members of the security organization shall participate in weapons range activities on a nominal four (4) month periodicity.''
- Paragraph F.5.(a): ''Armed members of the security organization shall be re-qualified for each assigned weapon at least annually in accordance with Commission requirements and the Commission-approved training and qualification plan, and the results documented and retained as a record.''

EHNC requested that this temporary exemption expire 90 days after the end of the COVID–19 PHE, or December 31, 2020, whichever occurs first.

III. Discussion

On January 31, 2020, the U.S. Department of Health and Human Services declared a PHE for the United States to aid the nation's healthcare community in responding to COVID–19. On March 11, 2020, the COVID–19 outbreak was characterized as a pandemic by the World Health Organization.

Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 73 when the exemptions are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest.

EHNC is requesting a temporary exemption from the requirements in paragraphs B.5.(a), C.3.(l)(1), D.1.(b)(3), D.2.(a), E.1.(c), E.1.(f), and F.5.(a) of 10 CFR part 73, Appendix B, Section VI, related to the periodic training and requalification of security personnel, pursuant to 10 CFR 73.5. EHNC is requesting this temporary exemption to support licensee isolation activities (*e.g.,* social distancing, group size limitations, and self-quarantining) to help protect required site personnel from the COVID–19 virus and ensure personnel remain capable of maintaining plant security. EHNC stated that these ''isolation activities restrict certain training activities.'' Notably, EHNC stated that: ''Range activities are challenged by current social distancing and safety guidelines relevant to COVID–19 response standards. Weapons range activities require significant staff support that potentially places armed individuals in the Energy Harbor Nuclear Corp. security organization and other security staff in close proximity to one another, increasing the likelihood of staff and officer exposure to COVID–19. Range activities present additional hygiene issues relevant to range facilities during the PHE.''

EHNC also stated that the requested exemption does not change physical security plans or defensive strategy. More specifically, EHNC stated that security personnel impacted by this exemption are currently satisfactorily qualified on all required tasks and are monitored regularly by supervisory personnel.

Licensee Provided Controls to Maintain the Knowledge, Skills, and Abilities of Security Personnel

EHNC has identified controls that have been or will be implemented at PNPP to ensure impacted security personnel maintain the knowledge, skills, and abilities required to effectively perform assigned duties and responsibilities during the period of this temporary exemption (*i.e.,* up to 90 days following the end of the COVID–19 PHE, or December 31, 2020, whichever occurs first). A discussion of how these controls relate to the current requirements is provided below:

1. *Paragraph B.5.(a) of 10 CFR 73, Appendix B, Section VI:* The purpose of the annual physical requirements in paragraph B.5.(a) is to ensure armed and unarmed members of the licensee's security organization are capable of performing their assigned duties necessary for implementing the licensee's Commission-approved security plans, protective strategy, and implementing procedures. To help ensure impacted security personnel

maintain the knowledge, skills, and abilities required to effectively perform assigned duties and responsibilities at PNPP, EHNC has established measures ''to ensure security personnel self-report and notify supervision or medical personnel, as appropriate, of changes related to their physical fitness that could impact their ability to perform their respective job function.''

2. *Paragraph C.3.(l)(1) of 10 CFR 73, Appendix B, Section VI:* The purpose of the quarterly tactical drills and the annual licensee conducted force-on-force exercises is to ensure that the site security force maintains its contingency response readiness. Participation in these drills and exercises also supports the requalification of security force members. To help ensure impacted security personnel maintain the knowledge, skills, and abilities required to effectively perform assigned duties and responsibilities at PNPP, EHNC described the measures it is taking to ensure contingency response readiness. These measures are: Conducting individual table top discussions during the shift and review of response locations with adherence to social distancing standards; providing officers with shift discussion topics utilizing lessons learned from previous exercises and based on training lesson plans/material objectives; and providing for officer follow up questions and answers relevant to the focus topics with adherence to social distancing standards.

3. *Paragraphs D.1.(b)(3), D.2.(a), E.1.(c), and F.5.(a) of 10 CFR 73, Appendix B, Section VI:* The purpose of the annual requalification requirements is to ensure the licensee's armed and unarmed individuals possess the requisite knowledge, skills, and abilities to effectively perform assigned duties in accordance with the Commission-approved security plans, protective strategy, and implementing procedures for the site. To help ensure impacted security personnel maintain the knowledge, skills, and abilities required to effectively perform assigned duties and responsibilities at PNPP, EHNC stated that it ''has established measures to ensure that individuals maintain performance capability despite not completing the annual requalification for the annual written exam, firearms familiarization and weapons requalification.'' These measures include lesson plan objective-based discussions topics regarding critical tasks necessary for performance of security duties and regarding the fundamentals of marksmanship.

4. *Paragraph E.1.(f) of 10 CFR 73, Appendix B, Section VI:* The purpose of the weapons range activity is to ensure that armed individuals in the licensee's security organization maintain weapons proficiency in support of the licensee's physical protection program. To help ensure impacted security personnel maintain the knowledge, skills, and abilities required to effectively perform assigned duties and responsibilities at PNPP, EHNC stated that it ''will establish measures to ensure that individuals maintain performance capability despite not completing weapons range activities on a nominal four-month periodicity. Those measures include discussion topics regarding relevant range activities and are based on range training lesson plan objectives to maintain knowledge of weapon performance requirements.''

Restoring Compliance with 10 CFR 73, Appendix B, Section VI

EHNC requested that this exemption expire 90 days after the end of the COVID–19 PHE, or December 31, 2020, whichever occurs first. EHNC indicates that the additional time period after the end of the COVID–19 PHE will be used to restore compliance with the periodic security training and requalification requirements at PNPP. To support restoring compliance with these requirements, EHNC stated that it will maintain a list with the names of the individuals that do not meet the periodic security requalification requirements, including the date(s) when each individual exceeds the required training periodicities. It is the NRC's expectation that any annual licensee-conducted force-on-force exercises that are delayed will be rescheduled so that they are completed after the PHE ends. Security personnel that miss one or more quarterly tactical drills during the period of the exemption would need to resume participation in those drills after the exemption expires.

A. The Exemption is Authorized by Law

EHNC is requesting an exemption from the requirements related to periodic training and requalification of security personnel in paragraphs B.5.(a), C.3.(l)(1), D.1.(b)(3), D.2.(a), E.1.(c), E.1.(f), and F.5.(a) of 10 CFR part 73, Appendix B, Section VI. In accordance with 10 CFR 73.5, the Commission may grant exemptions from the regulations in 10 CFR part 73, as authorized by law. The NRC staff finds that granting the proposed exemptions will not result in a violation of the Atomic Energy Act of 1954, as amended, or other laws, and is, thus, authorized by law.

B. The Exemption Will Not Endanger Life or Property or the Common Defense and Security

EHNC stated that the requested exemptions will not endanger life or property or the common defense and security. The requested exemption would temporarily allow the identified security training and requalification requirements to be deferred for security personnel currently satisfactorily qualified at PNPP. EHNC indicated that although it had scheduled these requalification activities to comply with the regulation, these activities must be rescheduled to allow implementation of the EHNC pandemic response plan mitigation strategies. EHNC asserts that these strategies serve the public interest by ensuring adequate staff isolation and maintaining staff health to perform their job function actions during the COVID–19 PHE.

EHNC stated that the requested exemption is related to training requalification and does not change physical security plans or defensive strategy. EHNC stated that security personnel impacted by the requested exemption are currently satisfactorily qualified on all required tasks. EHNC also stated that security personnel are monitored regularly by supervisory personnel. As discussed above, EHNC identified controls that have been or will be implemented at PNPP to ensure impacted security personnel maintain the knowledge, skills, and abilities required to effectively perform assigned duties and responsibilities. Therefore, EHNC stated that granting the requested temporary exemption will not endanger or compromise the common defense or security or the safeguarding of PNPP. EHNC requested that the exemption expire 90 days after the end of the COVID–19 PHE, or December 31, 2020, whichever occurs first. EHNC stated that this timeframe is needed for it to restore compliance with the periodic security training and requalification requirements at PNPP.

The NRC staff finds that the controls EHNC has or will establish for the duration of the exemption are adequate to ensure that the required security posture at PNPP is maintained. These controls are adequate because they include a variety of mechanisms to help ensure impacted security personnel continue to maintain the knowledge, skills, and abilities required to perform assigned duties and responsibilities, and as a result, will continue to ensure adequate security of PNPP. In addition, the requested duration of the exemption would allow EHNC time to restore normal requalification processes at

PNPP in a systematic manner. For example, it may take time after the PHE has ended for security personnel affected by COVID–19 to fully recover and return to duty status. Based on the above, the NRC staff concludes that the proposed exemption would not endanger life or property or the common defense and security.

C. Otherwise in the Public Interest

On April 17, 2020, the Cybersecurity & Infrastructure Security Agency (CISA) within the U.S. Department of Homeland Security (DHS) published Version 3.0 of its ''Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID–19 Response.'' Although that guidance is advisory in nature, it is designed to ensure ''continuity of functions critical to public health and safety, as well as economic and national security.'' In addition, the Centers for Disease Control and Prevention (CDC) has issued recommendations (*e.g.,* social distancing, limiting assemblies) to limit the spread of COVID–19.

EHNC states, in part, that:

The Energy Harbor Nuclear Corp. pandemic response plan is based on [the Nuclear Energy Institute (NEI) guidance document] NEI 06–03, *Pandemic Threat Planning, Preparation, and Response Reference Guide* (Reference 4), which recommends isolation strategies such as sequestering, use of super crews or minimum staffing as well as social distancing, group size limitations and self-quarantining, in the event of a pandemic, to prevent the spread of the virus to the plant. NEI 06–03 provides other mitigation strategies that serve the public interest during a pandemic by ensuring adequate staff is isolated from the pandemic and remains healthy to perform their job function.

Keeping PNPP in operation during the pandemic will help to support the public need for reliable electricity supply to cope with the pandemic. As the US Departments of Homeland Security and Energy have stated in their guidance, the electric grid and nuclear plant operation make up the nation's critical infrastructure similar to the medical, food, communications, and other critical industries. If the plant operation is impacted because it cannot comply with the security training requalification requirements while isolation activities are in effect for essential crew members, the area electrical grid would lose this reliable source of baseload power. In addition, PNPP personnel could face the added transient challenge of shutting down their respective plant and possibly not restarting it until the pandemic passes. This does not serve the public interest in maintaining a safe and reliable supply of electricity.

EHNC stated that the requalification activities for security personnel at PNPP must be rescheduled to allow implementation of the EHNC pandemic response plan mitigation strategies. In addition, EHNC indicated that this exemption would support the licensee's implementation of isolation activities (*e.g.,* social distancing, group size limitations, and self-quarantining) at PNPP. EHNC stated these actions serve the public interest by ensuring adequate staff isolation and maintaining staff health to perform their job function during the COVID–19 PHE.

Based on the above and the NRC staff's aforementioned findings, the NRC staff concludes that granting the temporary exemption is in the public interest because it allows EHNC to maintain the required security posture at PNPP while the facility continues to provide electrical power. The exemption also enables EHNC to reduce the risk of exposing essential security personnel at PNPP to COVID–19.

D. Environmental Considerations

NRC approval of this exemption request is categorically excluded under 10 CFR 51.22(c)(25), and there are no special circumstances present that would preclude reliance on this exclusion. The NRC staff determined, per 10 CFR 51.22(c)(25)(vi)(E), that the requirements from which the exemption is sought involve education, training, experience, qualification, requalification, or other employment suitability requirements. The NRC staff also determined that approval of this exemption request involves no significant hazards consideration because it does not authorize any physical changes to the facility or any of its safety systems, nor does it change any of the assumptions or limits used in the facility licensee's safety analyses or introduce any new failure modes; no significant change in the types or significant increase in the amounts of any effluents that may be released offsite because this exemption does not affect any effluent release limits as provided in the facility licensee's technical specifications or by the regulations in 10 CFR part 20, ''Standards for Protection Against Radiation''; no significant increase in individual or cumulative public or occupational radiation exposure because this exemption does not affect limits on the release of any radioactive material or the limits provided in 10 CFR part 20 for radiation exposure to workers or members of the public; no significant construction impact because this exemption does not involve any changes to a construction permit; and no significant increase in the potential for or consequences from radiological accidents because this exemption does not alter any of the assumptions or limits in the facility licensee's safety analysis. In addition, the NRC staff determined that there would be no significant impacts to biota, water resources, historic properties, cultural resources, or socioeconomic conditions in the region. As such, there are no special circumstances present that would preclude reliance on this categorical exclusion. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

IV. Conclusions

Accordingly, the NRC has determined that pursuant to 10 CFR part 73.5, the exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants EHNC's request to exempt PNPP from the requirements for periodic requalification of security personnel in paragraphs B.5.(a), C.3.(l)(1), D.1.(b)(3), D.2.(a), E.1.(c), E.1.(f), and F.5.(a) of 10 CFR part 73, Appendix B, Section VI. This exemption expires 90 days after the end of the COVID–19 PHE, or December 31, 2020, whichever occurs first.

Dated: May 11, 2020.

For the Nuclear Regulatory Commission.

Craig G. Erlanger,
Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–10527 Filed 5–15–20; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88859; File No. SR–PEARL–2020–03]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Establish Rules Governing the Trading of Equity Securities

May 12, 2020.

I. Introduction

On January 24, 2020, MIAX PEARL, LLC (''MIAX PEARL'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities

Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt rules to govern the trading of cash equities and establish an equities trading facility of the Exchange. The proposed rule change was published for comment in the **Federal Register** on February 12, 2020.[3] On March 25, 2020, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to May 12, 2020.[4] On May 8, 2020, the Exchange filed Amendment No. 1 to the proposed rule change.[5] The Commission has received no comments on the proposed rule change.

The Commission is publishing this notice and order to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

As more fully set forth in the Notice and Amendment No. 1, and summarized below, the Exchange proposes to establish a platform for the trading of cash equity securities (referred to herein as ''MIAX PEARL Equities'') to be regulated as an equities trading facility of the Exchange. MIAX PEARL Equities would operate pursuant to the proposed rules (''MIAX PEARL Equities Rules'') and regulatory requirements described below. This description summarizes but does not review every detail of the proposal, as modified by Amendment No. 1.

A. MIAX PEARL Equity Members

As proposed, MIAX PEARL Equities will operate an electronic trading system for equity securities (the ''System'') that will provide for the electronic execution of orders pursuant to a price/time priority execution model.[7] The Exchange will have a new category of Exchange Member participation called ''Equity Member.''[8]

As proposed, an Equity Member must be or become a member of the Exchange pursuant to Chapter II (Access) and continue to abide by the requirements of Chapter II of Exchange Rules and the additional requirements of Chapter XX governing participation in MIAX PEARL Equities.[9] An Equity Member must also be a member of another registered exchange that is not registered solely under Section 6(g) of the Exchange Act, or be a member of FINRA.[10] Further, an Equity Member that transacts business with public customers must at all times be a member of FINRA.[11]

There would be two types of Equity Members: (1) Equities Order Entry Firms (''OEFs'') and (2) Equities Market Makers. Each Equity Member must be registered as a broker-dealer and have as the principal purpose of being an Equity Member the conduct of a securities business, which shall be deemed to exist if and so long as: (1) The Equity Member has qualified and acts in respect of its business on MIAX PEARL Equities as an OEF, or an Equities Market Maker, or both; and (2) all transactions effected by the Equity Member are in compliance with Section 11(a) of the Act[12] and the rules and regulations adopted thereunder.[13] Equity Members may trade equity securities for their own proprietary accounts or, if authorized to do so under applicable law, may conduct business on behalf of customers.[14] OEFs are Equity Members representing orders as agent on MIAX PEARL Equities or non-Equities Market Makers conducting proprietary trading as principal.[15] An Equity Member may also register as an Equities Market Maker by filing a registration request with the Exchange.[16]

An Equity Member registered as an Equities Market Maker would be required to engage in a course of dealing for its own account and to assist in the maintenance of a fair and orderly market.[17] Among other things, each Equities Market Maker must, on a daily basis, maintain a two-sided market on a continuous basis during regular market hours for each equity security in which it is registered as an Equities Market Maker.[18] Equities Market Makers may withdraw their quotations,[19] and may voluntarily terminate their registration with the Exchange.[20] Pursuant to the existing procedures set forth in Chapter IX of current Exchange Rules, the Exchange could suspend, condition, limit, prohibit or terminate the authority of an Equities Market Maker to enter quotations in one or more authorized securities for violations of applicable requirements or prohibitions.[21]

While using the System, Equity Members and persons employed by or associated with any Equity Member would be prohibited from conduct that is: (1) Inconsistent with the maintenance of a fair and orderly market; (2) apt to impair public confidence in the operations of the Exchange; or (3) inconsistent with the ordinary and efficient conduct of business.[22] Should any such conduct occur, the Exchange may suspend an Equity Member's access to the System following a warning, or terminate an

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 88132 (February 6, 2020), 85 FR 8053 (February 12, 2020) (''Notice'').

[4] *See* Securities Exchange Act Release No. 88476 (March 25, 2020), 85 FR 17929 (March 31, 2020).

[5] Amendment No. 1 makes the following changes to the proposed rule change: (i) Deletes the definition of ''Equity Securities'' from proposed Exchange Rule 1901 and makes corresponding changes throughout the proposed Exchange Rules to eliminate unnecessary confusion; (ii) substitutes references to ''PEARL Equities'' with ''MIAX PEARL Equities'' throughout the proposed Exchange Rules; (iii) updates proposed Exchange Rule 2622 (Limit Up-Limit Down Plan and Trading Halts) regarding a Level 3 Market Decline to conform it to recent changes made by each of the national securities exchanges that trade equities and the Financial Industry Regulatory Authority (''FINRA''), and makes a corresponding change to proposed Exchange Rule 2615 (Opening Process); and (iv) amends proposed Exchange Rule 2617(a)(4)(C) and (D) to account for the potential for orders to post and rest at prices that cross contra-side liquidity and also to correct a typographical error in proposed Exchange Rule 2617(a)(4)(D). Amendment No. 1 is available on the Commission's website at: *https://www.sec.gov/comments/sr-pearl-2020-03/srpearl202003-7168815-216600a.pdf.*

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Notice, *supra* note 3 at 8053, 8056.

[8] *See* proposed MIAX PEARL Equities Rules 2000–2003.

[9] *See* proposed MIAX PEARL Equities Rule 2000(b).

[10] *See* proposed MIAX PEARL Equities Rule 2001(f). If such other registered exchange has not been designated by the Commission, pursuant to Rule 17d–1 under the Exchange Act, to examine Members for compliance with financial responsibility rules, then such applicant must have and maintain a membership in FINRA. *See id.*

[11] *See* proposed MIAX PEARL Equities Rule 2001(f).

[12] 15 U.S.C. 78k(a).

[13] *See* proposed MIAX PEARL Equities Rule 2001(e).

[14] *See id.*

[15] *See* proposed MIAX PEARL Equities Rule 1901.

[16] *See* proposed MIAX PEARL Equities Rule 2605. The Exchange represents that an unlimited number of Equities Market Makers may be registered in each equity security unless the number of Market Makers registered to make a market in a particular equity security should be limited whenever, in the Exchange's judgment, quotation system capacity in an equity security is not sufficient to support additional Market Makers in such equity security. *See* Notice, *supra* note 3, at 8053. The Exchange further represents that it will not restrict access in any particular equity security until the Exchange has submitted objective standards for restricting access to the Commission for the Commission's review and approval. *See id.*

[17] *See* proposed MIAX PEARL Equities Rule 2606.

[18] *See* proposed MIAX PEARL Equities Rule 2606(a)(1).

[19] *See* proposed MIAX PEARL Equities Rule 2607.

[20] *See* proposed MIAX PEARL Equities Rule 2608.

[21] *See* proposed MIAX PEARL Equities Rule 2609.

[22] *See* proposed MIAX PEARL Equities Rule 2602(b).

Equity Member's access to the System by notice in writing.[23]

B. MIAX PEARL Equities Trading System

As proposed, the Exchange's equities trading System, like its system for options, will be operated as a fully automated electronic order book, and the Exchange will not maintain or operate a physical trading floor.[24] The Exchange has proposed to be a trading center (''Trading Center'') whose quotations can be ''automated quotations'' under Rule 600(b)(4).[25] In addition, the Exchange is designed to be an ''automated trading center'' under Rule 600(b)(5) whose best-priced, displayed quotation will be a ''protected quotation'' under Rules 600(b)(61) and 600(b)(62), and for purposes of Rule 611.[26] Only Equity Members and their Sponsored Participants (''Users'') would be permitted to transact business on MIAX PEARL via the System.[27]

1. Order Types and Instructions

The Exchange proposes that Users may submit orders to the System as Limit Orders, Market Orders, or Midpoint Peg Orders.[28] Orders may be entered as an odd lot, round lot, or mixed lot.[29] The System will support two time-in-force instructions: Immediate-or-Cancel (''IOC'') or Regular Hours Only (''RHO'').[30] Users may submit orders with the display instructions of Displayed or Non-Displayed, but all orders eligible for display will be automatically defaulted to Displayed unless a User elects otherwise.[31] Users also may submit orders with instructions of: Do Not Route,[32] Post Only,[33] Attributable,[34] and Non-Attributable.[35] In addition, Users may mark Limit Orders as Intermarket Sweep Orders, which will allow orders so designated to be automatically matched and executed without reference to Protected Quotations at other Trading Centers.[36] Users may also choose to designate orders with self-trade protection modifiers to prevent executions against a resting opposite side order originating from the same market participant, Exchange Member, or trading group identifier.[37]

As proposed, the MIAX PEARL Equities Rules will provide for Limit Order Price Protection.[38] The Exchange has proposed that a Limit Order to buy (sell) will be rejected if it is priced at or above (below) the greater of a specified dollar and percentage away from: (1) The Protected Best Offer for Limit Orders to buy, the Protected Best Bid for Limit Orders to sell; or (2) if the Protected Best Offer or Protected Best Bid is unavailable, the consolidated last sale price disseminated during the Regular Trading Hours on trade date; or (3) if the Protected Best Offer or Protected Best Bid and a consolidated last sale price are unavailable, the prior day's Official Closing Price identified as such by the primary listing exchange, adjusted to account for events such as corporate actions and news events.[39] The proposed functionality would differ from that provided by other equities exchanges by using a waterfall of reference prices and permitting Equity Members to customize the Limit Order Price Protection dollar and percentage limits on a per session basis, in lieu of using the Exchange's default parameters.[40]

2. Opening Procedures

As proposed, the Exchange will conduct an Opening Process at the start

[23] *See* proposed MIAX PEARL Equities Rule 2602(d). The timing of such notice would depend on the severity of the Equity Member's misconduct. *See* Notice, *supra* note 3, at 8055.

[24] The Exchange represents that the System will leverage the Exchange's current technology, including its customer connectivity, messaging protocols, quotations and execution engine, order router, data feeds, and network infrastructure. *See* Notice, *supra* note 3, at 8056. In addition, the Exchange represents that it will become a member of the Depository Trust Company (''DTC''), and that the System will be linked to DTC for the Exchange to transmit locked-in trades for clearance and settlement. *Id.*

[25] 17 CFR 242.600(b)(4); *see* proposed MIAX PEARL Equities Rule 2617(c).

[26] 17 CFR 242.600(b)(5), (b)(61) and (b)(62); 17 CFR 242.611; *see* MIAX PEARL Equities Rule 2617(c).

[27] *See* proposed MIAX PEARL Equities Rules 2000 and 2602(a)(1). *See also* Exchange Rule 210 (Sponsored Access to the Exchange).

[28] *See* proposed MIAX PEARL Equities Rule 2614(a)(1)–(3). Midpoint Peg Orders are non-displayed Limit Orders that are assigned a ''working price'' pegged to the midpoint of the Protected NBBO. A Midpoint Peg Order receives a new timestamp each time its working price changes in response to changes to the midpoint of the Protected NBBO.

[29] *See* proposed MIAX PEARL Equities Rule 2614(a). The Exchange proposes that odd lot, round lot, and mixed lot orders are to be treated in the same manner on the Exchange, except as discussed below regarding the adjustment of an odd-lot price that locks or crosses the Protected NBBO. *See infra* note 74 and accompanying text.

[30] *See* proposed MIAX PEARL Equities Rule 2614(b). A Market Order may only include a time in force of IOC. *See* MIAX PEARL Equities Rule 2614(a)(2).

[31] *See* proposed MIAX PEARL Equities Rule 2614(c)(3) and (4). Market Orders and Mid-Point Peg Orders are not eligible for display. *See* proposed MIAX PEARL Equities Rule 2614(a)(2) and (3).

[32] An order designated as Do Not Route is a non-routable order that will be ranked and executed on the MIAX PEARL Equities Book pursuant to proposed MIAX PEARL Equities Rules 2616 and 2617(a)(4) or cancelled. Unless otherwise instructed by the User, an order designated as Do Not Route will be subject to the price sliding processes set forth in proposed MIAX PEARL Equities Rule 2614(g) and proposed MIAX PEARL Equities Rule 2622(e). *See* proposed MIAX PEARL Equities Rule 2614(c)(1).

[33] An order designated as Post Only is a non-routable order that will be ranked and executed on the MIAX PEARL Equities Book pursuant to proposed MIAX PEARL Equities Rule 2616 and proposed MIAX PEARL Equities Rule 2617(a)(4). An order designated as Post Only will only remove liquidity from the MIAX PEARL Equities Book when: (A) The order is for a security priced below $1.00; or (B) the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the MIAX PEARL Equities Book and subsequently provided liquidity including the applicable fees charged or rebates paid. To determine at the time of a potential execution whether the value of such execution when removing liquidity equals or exceeds the value of such execution if the order were instead posted to the MIAX PEARL Equities Book and subsequently provided liquidity, the Exchange will use the highest possible rebate paid and highest possible fee charged for such executions on the Exchange. Lastly, unless otherwise instructed by the User, an order designated as Post Only will be subject to the price sliding processes set forth in proposed MIAX PEARL Equities Rule 2614(g). *See* proposed MIAX PEARL Equities Rule 2614(c)(2).

[34] ''Attributable'' is an instruction to include the User's market participant identifier (''MPID'') with an order that is designated for display (price and size) on an Exchange proprietary data feed. *See* proposed MIAX PEARL Equities Rule 2614(c)(5).

[35] ''Non-Attributable'' is an instruction on an order that is designated for display (price and size) on an Exchange proprietary data feed to display that order on an anonymous basis. *See* proposed MIAX PEARL Equities Rule 2614(c)(6).

[36] A User marking a Limit Order as ''ISO'' must simultaneously route one or more additional Limit Orders marked ''ISO,'' as necessary, to away Trading Centers to execute against the full displayed size of any Protected Quotation for the security. An order meeting such requirements may be immediately executed at one or multiple price levels in the System without regard to Protected Quotations at away Trading Centers consistent with Regulation NMS. An ISO is not eligible for routing and may include a time-in-force of IOC or RHO. *See* MIAX PEARL Equities Rule 2614(d). A User entering an ISO with a time-in-force of IOC represents that such User has simultaneously routed one or more additional Limit Orders marked ''ISO,'' if necessary, to away Trading Centers to execute against the full displayed size of any Protected Quotation for the security with a price that is superior to the limit price of the ISO entered in the System. A User entering an ISO with a time-in-force of RHO makes the same representation but further represents that it simultaneously routed one or more additional Limit Orders marked ''ISO,'' if necessary, to away Trading Centers to execute against the full displayed size of any Protected Quotation for the security with a price that is equal to the limit price of the ISO entered in the System.

[37] *See* proposed MIAX PEARL Equities Rule 2614(f).

[38] *See* proposed MIAX PEARL Equities Rule 2614(a)(1)(I).

[39] *See* proposed MIAX PEARL Equities Rule 1900 (defining the term ''PBO'' or ''Protected NBO'' as the national best offer that is a Protected Quotation, and the term ''PBB'' or ''Protected NBB'' as the national best bid that is a Protected Quotation).

[40] *See* Notice, *supra* note 3, at 8061.

of Regular Trading Hours.[41] During the Opening Process, the Exchange attempts to match eligible buy and sell orders at the midpoint of the NBBO.[42] Similar to the Opening Process conducted by other national securities exchanges,[43] the midpoint of the NBBO will be calculated differently depending on whether the primary listing exchange is NYSE or NYSE American,[44] or is any other primary listing exchange.[45] If the conditions to establish the Opening Process do not occur by 9:45:00 a.m. Eastern Time, the Exchange will conduct a Contingent Open, by matching all orders eligible to participate in the Opening Process at the midpoint of the then prevailing NBBO.[46] If the midpoint of the NBBO is not available for the Contingent Open, all orders will be handled in time sequence, beginning with the order with the oldest timestamp, and be placed on the MIAX PEARL Equities Book, cancelled, executed, or routed to away Trading Centers in accordance with the terms of the order.[47] Those Users that do not wish to participate in the Contingent Open may cancel their orders at any time and resubmit those orders after the Contingent Open occurs and continuous trading begins.[48] While an equity security is subject to a halt, suspension, or pause in trading, the Exchange will accept orders for queuing prior to the resumption of trading in the security for participation in the Re-Opening Process.[49] As proposed, the Re-Opening Process will occur in the same general manner as the Opening Process.[50]

3. Order Priority and Execution

As proposed, following the Opening Process, the System will continuously and automatically match orders pursuant to price/time priority.[51] For equally-priced trading interest, orders categorized as displayed will have priority over orders categorized as non-displayed.[52] Within each priority category, orders will be ranked based on time, with each order being assigned a timestamp equal to the time the order is first placed on the MIAX PEARL Equities Book.[53] The System also will utilize certain collars and constraints in an effort to reduce the occurrence of erroneous trades.[54] The best-ranked orders to buy and best-ranked orders to sell that are displayable in the MIAX PEARL Equities book and their aggregate displayed size will be available to quotation vendors for dissemination pursuant to the requirements of Rule 602 of Regulation NMS.[55]

Proposed MIAX PEARL Equities Rule 2617(a) addresses order execution.[56] The proposed rule provides that an order will be cancelled back to the User if, based on market conditions, User instructions, applicable Exchange Rules and/or the Exchange Act and the rules and regulations thereunder, such order is not executable, cannot be routed to another Trading Center and cannot be posted to the MIAX PEARL Equities Book.[57]

Proposed MIAX PEARL Equities Rule 2617(a)(1)–(3) provides that the System will comply with all applicable securities laws and regulations, including Regulation NMS Rule 611, Regulation SHO, and the Plan to Address Extraordinary Market Volatility (the ''LULD Plan'').[58] Proposed Rule 2617(a)(4) addresses how (subject to the requirements of Rule 611 and other applicable Commission and Exchange requirements), an incoming order or Aggressing Order would be matched against orders on the MIAX PEARL Equities Book. Specifically, proposed MIAX PEARL Equities Rule 2617(a)(4)(A)–(B) provides that an Aggressing Order or an incoming order to buy (sell) will be automatically executed to the extent that it is priced at an amount that equals or exceeds (is less than) any order to sell (buy) in the MIAX PEARL Equities Book and is executable.[59]

In Amendment No. 1, the Exchange modifies proposed MIAX PEARL

[41] Orders designated as Post Only, ISOs, Market Orders, and orders that include a time-in-force other than RHO are not eligible to participate in the Opening Process. *See* proposed MIAX PEARL Equities Rule 2615. Self-trade prevention modifiers will be honored during the Opening Process. *See* proposed MIAX PEARL Equities Rule 2615(a)(2).

[42] All orders eligible to trade at the midpoint will be processed in time sequence, beginning with the order with the oldest timestamp. The Opening Process will conclude when no remaining orders, if any, can be matched at the midpoint of the NBBO. At the conclusion of the Opening Process, the unexecuted portion of orders that were eligible to participate in the Opening Process will be placed on the MIAX PEARL Equities Book in time sequence, cancelled, executed, or routed to away Trading Centers in accordance with the terms of the order. *See* proposed MIAX PEARL Equities Rule 2615(b).

[43] *See, e.g.,* Cboe BZX Rule 11.24(c); Cboe EDGX Rule 11.7(c).

[44] When the primary listing exchange is the NYSE or NYSE American, the Opening Process will be priced at the midpoint of the: (i) First NBBO subsequent to the first reported trade and first two-sided quotation on the primary listing exchange after 9:30:00 a.m. Eastern Time; or (ii) then prevailing NBBO when the first two-sided quotation is published by the primary listing exchange after 9:30:00 a.m. Eastern Time, but before 9:45:00 a.m. Eastern Time if no first trade is reported by the primary listing exchange within one second of publication of the first two-sided quotation by the primary listing exchange. *See* proposed MIAX PEARL Equities Rule 2615(c)(1).

[45] For any other primary listing exchange, the Opening Process will be priced at the midpoint of the first NBBO subsequent to the first two-sided quotation published by the primary listing exchange after 9:30:00 a.m. Eastern Time. *See* proposed MIAX PEARL Equities Rules 2615(c)(2).

[46] *See* proposed MIAX PEARL Equities Rule 2615(d).

[47] Users not seeking an execution at the midpoint of the NBBO during the Contingent Open may cancel their orders before 9:45 a.m. and re-enter those orders after the Contingent Open occurs. *See* Notice, *supra* note 3, at 8063.

[48] *See id.*

[49] *See* proposed MIAX PEARL Equities Rule 2615(e).

[50] *See* proposed MIAX PEARL Equities Rule 2615(e)(1).

[51] *See* proposed MIAX PEARL Equities Rules 2616(a)(1) and 2617(a)(4)(A). Orders to buy will be ranked from highest working price to lowest working price. Orders to sell will be ranked from lowest working price to highest working price. If the working price of an order changes, the price priority of the order will also change. *See* proposed MIAX PEARL Equities Rule 2616(a)(1). *See also* proposed MIAX PEARL Equities Rule 1900, defining ''working price'' to mean the price at which an order is eligible to trade at any given time, which may be different from the limit price or display price of the order.

[52] *See* proposed MIAX PEARL Equities Rule 2616(a)(2).

[53] *See* proposed MIAX PEARL Equities Rule 2616(a)(3). When Users elect that their orders not execute against an order with the same self-trade prevention modifier, the System will not permit such orders to execute against one another, regardless of priority ranking. *See* MIAX PEARL Equities Rule 2616(a)(4). When a User cancels or replaces an order resting on the MIAX PEARL Equities Book, the order will retain its timestamp and retain its priority only where the modification involves a decrease in the size of the order or a change in position from: (A) Sell to sell short; (B) sell to sell short exempt; (C) sell short to sell; (D) sell short to sell short exempt; (E) sell short exempt to sell; and (F) sell short exempt to sell short. *See* proposed MIAX PEARL Equities Rule 2616(a)(5). In addition, the remainder of an order that is partially executed against an incoming order or Aggressing Order (as defined in proposed MIAX PEARL Equities Rule 1901) will retain its timestamp. *See* proposed MIAX PEARL Equities Rule 2616(a)(6).

[54] *See* MIAX PEARL Equities Rules 2618 and 2621.

[55] *See* proposed MIAX PEARL Rule 2216(b), providing that, pursuant to Rule 602 of Regulation NMS, the Exchange will transmit for display to the appropriate network processor for each System security the highest (lowest) price to buy (sell) wherein the aggregate size of all displayed buy (sell) interest in the System greater (less) than or equal to that price is one round lot or greater, and that the aggregate size of all displayed buy (sell) interest in the System greater (less) than or equal to that price will be transmitted rounded down to the nearest round lot.

[56] The Exchange states that the order execution process for equity securities is based on functionality currently approved for use on the Cboe Equities Exchanges, NYSE, NYSE Arca, and Nasdaq. *See* Notice *supra* note 3 at 8065.

[57] *See* proposed MIAX Pearl Equities Rule 2617(a). The Exchange states that this is the same as on other equity exchanges. *See* Notice *supra* note 3 at 8065.

[58] *See id.* Proposed Rule 2617(a)(2) specifies that for any execution to occur during Regular Trading Hours, the price must be equal to, or better than, the Protected NBBO unless an exception to Rule 611 applies. *See* proposed MIAX PEARL Equities Rules 1901 (defining ''Protected NBBO'') and 2617(a)(2).

[59] *See* proposed MIAX PEARL Equities Rule 2617(a)(4)(A)–(B).

Equities Rule 2617(a)(4)(C) and (D), which further addresses executions on the MIAX PEARL Equities Book, by describing how the Exchange would handle internally locked or crossed interest on the MIAX PEARL Equities Book. Proposed MIAX PEARL Equities Rule 2617(a)(4)(C), as amended, acknowledges that certain orders, based on their operation and User instructions, are permitted to post and rest on the MIAX PEARL Equities Book at prices that lock or cross contra-side liquidity; provided, however, that the System would never display a locked or crossed market.[60] The rule states further that, if an Aggressing Order or an incoming order to buy (sell) would execute upon entry against an order to sell (buy) at the same price as or a worse price than a resting displayed order to buy (sell), the Aggressing Order or incoming order to buy (sell) will be cancelled or posted to the MIAX PEARL Equities Book and ranked in accordance with proposed MIAX PEARL Equities Rule 2616.[61]

Proposed MIAX PEARL Equities Rule 2617(a)(4)(D), as modified by Amendment No. 1, governs the price at which an order is executable when it is posted non-displayed on the PEARL Equities Book and there is a contra-side displayed order at a price which results in an internally locked or crossed book.[62] For securities priced equal to or greater than $1.00 per share, in the case where a non-displayed order to sell (buy) is posted on the MIAX PEARL Equities Book at a price that locks or crosses a displayed order to buy (sell) pursuant to proposed MIAX PEARL Equities Rule 2617(a)(4)(C) described above, an Aggressing Order or an incoming order to buy (sell) that is a market order or a limit order priced more aggressively than the order to buy (sell) displayed on the MIAX PEARL Equities Book will execute against the non-displayed order to sell (buy) resting on the PEARL Equities Book at one-half minimum price variation greater (less) than the price of the resting displayed order to buy (sell).[63]

As initially proposed, MIAX PEARL Equities Rule 2617(a)(4)(C) and (D) set forth how the Exchange would process orders when the MIAX PEARL Equities Book is internally locked.[64] In Amendment No. 1, the Exchange added language to these proposed rule provisions to account for the fact that certain orders also may post at prices that cross contra-side liquidity resting on the MIAX PEARL Equities Book.[65] The Exchange states that such an internally crossed book may occur when an incoming order of odd lot size designated as Post Only does not execute against a resting Midpoint Peg order pursuant to the Exchange's proposed economic best interest functionality under proposed MIAX PEARL Equities Rule 2614(c)(2).[66] The Exchange provides an example where this occurs when an incoming displayable odd lot Post Only order would cross a contra-side Midpoint Peg order resting at the midpoint of the PBBO by one half of one cent ($.005) and post and display at its limit price, crossing the Midpoint Peg order.[67] The example further reflects where these internally crossed orders would be subsequently executable—specifically, the Midpoint Peg order would no longer be executable at the midpoint of the PBBO and instead would be executable at one-half minimum price variation more aggressive than the displayed price of the odd lot Post Only order, and the odd lot Post Only order would be executable at its displayed price.[68]

The MIAX PEARL Equities Rules also are designed to address intermarket locks and crosses, as required by Rule 610(d) of Regulation NMS,[69] in that they are designed not to disseminate interest that would lock or cross a protected quote, require Users to reasonably avoid displaying interest that locks or crosses any protected quotation, and are reasonably designed to assure the reconciliation of locked or crossed interest.[70] The MIAX PEARL Equities Rules also provide for the re-pricing of limit orders in order to comply with Rule 201 of Regulation SHO[71] and the LULD Plan,[72] and the repricing of non-displayed limit orders to ensure compliance with Rule 611 of Regulation NMS.[73] Further, with respect to odd lots, the Exchange has proposed that the working and display price of a displayable odd lot order will be adjusted both on arrival and when resting on the MIAX PEARL Equities Book depending on the odd lot order's limit price in relation the Protected NBBO and whether the Protected NBBO itself is locked or crossed, to reduce the potential for odd lot orders to be displayed on the Exchange's proprietary data feed at potentially unexecutable prices.[74]

C. Routing

As proposed, MIAX PEARL Equities will support orders that are designated to be routed to the Protected NBBO as well as orders that will execute only within MIAX PEARL Equities.[75] The System will provide a routing service (''Routing Services'') for orders when trading interest is not available on MIAX PEARL Equities.[76] As the Exchange currently does for options,[77] it will route orders in equity securities via one or more routing brokers that are not affiliated with the Exchange.[78]

For all Routing Services, the Exchange will determine the logic that provides

[60] *See* Amendment No. 1; Rule 2617(a)(4)(C).

[61] *See* Amendment No. 1; Rule 2617(a)(4)(C).

[62] *See* Amendment No. 1; Rule 2617(a)(4)(D).

[63] *See* Amendment No. 1; Rule 2617(a)(4)(D).

[64] *See* Amendment No. 1.

[65] *Id.*

[66] *Id.*

[67] *Id.* The example assumes that the PBBO is $10.00 by $10.05 and there are no orders resting on the MIAX PEARL Equities book. The Exchange states that it has yet to determine the level of fees and rebates it intends to offer, so the example assumes a maker/taker fee structure with a $0.0030 fee for removing liquidity and a $0.0030 rebate for providing liquidity, requiring at least $0.0060 of price improvement for a displayed order designated as Post Only to remove liquidity. The Exchange also states that, assuming it offers lower fees and rebates for non-displayed orders, if the incoming post only order in the example was non-displayed, it would execute against the resting contra-side Midpoint Peg order pursuant to the Exchange's proposed economic best interest functionality under proposed Exchange Rule 2614(c)(2). Further, the Exchange states that if the incoming post only order in the example instead was a displayed round lot, it would have updated the PBBO resulting in the contra-side Midpoint Peg Order being re-priced to the new midpoint of the PBBO and not resulting in a non-displayed internally crossed book. *Id.*

[68] *Id.*

[69] 17 CFR 242.610(d).

[70] *See* proposed MIAX PEARL Equities Rule 2624: *see also* proposed MIAX PEARL Equities Rule 2614(a)(1) and (g)(1) (relating to price sliding functionality for non-routable limit orders to avoid violations of Rule 610(d) of Regulation NMS, 17 CFR 242.610(d)).

[71] 17 CFR 242.201; *see* proposed MIAX PEARL Equities Rule 2614(a)(1) and (g)(3).

[72] *See* proposed MIAX PEARL Equities Rules 2614(a)(1) and 2622; *see also* proposed MIAX PEARL Equities Rule 2617(a)(3) (providing that any executions that occur during Regular Trading Hours must comply with the LULD plan).

[73] 17 CFR 242.611; *see* proposed MIAX PEARL Equities Rule 2614(a)(1) and (g)(2).

[74] *See* proposed MIAX PEARL Equities Rule 2611(b)(1). *See also* proposed MIAX PEARL Equities Rule 2611(b)(2) (regarding circumstances in which resting odd lot quantity could be joined with the returned quantity of a routed order and receive a new timestamp). *See also* Notice, *supra* note 3 at 8057.

[75] However, an order marked ''short'' when a short sale price test restriction pursuant to Rule 201 of Regulation SHO is in effect is not eligible for routing by the Exchange. *See* MIAX Pearl Equities Rule 2617(b)(2). An order that is ineligible for routing due to a short sale price test restriction and that includes a time-in-force of IOC will be cancelled upon entry. *Id.* The Exchange will handle routable orders in connection with the LULD Plan as described in proposed MIAX PEARL Equities Rule 2622(b)(2) and (3).

[76] *See* Notice, *supra* note 3, at 8053.

[77] *See* Exchange Rule 529.

[78] *See* Notice, *supra* note 3, at 8066. The Exchange notes that this routing process is described under proposed MIAX PEARL Equities Rule 2617(b)(1), which is identical to current Exchange Rule 529 that is applicable to options. *See id.*

when, how, and where orders are routed away to other Trading Centers.[79] The Exchange represents that the Exchange's routing logic will not provide any advantage to Users when routing orders to away Trading Centers as compared to other routing methods.[80] The routing broker will receive routing instructions from the Exchange to route orders to other Trading Centers and report such executions back to the Exchange.[81] The routing broker cannot change the terms of an order or the routing instructions, nor does the routing broker have any discretion about where to route an order.[82]

The Exchange represents that for each routing broker used by the Exchange, an agreement will be in place between the Exchange and the routing broker that will, among other things, restrict the use of any confidential and proprietary information that the routing broker receives to legitimate business purposes necessary for routing orders at the direction of the Exchange.[83] Further, the Exchange will establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and the routing broker, and any other entity, including any affiliate of the routing broker; and, if the routing broker or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the routing broker or affiliate that provides the other business activities and the segment of the routing broker that provides the Routing Services.[84]

The Exchange may not use a routing broker for which the Exchange or any affiliate of the Exchange is the designated examining authority.[85] In addition, the Exchange will provide its Routing Services in compliance with the provisions of the Act and the rules thereunder, including, but not limited to, the requirements in Section 6(b)(4) and (5) of the Act that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among an exchange's members and other persons using its facilities, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[86] The Exchange also represents that it will file a proposed rule change with the Commission pursuant to Section 19(b) of the Act prior to offering additional routing options.[87]

The Exchange notes that use of its routing services to route orders to other market centers is optional.[88] Parties that do not desire to use these services must designate their orders as not available for routing.[89] In addition, any bid or offer entered on the Exchange routed to another Trading Center through a routing broker that results in an execution shall be binding on the Member that entered such bid or offer.[90]

D. Securities Traded: Unlisted Trading Privileges

The Exchange is not proposing to be a listing market for equity securities, but instead proposes to trade equity securities pursuant to unlisted trading privileges (''UTP''). MIAX PEARL Equities Rule 2900 establishes the Exchange's authority to trade securities on a UTP basis. MIAX PEARL Equities Rule 2900(a) provides that the Exchange may extend UTP any NMS Stock that is listed on another national securities exchange or with respect to which UTP may otherwise be extended in accordance with Section 12(f) of the Act.[91] MIAX PEARL Equities Rule 2900(a) further provides that any such security would be subject to all Exchange rules applicable to trading on the Exchange, unless otherwise noted. For any UTP security that is a UTP Exchange Traded Product, the Exchange will distribute an information circular prior to the commencement of trading in each such UTP Exchange Traded Product that generally includes the same information as is contained in the information circular provided by the listing exchange.[92] Equity Members must provide each purchaser of UTP Exchange Traded Products a written description of the terms and characteristics of those securities, in a form approved by the Exchange or prepared by the open-ended management company issuing such securities, not later than the time a confirmation of the first transaction in such securities is delivered to such purchaser.[93] Upon request of a customer, an Equity Member must also provide a prospectus for the particular UTP Exchange Traded Product.[94]

The Exchange also proposes certain restrictions on Equity Members acting as Equities Market Makers on the Exchange in a UTP Exchange Traded Product that derives its value from one or more currencies, commodities, or derivatives based on one or more currencies or commodities, or is based on a basket or index composed of currencies or commodities.[95] Further, the Exchange will enter into comprehensive surveillance sharing agreements with markets that trade components of the index or portfolio on which the UTP Exchange Traded Product is based to the same extent as the listing exchange's rules require the listing exchange to enter into comprehensive surveillance sharing agreements with such markets.[96]

E. Regulation

The Exchange represents that it will regulate MIAX PEARL Equities using the Exchange's existing regulatory structure.[97] Pursuant to the Exchange's By-Laws, the Chief Regulatory Office of the Exchange will have general supervision of the regulatory operations of the Exchange, which will include responsibility for overseeing the Exchange's surveillance, examination, and enforcement functions and for administering any regulatory services agreements applicable to MIAX PEARL

[79] *See* proposed MIAX PEARL Equities Rule 2617(b)(1)(A)(iv).

[80] *See* Notice, *supra* note 3, at 8066.

[81] *See* proposed MIAX PEARL Equities Rule 2617(b)(1)(A)(v).

[82] *See* proposed MIAX PEARL Equities Rule 2617(b)(1)(A)(v).

[83] *See* Notice, *supra* note 3, at 8066. *See also* proposed MIAX PEARL Equities Rule 2617(b)(1)(A).

[84] *See* proposed MIAX PEARL Equities Rule 2617(b)(1)(A)(i).

[85] *See* proposed MIAX PEARL Equities Rule 2617(b)(1)(A)(ii).

[86] *See* proposed MIAX PEARL Equities Rule 2617(b)(1)(A)(iii).

[87] *See* Notice, *supra* note 3, at 8066 n.78.

[88] *See id.* at 8066.

[89] *See id.*

[90] *See* proposed MIAX PEARL Equities Rule 2617(b)(1)(A)(vi).

[91] Any such security will be subject to all Exchange rules applicable to trading on the Exchange, unless otherwise noted. *See* proposed MIAX PEARL Equities Rule 2900. The Exchange states that this rule is identical to the rules of other equities exchanges. *See* Notice, *supra* note 3, at 8070. *See also* Amendment No. 1, *supra* note 5, deleting from the proposed MIAX PEARL Equities Rules the originally proposed definition of Equity Securities as unnecessary.

[92] This includes: (a) The special risks of trading the new Exchange Traded Product; (b) the Exchange Rules that will apply to the new Exchange Traded Product; and (c) information about the dissemination of value of the underlying assets or indices. *See* proposed MIAX PEARL Equities Rules 2900(b)(1).

[93] In addition, Equity Members will include a written description with any sales material relating to UTP Exchange Traded Products that is provided to customers or the public, as well as a disclaimer (Any other written materials provided by an Equity Member to customers or the public making specific reference to the UTP Exchange Traded Products as an investment vehicle) with any other written materials provided by an Equity Member to customers or the public making specific reference to the UTP Exchange Traded Products as an investment vehicle substantially in in a form prescribed by the Exchange. *See* proposed MIAX PEARL Equities Rules 2900(b)(2)(B).

[94] *See* proposed MIAX PEARL Equities Rule 2900(b)(2)(C).

[95] *See* proposed MIAX PEARL Equities Rule 2900(b)(4).

[96] *See* proposed MIAX PEARL Equities Rule 2900(b)(5).

[97] *See id.* at 8071–72.

Equities.[98] Similarly, the Exchange's existing Regulatory Oversight Committee will be responsible for overseeing the adequacy and effectiveness of Exchange's regulatory and self-regulatory organization responsibilities, including those applicable to MIAX PEARL Equities.[99]

As more fully discussed in the Notice, the Exchange has proposed specific business conduct and operational rules for Equity Members consistent with the approved rules of other equities exchanges, which include rules covering similar subject matter as existing Exchange Rules, applicable to options Members.[100] In addition, the Exchange proposes that existing rules applicable to the MIAX PEARL options market (current Chapters I though XVIII of the Exchange Rules) will apply to Equity Members and their associated persons, unless a specific MIAX PEARL Equities Rule (in proposed Chapters XIX through XXX of the Exchange Rules) governs or the context otherwise requires.[101] The Exchange also proposes to incorporate certain rules of other self-regulatory organizations (''SROs'') and represents that it will request an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for those rules of another SRO that it proposes to incorporate by reference to the extent such rules are effected solely by virtue of a change to any of those rules.[102]

Further, the Exchange's By-Laws provide that it has disciplinary jurisdiction over its members, including Equity Members so that it can enforce its members' compliance with its rules and the federal securities laws.[103] The Exchange's rules also permit it to sanction members for violations of its rules and of the federal securities laws by, among other things, expelling or suspending members, limiting members' activities, functions, or operations, fining or censuring members, or suspending or barring a person from being associated with a member.[104]

In addition, the Exchange represents that: (1) The Exchange will join the existing equities industry agreements and establish new agreements, as necessary, pursuant to Section 17(d) of the Exchange Act, as it has with respect to its equities market; (2) the Exchange's Regulatory Services Agreement (''RSA'') with FINRA will govern many aspects of the regulation and discipline of Members that participate in equities trading, as it does for options market regulation; and (3) the Exchange will authorize Equity Members to trade on MIAX PEARL Equities and conduct surveillance of equities trading as it does for options.[105]

The Exchange represents that it will establish Rule 17d–2 Plans for Allocation of Regulatory Responsibilities, including, subject to Commission approval: (i) A plan with FINRA pursuant to which the Exchange and FINRA will agree to allocate to FINRA, with respect to common members, regulatory responsibility for overseeing and enforcing certain applicable laws, rules, and regulations of MIAX PEARL Equities; (ii) joining the multi-party plan with FINRA and other national securities exchanges for the surveillance, investigation, and enforcement of common insider trading rules; and (iii) joining the multi-party plan with FINRA and other national securities exchanges for the allocation of regulatory responsibilities with respect to certain Regulation NMS Rules.[106]

In addition, the Exchange represents that it will: (i) Expand its existing RSA with FINRA, pursuant to which FINRA performs various regulatory services on behalf of the Exchange, subject to the Exchange's ultimate responsibility, including the review of membership applications and the conduct of investigations, disciplinary and hearing services; (ii) join the Intermarket Surveillance Group (''ISG''); and (iii) submit an amended Minor Rule Violation Plan to the Commission under Rule 19d–1(c)(2) of the Exchange Act.[107]

According to the Exchange, FINRA currently surveils options trading on behalf of the Exchange pursuant to an existing RSA designed to detect violations of Exchange rules and applicable federal securities laws.[108] The Exchange represents that this RSA will be expanded to provide for FINRA to also surveil equities trading on MIAX PEARL Equities on behalf of the Exchange.[109] The Exchange will remain responsible for FINRA's performance under the RSA.[110]

In addition, with respect to exchange traded products traded on MIAX PEARL Equities pursuant to unlisted trading privileges, the Exchange represents that it will enter into a comprehensive surveillance sharing agreement with markets that trade components of the index or portfolio on which shares of an exchange-traded product is based to the same extent as the listing exchange's rules require the listing exchange to enter into a comprehensive surveillance sharing agreement with such markets.[111]

The Exchange has also proposed Rule 2622(e) to comply with the LULD Plan, and has represented that it is identical in all material respects to the rules of other equities exchanges.[112] Proposed MIAX PEARL Equities Rule 2622(e) states that the Exchange is a Participant

[98] *See* proposed MIAX PEARL By-Laws, Section 6.10.

[99] *See* proposed MIAX PEARL By-Laws, Section 4.5(c).

[100] *See* Notice, *supra* note 3, at 8069–70 (discussing MIAX PEARL Equities Rules regarding Fair Practice (Chapter XXI), Books, Records, and Reports (Chapter XXII), Supervision (Chapter XXIII), Margin (Chapter XXIV), Chapter XXVII (Trading Practice Rules), and other miscellaneous provisions (Chapter XXVIII).

[101] *See* proposed MIAX PEARL Rule 1900 (Applicability).

[102] *See* Notice *supra* note 3 at 8069.

[103] *See* MIAX PEARL By-Laws Section 9.2; *see also* MIAX PEARL By-Laws Section 2.1(d).

[104] *See* Chapter X of Exchange Rules. The Exchange's rules also provide for the imposition of fines for minor rule violations in lieu of commencing disciplinary proceedings. The Commission approved the Exchange's Minor Rule Violation Plan (''MRVP'') in 2017. *See* Securities Exchange Act Release No. 82385 (December 21, 2017), 82 FR 61613 (December 28, 2017) (File No. 4–715).

[105] *See id.* at 8071–72.

[106] *See* Notice, *supra* note 3, at 8072. Rule 17d–2 provides that any two or more SROs may file with the Commission a plan for allocating among such SROs the responsibility to receive regulatory reports from persons who are members or participants of more than one of such SROs to examine such persons for compliance, or to enforce compliance by such persons, with specified provisions of the Act, the rules and regulations thereunder, and the rules of such SROs, or to carry out other specified regulatory functions with respect to such persons. *See* 17 CFR 240.17d–2.

[107] *See id.* The Commission approved the Exchange's current MRVP in 2017. *See* Securities Exchange Act Release No. 82385 (December 21, 2017), 82 FR 61613 (December 28, 2017) (File No. 4–715).

[108] *See* Notice, *supra* note 3, at 8072.

[109] *See id.*

[110] *See id.*

[111] *See id.* The Exchange states that FINRA, on behalf of the Exchange, may obtain information, and will communicate information as needed, regarding trading in the shares of exchange-traded products, as well as in the underlying exchange-traded securities and instruments with other markets and other entities that are members of ISG. The Exchange may also obtain information regarding trading in such shares and underlying securities and instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, the Exchange states that FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by a fund reported to FINRA's Trade Reporting and Compliance Engine. *See id.*

[112] *See id.* at 8068. In Amendment No. 1, the Exchange updated proposed MIAX PEARL Equities Rules 2615 and 2622 regarding trading halts to reflect recent proposed rule changes filed by all other equity exchanges and FINRA with respect to a Level 3 Market Decline. *See supra* note 5. When triggered, a Level 3 halt would halt trading market-wide until the next trading day. The changes in Amendment No. 1 would allow for next-day trading to resume in all NMS stocks no differently from any other trading day, and would not need to wait for the primary listing market to reopen trading in a security.

in the LULD Plan [113] and requires that Equity Members comply with the LULD Plan's provisions. Proposed MIAX PEARL Equities Rule 2622(e) also describes the Exchange's order handling procedures to comply with the LULD Plan.[114]

III. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change, as Modified by Amendment No. 1

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [115] to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the amended proposal. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change, as modified by Amendment No. 1, to inform the Commission's analysis of whether to approve or disapprove the proposal.

Pursuant to Section 19(b)(2)(B) of the Act,[116] the Commission is providing notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the amended proposal's consistency with:

- Section 6(b)(1) of the Act, which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the exchange; [117] and
- Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' [118]

IV. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by June 8, 2020. Rebuttal comments should be submitted by June 22, 2020. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[119]

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposed rule change, as modified by Amendment No. 1, in addition to any other comments they may wish to submit about the proposal.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, as modified by Amendment No. 1, including whether the proposal 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–PEARL–2020–03 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–PEARL–2020–03. The 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 such 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 publicly available. All submissions should refer to File No. SR–PEARL–2020–03 and should be submitted on or before June 8, 2020. Rebuttal comments should be submitted by June 22, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[120]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–10519 Filed 5–15–20; 8:45 am]

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[113] The Exchange represents that it intends to become a Participant in the LULD Plan prior to launching MIAX PEARL Equities. *See* Notice, *supra* note 3, at 8068, n.87.

[114] For a description of the order handling procedures under proposed Exchange Rule 2622(e), *see id.* at 8068.

[115] 15 U.S.C. 78s(b)(2)(B).

[116] *Id.* Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

[117] 15 U.S.C. 78f(b)(1).

[118] 15 U.S.C. 78f(b)(5).

[119] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[120] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88857; File No. SR–BX–2020–008]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Transaction Credits and Fees, at Equity 7, Section 118(a)

May 12, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 1, 2020, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's transaction credits and fees, at Equity 7, Section 118(a), as described further below.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange operates on the ''taker-maker'' model, whereby it generally pays credits to members that take liquidity and charges fees to members that provide liquidity. Currently, the Exchange has a schedule, at Equity 7, Section 118(a), which consists of several different credits that it provides for orders in securities priced at $1 or more per share that access liquidity on the Exchange and several different charges that it assesses for orders in such securities that add liquidity on the Exchange.

Over the course of the last few months, the Exchange has experimented with various reformulations of its pricing schedule with the aim of increasing activity on the Exchange, improving market quality, and increasing market share.[3] Although these changes have met with some success, the Exchange has yet to achieve the results it desires. Accordingly, the Exchange proposes to again revise its pricing schedule, in large part, in a further attempt to improve the attractiveness of the market to new and existing participants.

Description of the Changes

Credits for Accessing Liquidity through the Exchange

The Exchange proposes to revise its schedule of credits to add one new credit. Specifically, the Exchange proposes to provide a $0.0027 per share executed credit (for securities in Tapes A and B) and a $0.0026 per share executed credit (for securities in Tape C) for orders that access liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member: (i) Whose combined liquidity removing and adding activities equal to or exceed 0.185% of total Consolidated Volume during a month; and (ii) adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month. The Exchange believes that that the availability of the new credits will incentivize members that currently qualify for one of the lesser credits to increase their existing levels of liquidity adding and removal activities on the Exchange to attain it. In doing so, the Exchange intends to improve the overall quality and attractiveness of the Nasdaq BX market.

Charges for Adding Liquidity to the Exchange

In addition to the above, the Exchange proposes to amend its existing schedule of charges for adding displayed liquidity to the Exchange.

First, the Exchange proposes to amend its existing $0.0026 per share executed charge for displayed orders entered by a member that adds liquidity equal to or exceeding 0.15% of total Consolidated Volume during a month. The Exchange proposes to reduce the percentage of total Consolidated Volume needed to qualify for this charge, from 0.15% to 0.11% total Consolidated Volume. By easing the volume requirements for this charge, which represents a discount off of the standard $0.0030 per share executed charge (for all other orders), the Exchange intends to increase the number of members that seek to and do qualify for it, and thereby provide incentives for members to add liquidity to the Exchange.

Second, the Exchange proposes to add to its schedule of charges a new $0.0025 per share executed charge for displayed orders entered by a member that adds liquidity equal to or exceeding 0.175% of total Consolidated Volume during a month. The Exchange proposes to add this new charge, which also represents a discount off of the standard charge, to provide a new incentive for members that already qualify for the $0.0026 per share executed charge to increase their volume of liquidity adding activity so as to qualify for the further discounted charge of $0.0025 per share executed.

Impact of the Changes

Those participants that act as net removers of liquidity from the Exchange will benefit directly from the proposed addition of new credits that would apply to orders that remove liquidity from the Exchange. Those participants that act as net adders of liquidity will also benefit from the new credits insofar as they are tied to members achieving a threshold level of liquidity adding and removing activity on the Exchange; any ensuing increase in liquidity adding and removing activity will improve the overall quality of the market, to the benefit of all members.

Meanwhile, the proposed changes to ease the qualifying volume threshold to qualify for the $0.0026 per share executed charge and to establish a new $0.0025 charge, will benefit participants that are net adders of liquidity by enabling them to more easily qualify for the existing $0.0026 per share executed discounted charge, and by providing members with an incentive to increase their liquidity adding activity to qualify for the new $0.0025 per share executed discounted charge. The Exchange notes that its proposal is not otherwise targeted at or expected to be limited in its applicability to a specific segment(s) of market participants nor will it apply differently to different types of market participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not

[3] *See* Securities Exchange Act Release No. 34–87271 (October 10, 2019), 84 FR 55621 (October 17, 2019) (SR–BX–2019–035); Securities Exchange Act Release No. 34–87271 (September 24, 2019), 84 FR 57530 (October 25, 2019) (SR–BX–2019–031); Securities Exchange Act Release No. 34–86120 (June 17, 2019); 84 FR 29270 (June 21, 2019) (SR–BX–2019–026); Securities Exchange Act Release No. 34–85912 (May 22, 2019); 84 FR 24834 (May 29, 2019) (SR–BX–2019–013).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4) and (5).

designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

The Proposal Is Reasonable

The Exchange's proposed changes to its schedule of credits and fees are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [6]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, 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]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several taker-maker exchanges. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.[8]

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules.[9] Separately, the Exchange has provided the SEC staff with multiple examples of instances where pricing changes by BX and other exchanges have resulted in shifts in exchange market share. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange has designed its proposed schedule of credits and charges to provide increased overall incentives to members to increase their liquidity removal and adding activity on the Exchange. An increase in liquidity removal and adding activity on the Exchange will, in turn, improve the quality of the Nasdaq BX market and increase its attractiveness to existing and prospective participants. Generally, the proposed new credit and amended and new charges will be comparable to, if not favorable to, those that its competitors provide.[10]

The Exchange notes that those participants that are dissatisfied with the proposed credits or fees are free to shift their order flow to competing venues that offer them higher credits or lower fees.

The Proposal Is an Equitable Allocation of Credits

The Exchange believes its proposal will allocate its proposed new credits and amended and new charges fairly among its market participants. It is equitable for the Exchange to increase its credits to participants whose orders remove liquidity from the Exchange as a means of incentivizing increased liquidity removal activity on the Exchange as well as to tie the receipt of the credits to the member engaging in a threshold volume of combined liquidity removal and adding activity on the Exchange. Furthermore, it is equitable for the Exchange to propose higher credits for participants with orders in securities in Tapes A and B than it proposes for participants with orders in Tape C due to the Exchange's desire to specifically promote increased liquidity removal activity in securities in Tapes A and B. Likewise, it is equitable for the Exchange to reduce charges to participants whose orders add liquidity to the Exchange as a means of incentivizing liquidity adding activity. An increase in overall liquidity removal and addition activity on the Exchange will improve the quality of the Nasdaq BX market and increase its attractiveness to existing and prospective participants.

Any participant that is dissatisfied with the proposed new credist or its amended or new charges is free to shift their order flow to competing venues that provide more favorable pricing or less stringent qualifying criteria.

The Proposed Credit Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries—from co-branded credit cards to grocery stores to cellular telephone data plans—that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

The Exchange intends for its proposal to improve market quality for all members on the Exchange and by extension attract more liquidity to the market, improving market wide quality and price discovery. Both net removers and net adders of liquidity to the Exchange stand to benefit directly from the proposed changes. Moreover, to the extent that the proposed changes increase liquidity addition and removal activity on the Exchange, this will improve market quality and the attractiveness of the Nasdaq BX market,

[6] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[7] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[8] *See* CBOE EDGA Fee Schedule, at *https://markets.cboe.com/us/equities/membership/fee_schedule/edga/;* NYSE National Fee Schedule, at *https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_National_Schedule_of_Fees.pdf.*

[9] The Exchange perceives no regulatory, structural, or cost impediments to market participants shifting order flow away from it. In particular, the Exchange notes that these examples of shifts in liquidity and market share, along with many others, have occurred within the context of market participants' existing duties of Best Execution and obligations under the Order Protection Rule under Regulation NMS.

[10] *See* n. 8, *supra.*

to the benefit of all existing and prospective participants.

Furthermore, it is not unfairly discriminatory for the Exchange to propose higher credits for participants with orders in securities in Tapes A and B than it proposes for participants with orders in Tape C because the Exchange seeks to promote increased liquidity removal activity specifically in securities in Tapes A and B.

Moreover, any participant that is dissatisfied with the proposed new credits or proposed amended or new charges is free to shift their order flow to competing venues that provide more favorable pricing or less stringent qualifying criteria.

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.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage. As noted above, all members of the Exchange will benefit from any increase in market activity that the proposal effectuates. Members may grow or modify their businesses so that they can receive the higher credits or lower charge. Moreover, members are free to trade on other venues to the extent they believe that the credit provided or fees imposed are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. The Exchange notes that the tier structure is consistent with broker-dealer fee practices as well as the other industries, as described above.

Intermarket Competition

Addressing whether the proposal could impose a burden on competition on other SROs that is not necessary or appropriate, the Exchange believes that its proposed modifications to its schedule of credits and charges will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from the other 12 live exchanges and from off-exchange venues, which include 32 alternative trading systems. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and credits to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. 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 believes that the degree to which fee and credits changes in this market may impose any burden on competition is extremely limited.

The proposed restated schedule of credits and charges is reflective of this competition because, as a threshold issue, the Exchange is a relatively small market so its ability to burden intermarket competition is limited. In this regard, even the largest U.S. equities exchange by volume has less than 17–18% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprised more than 37% of industry volume for the month of March 2019.

The Exchange intends for the proposed changes to its schedule of credits and fees, in the aggregate, to increase member incentives to engage in the removal and addition of liquidity on the Exchange. These changes are procompetitive and reflective of the Exchange's efforts to make it an attractive and vibrant venue to market participants.

In sum, if the changes proposed herein is unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–BX–2020–008 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–BX–2020–008. 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,

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BX–2020–008, and should be submitted on or before June 8, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–10518 Filed 5–15–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88858; File No. SR–Phlx–2020–26]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Phlx's Pricing Schedule at Options 7, Section 4

May 12, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 30, 2020, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx's Pricing Schedule at Options 7, Section 4, ''Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed).'' The Exchange also proposes to correct a technical amendment within Options 7, Section 1.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on May 1, 2020.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx proposes to amend its pricing within Options 7, Section 4, ''Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed)'' to: (1) Decrease an existing strategy cap for certain strategies; and (2) establish a new daily cap for certain strategies in a single class of options.[3] The Exchange also proposes to correct a technical amendment within Options 7, Section 1.

Today, to qualify for a strategy cap, the buy and sell side of a transaction must originate either from the Exchange Trading Floor or as a Floor Qualified Contingent Cross Order.[4]

Currently, the Exchange offers the following strategy caps:

Floor options transactions—multiply listed options	Strategy	Qualification	Cap
Lead Market Maker, Market Maker, Professional, Firm and Broker-Dealer.	dividend	executed on the same trading day in the same options class when such members are trading: (1) In their own proprietary accounts; or (2) on an agency basis. If transacted on an agency basis, the daily cap will apply per beneficial account.	$1,100
Lead Market Maker, Market Maker, Professional, Firm and Broker-Dealer.	reversal and conversion, merger, short stock interest, jelly roll, and box spread strategies.	executed on the same trading day for all options classes in the aggregate when such members are trading (1) in their own proprietary accounts; or (2) on an agency basis. If transacted on an agency basis, the daily cap will apply per beneficial account.	1,100
Per member organization	dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategies (''Monthly Strategy Cap'').	combined executions in a month when trading in its own proprietary accounts.	65,000

• Reversal and conversion, jelly roll and box spread strategy executions will not be included in the Monthly Strategy Cap for a Firm. Reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7,

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''class of options'' means all option contracts of the same type of option covering the same underlying stock or Exchange-Traded Fund Share (in the case of options on a stock or Exchange-Traded Fund Share) or the same underlying foreign currency (in the case of options on a foreign currency). *See* Options 1, Section 1(b)(9). The Exchange proposes to replace the terms ''options class'' and ''options classes'' in the current rule text, within Options 7, Section 4, with the terms ''class of options'' and ''classes of options'', respectively, to conform to the defined term.

[4] *See* Phlx's Pricing Schedule at Options 7, Section 4.

Section 4) are included in the Monthly Firm Fee Cap. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7, Section 4) will be excluded from the Monthly Market Maker Cap. NDX and NDXP Options Transactions will be excluded from Strategy Cap pricing.

The Exchange offers strategy caps for various types of strategies, including dividend,[5] merger,[6] short stock interest,[7] reversal and conversion,[8] jelly roll[9] and box spread[10] strategies.

The Exchange proposes to add the phrase ''(daily)'' next to the daily caps and ''(monthly)'' next to the monthly cap in the Cap column for clarity. The Exchange also proposes to rename the ''Cap'' column as ''Daily/Monthly Cap.''

The Exchange proposes to amend the strategy cap applicable to Lead Market Makers,[11] Market Makers,[12] Professionals,[13] Firms[14] and Broker-Dealers[15] with respect to reversal and conversion, merger, short stock interest, jelly roll and box spread strategies from $1,100 to $1,000. The Exchange believes that its proposal will incentivize members to transact a greater number of reversal and conversion, merger, short stock interest, jelly roll and box spread strategies because the cap for these strategies is being lowered from $1,100 to $1,000. As proposed, the Exchange notes that this daily cap applies to strategies that were executed on the same trading day for all classes of options in the aggregate when such members are trading (1) in their own proprietary accounts; or (2) on an agency basis. If transacted on an agency basis, the daily cap will apply per beneficial account. The Exchange also proposes to state within the rule text, after the amended $1,000 cap and the term ''(daily),'' ''if more than one class of options.'' The daily cap applies to executions for all classes of options. The Exchange proposes to add this rule text because it is proposing a new daily cap applicable to executions in a single class of options.

The Exchange proposes to establish a new daily cap of $700 for reversal and conversion, merger, short stock interest, jelly roll and box spread strategies in a single class of options. Lead Market Makers, Market Makers, Professionals, Firms and Broker-Dealers who execute reversal and conversion, merger, short stock interest, jelly roll and box spread strategies on the same trading day in a single class of options will be subject to the daily strategy cap of $700. The Exchange qualifications, as proposed, executed on the same trading day for all classes of options in the aggregate when such members are trading (1) in their own proprietary accounts; or (2) on an agency basis still apply.[16] For example, if a Lead Market Maker executed reversal and conversion strategies only in AAPL options, and otherwise met the qualifications for a reversal and conversion cap, the proposed $700 daily cap would apply. If the Lead Market Maker executed reversal and conversion strategies in AAPL and SPY options, and otherwise met the qualifications for a reversal and conversion cap, the proposed $1,000 daily cap would apply. The Exchange believes that offering a daily cap, when executions are only in a single class of options, will incentivize members to transact a greater number of reversal and conversion, merger, short stock interest, jelly roll and box spread strategies.

The Exchange proposes to amend a cross-reference within the description of the term ''Customer'' within Options 7, Section 1. Specifically, the Exchange proposes to amend the cross-reference to the term ''Professional,'' within that description of Customer, from Rule 1000(b)(43) to Options 1, Section 1(b)(45).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[18] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, 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

[5] A dividend strategy is defined as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend. *See* Options 7, Section 4.

[6] A merger strategy is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed the first business day prior to the date on which shareholders of record are required to elect their respective form of consideration, *i.e.,* cash or stock. *See* Options 7, Section 4.

[7] A short stock interest strategy is defined as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class. *See* Options 7, Section 4.

[8] Reversal and conversion strategies are transactions that employ calls and puts of the same strike price and the underlying stock. Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration. Conversions employ long positions in the underlying stock that accompany long puts and short calls sharing the same strike and expiration. *See* Options 7, Section 4.

[9] A jelly roll strategy is defined as transactions created by entering into two separate positions simultaneously. One position involves buying a put and selling a call with the same strike price and expiration. The second position involves selling a put and buying a call, with the same strike price, but with a different expiration from the first position. *See* Options 7, Section 4.

[10] A box spread strategy is a strategy that synthesizes long and short stock positions to create a profit. Specifically, a long call and short put at one strike is combined with a short call and long put at a different strike to create synthetic long and synthetic short stock positions, respectively. *See* Options 7, Section 4.

[11] The term ''Lead Market Maker'' applies to transactions for the account of a Lead Market Maker (as defined in Options 2, Section 12(a)). A Lead Market Maker is an Exchange member who is registered as an options Lead Market Maker pursuant to Rule Options 2, Section 12(a). An options Lead Market Maker includes a Remote Lead Market Maker which is defined as an options Lead Market Maker in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Options 2, Section 11. *See* Options 7, Section 1.

[12] The term ''Market Maker'' is defined in Options 1, Section 1(b)(28) as a member of the Exchange who is registered as an options Market Maker pursuant to Options 2, Section 12(a). A Market Maker includes SQTs and RSQTs as well as on and Floor Market Makers. *See* Options 7, Section 1.

[13] The term ''Professional'' applies to transactions for the accounts of Professionals, as defined in Exchange Rule 1000(b)(43) means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Options 7, Section 1.

[14] The term ''Firm'' applies to any transaction that is identified by a member or member organization for clearing in the Firm range at The Options Clearing Corporation. *See* Options 7, Section 1.

[15] The term ''Broker-Dealer'' applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category. *See* Options 7, Section 1.

[16] If transacted on an agency basis, the daily cap will apply per beneficial account.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4) and (5).

broader forms that are most important to investors and listed companies.'' [19]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [20] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[21] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [22]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [23] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange's proposal to decrease the strategy cap applicable to Lead Market Makers, Market Makers, Professionals, Firms and Broker-Dealers with respect to reversal and conversion, merger, short stock interest, jelly roll and box spread strategies from $1,100 to $1,000 is reasonable because it will incentivize Lead Market Makers, Market Makers, Professionals, Firms and Broker-Dealers to transact a greater number of reversal and conversion, merger, short stock interest, jelly roll and box spread strategies with the lower cap.

The Exchange's proposal to decrease the strategy cap applicable to Lead Market Makers, Market Makers, Professionals, Firms and Broker-Dealers with respect to reversal and conversion, merger, short stock interest, jelly roll and box spread strategies from $1,100 to $1,000 is equitable and not unfairly discriminatory because all Lead Market Makers, Market Makers, Professionals, Firms and Broker-Dealers may qualify for the reversal and conversion, merger, short stock interest, jelly roll and box spread strategy cap provided they transact the requisite amount of reversal and conversion, merger, short stock interest, jelly roll and box spread strategies, wherein the buy and sell side of a transaction originated either from the Exchange Trading Floor or as a Floor Qualified Contingent Cross Order. The Exchange notes that while Customers [24] are not offered the strategy caps, Customers are not assessed the Options Transaction Charges within Options 7, Section 4.

The Exchange's proposal to establish a new daily cap of $700 for reversal and conversion, merger, short stock interest, jelly roll and box spread strategies in a single class of options, with the same qualifications as today, is reasonable. The proposed daily cap will incentivize Lead Market Makers, Market Makers, Professionals, Firms and Broker-Dealers to execute a greater number of reversal and conversion, merger, short stock interest, jelly roll and box spread strategies for the opportunity to qualify for the new daily cap.

The Exchange's proposal to establish a new daily cap of $700 for reversal and conversion, merger, short stock interest, jelly roll and box spread strategies in a single class of options, with the same qualifications as today, is equitable and not unfairly discriminatory because all Lead Market Makers, Market Makers, Professionals, Firms and Broker-Dealers may qualify for the reversal and conversion, merger, short stock interest, jelly roll and box spread daily strategy cap provided they transact the requisite amount of reversal and conversion, merger, short stock interest, jelly roll and box spread strategies, wherein the buy and sell side of a transaction originated either from the Exchange Trading Floor or as a Floor Qualified Contingent Cross Order in a single class of options. The Exchange notes that while Customers are not offered the strategy caps, Customers are not assessed the Options Transaction Charges within Options 7, Section 4.

The Exchange's proposal to amend a cross-reference within the description of the term ''Customer'' within Options 7, Section 1 from Rule 1000(b)(43) to Options 1, Section 1(b)(45) is a non-substantive amendment.

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.

Inter-Market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intra-Market Competition

The proposed amendments do not impose an undue burden on intra-market competition.

The Exchange's proposal to decrease the strategy cap applicable to Lead Market Makers, Market Makers, Professionals, Firms and Broker-Dealers with respect to reversal and conversion, merger, short stock interest, jelly roll and box spread strategies from $1,100 to $1,000 does not impose an undue burden on competition because all Lead Market Makers, Market Makers, Professionals, Firms and Broker-Dealers may qualify for the reversal and conversion, merger, short stock interest, jelly roll and box spread strategy cap provided they transact the requisite amount of reversal and conversion, merger, short stock interest, jelly roll and box spread strategies, wherein the buy and sell side of a transaction originated either from the Exchange Trading Floor or as a Floor Qualified Contingent Cross Order. The Exchange notes that while Customers are not offered the strategy caps, Customers are

[19] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[20] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[21] *See NetCoalition,* at 534–535.

[22] *Id.* at 537.

[23] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[24] The term ''Customer'' applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of a broker or dealer or for the account of a ''Professional'' (as that term is defined in Options 1, Section 1(b)(45)). *See* proposed Options 7, Section 1.

not assessed the Options Transaction Charges within Options 7, Section 4.

The Exchange's proposal to establish a new daily cap of $700 for reversal and conversion, merger, short stock interest, jelly roll and box spread strategies in a single class of options, with the same qualifications as today, does not impose an undue burden on competition because all Lead Market Makers, Market Makers, Professionals, Firms and Broker-Dealers may qualify for the reversal and conversion, merger, short stock interest, jelly roll and box spread daily strategy cap provided they transact the requisite amount of reversal and conversion, merger, short stock interest, jelly roll and box spread strategies, wherein the buy and sell side of a transaction originated either from the Exchange Trading Floor or as a Floor Qualified Contingent Cross Order in a single class of options. The Exchange notes that while Customers are not offered the strategy caps, Customers are not assessed the Options Transaction Charges within Options 7, Section 4.

The Exchange's proposal to amend a cross-reference within the description of the term ''Customer'' within Options 7, Section 1 from Rule 1000(b)(43) to Options 1, Section 1(b)(45) is a non-substantive amendment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[25]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2020–26 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–Phlx–2020–26. 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–Phlx–2020–26 and should be submitted on or before June 8, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–10517 Filed 5–15–20; 8:45 am]

BILLING CODE 8011–01–P

[25] 15 U.S.C. 78s(b)(3)(A)(ii).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Wednesday, May 20, 2020.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topic:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: May 13, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–10714 Filed 5–14–20; 11:15 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16448 and #16449; Mississippi Disaster Number MS–00127]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Mississippi

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of MISSISSIPPI (FEMA–4536–DR), dated 05/08/2020.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 04/12/2020.

DATES: Issued on 05/08/2020.

Physical Loan Application Deadline Date: 07/07/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 02/08/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/08/2020, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Covington, Jefferson Davis, Jones.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	2.750
Non-Profit Organizations Without Credit Available Elsewhere	2.750
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16448C and for economic injury is 164490.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2020–10520 Filed 5–15–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16431 and #16432; TENNESSEE Disaster Number TN–00122]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Tennessee

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Tennessee (FEMA–4541–DR), dated 04/24/2020.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 04/12/2020 through 04/13/2020.

DATES: Issued on 05/08/2020.

Physical Loan Application Deadline Date: 06/23/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 01/25/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of TENNESSEE, dated 04/24/2020, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Unicoi.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2020–10525 Filed 5–15–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16446 and #16447; NORTH CAROLINA Disaster Number NC–00116]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of North Carolina

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of North Carolina (FEMA–4543–DR), dated 05/08/2020.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 02/06/2020 through 02/19/2020.

DATES: Issued on 05/08/2020.

Physical Loan Application Deadline Date: 07/07/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 02/08/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/08/2020, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Alexander, Ashe, Cherokee, Cleveland, Graham, Madison, Mitchell, Pender, Perquimans, Polk, Randolph, Rutherford, Stanly, Stokes, Swain, Wayne, Yadkin, Yancey.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	2.750
Non-Profit Organizations Without Credit Available Elsewhere	2.750
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16446B and for economic injury is 164470.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2020–10523 Filed 5–15–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16421 and #16422; MISSISSIPPI Disaster Number MS–00124 Presidential]

Declaration Amendment of a Major Disaster for the State of Mississippi

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–4536–DR), dated 04/16/2020.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 04/12/2020.

DATES: Issued on 05/08/2020.

Physical Loan Application Deadline Date: 06/15/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 01/19/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of MISSISSIPPI, dated 04/16/2020, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Clarke, Grenada, Jasper, Lawrence, Panola, Walthall.

Contiguous Counties (Economic Injury Loans Only):

Alabama: Choctaw.

Louisiana: Washington.

Mississippi: Calhoun, Carroll, Copiah, Lafayette, Lauderdale, Leflore, Lincoln, Montgomery, Newton, Pike, Quitman, Scott, Tallahatchie, Tate, Tunica, Webster, Yalobusha.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2020–10524 Filed 5–15–20; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice 11120]

60-Day Notice of Proposed Information Collection: Evacuee Manifest and Promissory Note

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to July 17, 2020.

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

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov*. You can search for the document by entering ''Docket Number: DOS–2020–0021'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: OliphantCE@state.gov*.
- *Regular Mail:* Send written comments to: U.S. Department of State, 600 19th St. NW, Washington, DC 20522–1710.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Clifton Oliphant Department of State, 600 19th St. NW, Washington, DC 20522–1710, who may be reached at *OliPhantCE@state.gov* or 202–485–6020.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Evacuee Manifest and Promissory Note.
- *OMB Control Number:* 1405–0211.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS).
- *Form Number:* DS–5528.
- *Respondents:* U.S. citizens, U.S. non-citizen nationals, lawful permanent residents, and foreign nationals applying for emergency loan assistance during an evacuation.
- *Estimated Number of Respondents:* 525.
- *Estimated Number of Responses:* 525.
- *Average Time per Response:* 20 minutes.
- *Total Estimated Burden Time:* 175 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The purpose of the DS–5528 is to document the evacuation of persons from abroad when their lives are endangered by war, civil unrest, or natural disaster; document issuance of a crisis evacuation loan; obtain a Privacy Act Waiver to share information about the welfare of a U.S. citizen or U.S. lawful permanent resident consistent with the Privacy Act of 1974; and, to facilitate debt collection.

Methodology

An electronic version of the Evacuee Manifest and Promissory Note in the form of a .pdf file was created, allowing applicants to type their information into the form, print it, and present it to a consular officer at the evacuation point.

An alternative input method for evacuees utilizing the MS-Forms application has been utilized by some posts and provides the same functionality as the .pdf file. After completing the Microsoft Forms fields, applicants may print out and sign the form and transmit the form to post via email/fax. Alternatively, consular officers may accept a completed but unsigned form electronically, print it out, and then obtain the applicant's signature on the form prior to the individual boarding the transport. Continued software development may provide the capability to electronically submit signed loan applications for adjudication. The final stage of software development should not only allow the applicant to enter his/her information and submit the form, but will also make the information available for welfare inquiries which fall under the Privacy Act of 1974, as well as all stages of financial processing including the Department of State's debt collection process. Due to the potential for serious conditions during crisis events that often affect electronic and internet infrastructure systems, the electronic form will not replace the paper form. Rather, the paper form will still be maintained and used in the event that applicants are unable to submit forms electronically.

Zachary Parker,

Director.

[FR Doc. 2020–10585 Filed 5–15–20; 8:45 am]

BILLING CODE 4710–06–P

SURFACE TRANSPORTATION BOARD

Release of Waybill Data

The Surface Transportation Board (Board) has received a joint request from the Missouri Department of Transportation, the Illinois Department of Transportation, the Kansas Department of Transportation, and the Arkansas Department of Transportation (WB20–19—5/7/2020) for permission to use select data from the Board's 2012–2018 Masked Carload Waybill Sample. A copy of this request may be obtained from the Board's website under docket no. WB20–19.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Alexander Dusenberry, (202) 245–0319

Aretha Laws-Byrum,

Clearance Clerk.

[FR Doc. 2020–10605 Filed 5–15–20; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2020–29]

Petition for Exemption; Summary of Petition Received; Air Wisconsin Airlines, LLC.

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 26, 2020.

ADDRESSES: Send comments identified by docket number FAA–2020–0395 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Megan Blatchford, (202) 267–3896, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

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

Brandon Roberts,

Acting Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2020–0395.

Petitioner: Air Wisconsin Airlines, LLC.

Section of 14 CFR Affected: § 121.434(g).

Description of Relief Sought: Air Wisconsin Airlines, LLC (Air Wisconsin) seeks relief from § 121.434(g) of Title 14 of the Code of Federal Regulations to allow all pilots required to have 100 hours of line operating flight time for consolidation of knowledge and skill after an initial checking event with Air Wisconsin to extend the timeframe requirement from 120 days to 240 days with added checks, due to the reduction in capacity across the aviation industry as a result of COVID–19.

[FR Doc. 2020–10619 Filed 5–15–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. FAA–2020–28]

Petition for Exemption; Summary of Petition Received; Airlines for America

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief

from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 26, 2020.

ADDRESSES: Send comments identified by docket number FAA–2020–0308 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Alphonso Pendergrass, Office of Rulemaking, Federal Aviation Administration, Telephone (202) 267–4713, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

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

Brandon Roberts,

Acting Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2020–0308
Petitioner: Airlines for America
Section(s) of 14 CFR Affected: §§ 121.401(b), 121.411(g), 121.412(g), 121.413(b), 121.414(b), 121.439(a), 121.903(e), and 121.1005(d)
Description of Relief Sought: The petitioner requests an extension of Exemption No.18511, which provides limited relief to the timeframes for completing recurrent training and qualification requirements for ground personnel, crewmembers (includes pilots, flight engineers, and flight attendants), and aircraft dispatchers. If granted, the extension of this exemption would provide limited relief from timeframes for completing certain training and qualification requirements due through September 30, 2020.

[FR Doc. 2020–10620 Filed 5–15–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2020–16]

Petition for Exemption; Summary of Petition Received; Patrick Tohill

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before June 8, 2020.

ADDRESSES: Send comments identified by docket number FAA–2020–0226 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jake Troutman (202) 683–7788, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

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

Brandon Roberts,

Deputy Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2020–0226
Petitioner: Patrick Tohill
Section(s) of 14 CFR Affected: §§ 61.3(a)(1)(i); 91.119(c); 91.121; 91.151(b); 91.405(a); 91.407(a)(1); 91.409(a)(1) & (2); & 91.417(a) & (b).
Description of Relief Sought: The proposed exemption, if granted, would allow the petitioner to operate the Freefly Systems, Inc. Alta X unmanned aircraft system, over 55 pounds (lbs.) but no more than 70 lbs., for controlled, low-risk, closed-set aerial cinematography operations for the television and motion picture industry.

[FR Doc. 2020–10623 Filed 5–15–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2020–19]

Petition for Exemption; Summary of Petition Received; AgrowSoft, LLC dba AgrowDrone

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before June 8, 2020.

ADDRESSES: Send comments identified by docket number FAA–2019–0762 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jake Troutman, (202) 683–7788, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

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

Brandon Roberts,

Deputy Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2019–0762.

Petitioner: AgrowSoft, LLC dba AgrowDrone.

Section(s) of 14 CFR Affected: §§ 61.3(a)(1)(i); 91.7(a); 91.119(c); 91.121; 91.151(b); 91.405(a); 91.407(a)(1); 91.409(a)(1) and (2); 91.417(a) and (b); 137.19(c), (d), (e)(2)(ii), (e)(2)(iii) and (e)(2)(v); 137.31; and 137.42.

Description of Relief Sought: AgrowSoft, LLC d.b.a. AgrowDrone seeks relief from §§ 61.3(a)(1)(i); 91.7(a); 91.119(c); 91.121; 91.151(b); 91.405(a); 91.407(a)(1); 91.409(a)(1) and (2); 91.417(a) and (b); 137.19(c), (d), (e)(2)(ii), (e)(2)(iii) and (e)(2)(v); 137.31; and 137.42 to allow the petitioner to operate the AgrowDrone UAS–eM5 and AgrowDrone UAS–eM10 unmanned aircraft systems, weighing 55 pounds or above, at night and from a moving vehicle in order to provide commercial agricultural-related services in the United States.

[FR Doc. 2020–10618 Filed 5–15–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. FAA–2020–27]

Petition for Exemption; Summary of Petition Received; Airlines for America

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 26, 2020.

ADDRESSES: Send comments identified by docket number FAA–FAA–2020–0307 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Alphonso Pendergrass, Office of Rulemaking, Federal Aviation Administration, telephone 202–267–4713, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

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

Brandon Roberts,

Acting Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2020–0307

Petitioner: Airlines for America

Section(s) of 14 CFR Affected: 121.407(c)(2), 121.409(b)(2)(i), 121.417(c)(2)(i)(C)–(D) and (E)(4), 121.424(a)(1), 121.427(b)(2)(i)–(iii), (e)(1)(ii) and (e)(2), 121.441(b)(1), and 121.805(b)(5)(iii)

Description of Relief Sought: The petitioner requests extension of exemption 18512 to allow certificate holders to use alternative methods to conduct certain required crewmember emergency procedures during recurrent, conversion, and upgrade training, checking, and evaluation until November 30, 2020.

[FR Doc. 2020–10621 Filed 5–15–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2020–17]

Petition for Exemption; Summary of Petition Received; Benjamin Kroll

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before June 8, 2020.

ADDRESSES: Send comments identified by docket number FAA–2020–0044 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jake Troutman, (202) 683–7788, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

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

Brandon Roberts,

Deputy Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2020–0044.

Petitioner: Benjamin Kroll.

Section(s) of 14 CFR Affected: § 107.1.

Description of Relief Sought: The proposed exemption, if granted, would allow Benjamin Kroll to operate the X8 multi-rotor unmanned aircraft system (UAS), which is over 55 pounds (lbs), under part 107 for the purposes of aerial firefighting by dropping critical resources to include: Up to 20 gallons of water; provisions; and equipment to responding crews.

[FR Doc. 2020–10617 Filed 5–15–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2020–30]

Petition for Exemption; Summary of Petition Received; Sun Country Inc. d/b/a Sun Country Airlines

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before June 8, 2020.

ADDRESSES: Send comments identified by docket number FAA–2020–0266 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for

accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Megan Blatchford, Office of Rulemaking, Federal Aviation Administration, Telephone (202) 267–3896, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

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

Brandon Roberts,

Acting Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2020–0266

Petitioner: Sun Country Inc. d.b.a. Sun Country Airlines

Section of 14 CFR Affected: § 121.463(a)(2)

Description of Relief Sought: Sun Country Inc. d.b.a. Sun Country Airlines seeks relief from § 121.463(a)(2) of the Code of Federal Regulations to allow a specified new dispatcher the ability to satisfy their operating familiarization, as it pertains to the flight deck, in any approved simulator not on motion, due to medical or physical circumstances.

[FR Doc. 2020–10622 Filed 5–15–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2020–21]

Petition for Exemption; Summary of Petition Received; Airlines for America

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 26, 2020.

ADDRESSES: Send comments identified by docket number FAA–2020–0397 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Justin Barcas (202) 267–7023, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

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

Brandon Roberts,

Acting Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2020–0397

Petitioner: Airlines for America

Section(s) of 14 CFR Affected: § 121.434(g) and (h)

Description of Relief Sought: Airlines for America requests relief to extend the time for pilots of its member airlines to complete at least 100 hours of line operating flight time for the consolidation of knowledge and skills to a period of 180 days due to the difficulties imposed by the COVID–19 crisis.

[FR Doc. 2020–10624 Filed 5–15–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2020–22]

Petition for Exemption; Summary of Petition Received; Aero Seat, Inc.

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 26, 2020.

ADDRESSES: Send comments identified by docket number FAA–2020–0403 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records

notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Justin Barcas (202) 267–7023, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

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

Brandon Roberts,

Acting Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2020–0403.

Petitioner: Aero Seat, Inc.

Section(s) of 14 CFR Affected: §§ 135.293, 135.299.

Description of Relief Sought: Aero Seat, Inc. requests relief from the testing and checking requirements in part 135 that would allow its pilot to continue operating until December 2020 based on the competency and line checks completed in December 2018. Aero Seat, Inc. cites a lack of qualified FAA inspectors available to conduct the testing and checking and difficulties imposed by the COVID–19 crisis as justification for an exemption.

[FR Doc. 2020–10616 Filed 5–15–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0184]

Hours of Service of Drivers: PTS Worldwide, Inc.; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA announces its decision to deny the exemption request from PTS Worldwide, Inc. (PTS). PTS sought an exemption from the hours-of-service (HOS) requirement for drivers utilizing the sleeper-berth (S/B) exception. PTS transports highly sensitive cargo for the Department of Defense (DOD) and proposes that its team drivers be permitted to obtain 10 hours in the S/B in two periods, neither less than 4 hours long. This would allow the driver to split the required 10 hours into segments of 4/6, 5/5, or 6/4 hours. FMCSA analyzed the exemption application and public comments, and determined that the application lacked evidence that would ensure an equivalent level of safety or greater would be achieved absent such exemption.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–2722. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov* and insert the docket number, FMCSA–2019–0184 in the ''Keyword'' box and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

The Agency's HOS rules (49 CFR part 395) generally require operators of commercial motor vehicles (CMVs) transporting property to obtain 10 consecutive hours off duty before they can drive again after they accumulate the maximum 11 hours of driving or reach the end of the 14-hour duty period, whichever comes first (49 CFR 395.3). However, drivers whose CMV is equipped with a qualifying sleeper berth (S/B) may accumulate the equivalent of 10 consecutive hours off duty in two separate periods, one of at least 8 (but less than 10) consecutive hours in the S/B, and another of at least 2 consecutive hours off duty, whether in the S/B, off duty, or any combination thereof. It does not matter which of these two periods comes first. When the driver has obtained the two qualifying periods, the S/B rule provides the driver more on-duty and driving time.

PTS (USDOT 1835654) transports sensitive Department of Defense (DOD) cargo, including ammunition and explosives, in interstate commerce. For security reasons, this transportation requires a team of two drivers. PTS seeks by exemption to allow its team drivers to split the equivalent of 10 hours off duty into two S/B periods, neither less than 4 hours long. This would allow splits of 4/6, 5/5, or 6/4 hours. The request is limited to team operations and is in no way a request to apply any such exemption to solo driver operations.

PTS states that its team drivers travel over 1,100 miles per 24 hours, and average 60 hours on duty per week. After 5 weeks on the road, PTS drivers receive a week off duty at home. PTS asserts that due to the nature of its business, these drivers would be more alert if allowed to take shorter rest periods in the S/B. It believes that the shorter period would allow PTS drivers to obtain nighttime hours in the S/B and thereby minimize driver fatigue. PTS states that its vehicle and driver safety record is better than the national average and that it has one of the best safety, security, and service records of

all DOD arms and ammunition transporters. All power units are equipped, and any new power units will be equipped, with on-board electronic recorders to track driving and on-duty time, and all power units are governed to 70 miles per hour.

IV. Method To Ensure an Equivalent or Greater Level of Safety

To ensure an equivalent level of safety, PTS offers to split 10 off-duty hours into two periods, neither less than 4 hours long. This would allow splits of 4/6, 5/5, or 6/4 hours. In addition, the PTS request would be limited to team driver operations. PTS' exemption application references a study concerning the effects on sleep that found sleeper-berth flexibility to be a better choice than consolidated daytime sleep when consolidated nighttime sleep is not possible. PTS referenced additional studies that identified sleeper berth flexibility as a contributor to normalizing sleeping patterns and reducing fatigue. PTS requests the exemption be granted for the maximum allowable period (5 years). A copy of PTS's application for exemption is available for review in the docket for this notice.

V. Public Comments

On October 16, 2019, FMCSA published notice of this application and requested public comments (84 FR 55376). The Agency received 20 comments. The Commercial Vehicle Safety Alliance (CVSA) and Boyle Transportation strongly opposed the exemption request. CVSA commented that ''before FMCSA makes a determination on this exemption request, the Agency should conduct the originally planned pilot program on this issue and consider data collected in the pilot program in the decision. The pilot program is necessary to study the effects of various S/B splits on driver fatigue. Without the results of a pilot program or further study, it isn't possible for FMCSA to determine if PTS can maintain an equivalent level of safety under the proposed exemption.''

Boyle Transportation stated that the exemption application would increase the risk of crashes, and that PTS has not shown how it would ensure an equivalent level of safety if granted the exemption. Boyle urged FMCSA to reject PTS' request because if granted it would create an increased risk of crashes among those professional drivers who elect to use a S/B split that affords them less than 8 hours of consolidated sleep. Boyle further added that such a practice is unacceptable given the inherent danger of much of the material being transported (Division 1.1, 1.2, 1.3 and 1.4 explosives) and the unsafe conditions it would create for other professional drivers, military service members and DOD civilians and contractors engaged in loading and unloading operations as well as the public.

Conversely, the Truckload Carriers Association (TCA) supported the PTS exemption request and stated the following: ''PTS believes, as have others studying HOS and S/B flexibility, that this would reduce fatigue and provide safer environment on the roadways.'' TCA fully concurred with that sentiment.

Of the 17 other individuals who filed comments, 12 supported the request, 4 opposed it, and one had no position either for or against the request. One commenter stated that it would be irresponsible to allow PTS to experiment with the S/B provision while transporting Division 1.1, 1.2 and 1.3 explosives as the issues associated with the lack of proper rest is exponentially compounded creating a significant risk to the public and the drivers operating the equipment transporting the ''sensitive'' DoD materials. A few individuals favored allowing all segments of the trucking industry to use the S/B splits PTS requested.

VI. FMCSA Safety Analysis and Decision

FMCSA has evaluated PTS' application and the public comments and decided to deny the exemption. When the Agency established the rules mandating HOS, it relied upon research indicating that the rules improve CMV safety. These regulations put limits in place for when and how long an individual may drive, to ensure that drivers stay awake and alert while driving, and on a continuing basis to help reduce the possibility of driver fatigue.

As CVSA and Boyle Transportation indicated, the PTS application does not provide an analysis of the safety impacts the requested exemption from the HOS regulations may cause. It also does not provide countermeasures to be undertaken to ensure that the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulations. In fact, the countermeasures it described were simply the split S/B provisions PTS requested.

The Agency cannot ensure that the exemption would achieve the requisite level of safety. The most recent research and data suggests that the longer sleeper berth period needs to be at least seven hours in duration, if all the other variables (*e.g.,* daily driving time limits, weekly driving time limits, etc.) in the HOS regime remain unchanged. And PTS has not indicated in its application a plan to change any of those variable. PTS' application must be judged based on the exemption standards in 49 CFR part 381. As indicated above, PTS' application fails to meet those standards. The application is therefore denied.

James A. Mullen,

Acting Administrator.

[FR Doc. 2020–10592 Filed 5–15–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0086]

Hours of Service of Drivers: Extreme Logistics, LLC, Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; granting of application for exemption.

SUMMARY: FMCSA announces its decision to grant Extreme Logistics, LLC (Extreme Logistics) an exemption from the requirement that all driving be completed within 14 hours of the beginning of the work shift. This exemption allows the applicant to exclude off-duty and sleeper-berth time, of any length, from the calculation of the 14-hour driving window. This exemption is applicable June 28–July 8, each year for several days prior to and several days following Independence Day celebrations. FMCSA has determined that the terms and conditions of the exemption will likely ensure a level of safety equivalent to, or greater than, the level of safety achieved without the exemption.

DATES: This exemption is effective May 18, 2020 and expires May 19, 2025.

ADDRESSES:

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–4325. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov* and insert the docket number, ''FMCSA–2019–0086 in the ''Keyword'' box and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would be likely to achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the granting or denial, and, if granted, the specific person or class of persons receiving the exemption and the regulatory provision or provisions from which exemption is granted. The notice must specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

The hours-of-service (HOS) rule in 49 CFR 395.3(a)(2) prohibits a property-carrying commercial motor vehicle (CMV) driver from driving a CMV after the 14th hour after coming on duty following 10 consecutive hours off duty. Extreme Logistics, LLC (USDOT 1971328) (Applicant) is a fireworks display company that employs CMV drivers who hold commercial driver's licenses (CDLs) with hazardous materials endorsements. The applicant requested an exemption from the 14-hour rule in 49 CFR 395.3(a)(2) so that its drivers would be allowed to exclude off-duty and sleeper-berth time of any length from the calculation of the 14 hours. This means that driving during a work shift would not be prohibited until the individual had accumulated 14 hours of on-duty time, rather than after the 14th hour of coming on duty. The applicant states that complying with the existing 14-hour rule means that most shows would require two CDL drivers, significantly increasing the cost of the fireworks display.

The applicant asserts that without the extra duty period provided by the exemption, safety would decline as firework drivers would be unable to return to their home base following each show should they have fireworks remaining after the display. They would be forced to park the CMVs carrying Division 1.3G and 1.4G products in areas less secure than the motor carrier's home base.

V. Public Comments

On April 18, 2019, the Agency published a notice (84 FR 16324) requesting public comment on Extreme Logistics' exemption application. The Agency received one comment from Mr. Michael Millard. Mr. Millard said that there were seven Extreme Logistic LLCs and five Extreme Logistics, making it impossible for the public to review the applicant's data by its business name. The Agency acknowledges that identifying the company through a name search would be challenging. However, the application and the notice included the company's unique USDOT identification number.

VI. FMCSA Decision and Safety Analysis

FMCSA has determined that granting an exemption to Extreme Logistics, LLC, will likely achieve a level of safety equivalent to or greater than the level that compliance with the 14-hour rule would ensure. The Agency has concluded that the annual 11-day exemption requested by Extreme Logistics is not likely to decrease safety.

Based on the Agency's experience evaluating exemption requests from fireworks companies responsible for Independence Day celebrations, pyrotechnicians rarely drive the full 11 hours allowed by the current regulations. However, in preparing for these celebrations they may need to be on duty more than 14 consecutive hours and to drive at the end of that tour of duty. Without an exemption, these pyrotechnician/drivers would be stranded, often with a CMV partially loaded with fireworks, at the site of a forthcoming shoot; conversely, the fireworks company could employ a second CDL holder, operating on a later schedule, to return the vehicle to a secure location within the 14-hour limit. The first option poses certain risks to public safety and the second would significantly increase the costs and logistical complexity of a shoot.

The operational demands of this unique industry appear to minimize the risk of CMV crashes. In the few days before the Independence Day celebrations, drivers spend their driving time transporting fireworks relatively short distances, from the nearest distribution point to the site of the shoot. Most of their on-duty time after arriving at the site, however, is devoted to the intricate and potentially dangerous task of installing, wiring, and double-checking fireworks displays.

Generally, pyrotechnicians drive to the site of the shoot in the early morning and return late in the evening, thus avoiding much of the heavy traffic typical of the holiday. After setting up the fireworks display in daylight, to reduce the risks of mistakes, the pyrotechnician/drivers typically have several hours off duty in the late afternoon and early evening, just before the shoot. This enables them to rest or nap, reducing or eliminating the fatigue caused by the day's activities, and making their return trip after the shoot, safer than would otherwise be expected.

In addition to driving at off-peak hours and having an opportunity for substantial rest periods during their tours of duty, pyrotechnicians who drive back to a hotel or motel in the 15th or 16th hours after coming on duty

will be required to take 10 consecutive hours off duty, like other drivers. An opportunity for 8 consecutive hours of sleep should eliminate the possibility of cumulative fatigue the next day.

Although FMCSA believes the 14-hour limit helps to reduce the risks of drivers operating while fatigued, the current HOS regulations allow short-haul drivers, who are not required to possess a CDL, a 16-hour driving window once a week, providing certain conditions are met. The Agency believes that the requisite level of safety will be ensured by the limited amount of driving that takes place during any given work shift, combined with the frequent breaks from the time on task (driving) and continued compliance with the requirement for 10 consecutive hours off duty at the end of the work shift.

Furthermore, FMCSA conducted a comprehensive review of the motor carrier's safety performance, which included a review of the Motor Carrier Management Information System safety records, and inspection and accident reports submitted to FMCSA by State agencies. Extreme Logistics possesses an active USDOT registration, minimum required levels of financial responsibility, and is not subject to an ''imminent hazard'' or other out-of-service order.

Finally, the carrier is not under investigation by the Pipeline and Hazardous Materials Safety Administration, the Agency within the Department responsible for the Federal Hazardous Materials Regulations. The applicant has a ''satisfactory'' safety rating and a valid Hazardous Materials Safety Permit from FMCSA.

In consideration of the above, FMCSA grants Extreme Logistics an exemption from the 14-hour rule covering June 28 through July 8, each year from 2020 to 2024.

VII. Terms and Conditions of the Exemption

Period of the Exemption

The exemption from 49 CFR 395.3(a)(2) is effective from 12:01 a.m. June 28 through 11:59 p.m. on July 8 local time, each year through 2024 for the drivers employed by the applicant.

Terms and Conditions of the Exemption

Drivers covered by this exemption may exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour limit. This exemption is limited to the drivers employed by Extreme Logistics. The conditions of this exemption are as follows:

- Drivers must not drive more than 11 hours after accumulating 14 hours of on-duty time;
- Drivers must have 10 consecutive hours off duty following 14 hours on duty prior to beginning a new driving period;
- Extreme Logistics must maintain USDOT registration, a Hazardous Materials Safety Permit (if required), and minimum levels of public liability insurance, and must not be subject to an ''imminent hazard'' or other out-of-service (OOS) order issued by FMCSA; and
- Each driver covered by the exemption must be in possession of the exemption document and maintain a valid CDL with required endorsements, not be subject to an OOS order or suspension of driving privileges, and meet all physical qualifications required by 49 CFR part 391.

The carrier and drivers must comply with all other applicable requirements of the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399) and Hazardous Materials Regulations (49 CFR parts 105–180).

Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may adopt the same exemption with respect to operations in intrastate commerce.

FMCSA Notification

The applicant must notify FMCSA within 5 business days of any accident (as defined by 49 CFR 390.5) involving the operation of any of its CMVs while under this exemption. The notification must be emailed to *MCPSD@DOT.GOV* and include the following information:

a. Name of the Exemption: ''Extreme Logistics'';

b. Date of the accident;

c. City or town, and State, in which the accident occurred, or which is closest to the scene of the accident;

d. Driver's name and driver's license State, number, and class;

e. Co-Driver's name and driver's license State, number, and class;

f. Vehicle company number and power unit license plate State and number;

g. Number of individuals suffering physical injury;

h. Number of fatalities;

i. The police-reported cause of the accident;

j. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations; and

k. The total driving time and the total on-duty time of the CMV driver at the time of the accident.

In addition, if there are any injuries or fatalities, the carrier must forward the police accident report to *MCPSD@DOT.GOV* as soon as available.

Termination

The FMCSA does not believe the drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revoking the exemption. The FMCSA will revoke the exemption immediately for failure to comply with its terms and conditions.

James A. Mullen,

Acting Administrator.

[FR Doc. 2020–10590 Filed 5–15–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0070]

Parts and Accessories Necessary for Safe Operation; Application for an Exemption From Laydon Composites Ltd.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: The FMCSA announces its decision to grant Laydon Composites Ltd.'s (Laydon) application for a limited 5-year exemption to allow motor carriers to operate certain commercial motor vehicles (CMVs) that are equipped with Laydon's OptiTail™ aerodynamic device with rear identification lamps and rear clearance lamps that are mounted lower than currently permitted by the Agency's regulations. The Agency has determined that locating the rear identification lamps and rear clearance lamps lower on the trailers and semitrailers, mounted at the same level as the stop lamps, tail lamps, and turn signals, will maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

FOR FURTHER INFORMATION CONTACT: José Cestero, Vehicle and Roadside Operations Division, Office of Carrier,

Driver & Vehicle Safety Standards, MC–PSV, (202) 366–5541; Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 49 CFR part 381, FMCSA has authority to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305(a)).

The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must specify the terms and conditions of the exemption, as well as its effective period (up to 5 years). The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

Laydon's Application for Exemption

Laydon, on behalf of motor carriers utilizing its OptiTail™ aerodynamic devices, applied for an exemption from 49 CFR 393.11 to allow rear identification lamps and rear clearance lamps to be mounted lower than currently permitted by the Agency's regulations.

Table 1 of section 393.11, ''Required lamps and reflectors on commercial motor vehicles,'' specifies the requirements for lamps, reflective devices, and associated equipment by type of CMV. All CMVs manufactured on or after December 25, 1968, must, at a minimum, meet the applicable requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, ''Lamps, reflective devices, and associated equipment,'' in effect at the time of manufacture of the vehicle. Rear identification lamps must be mounted as close as practicable to the top of the vehicle. One lamp must be as close as practicable to the vertical centerline and one must be on each side of the center lamp, with the lamp centers spaced not less than 6 inches or more than 12 inches apart, and all on the same level. One rear clearance lamp must be located on each side of the vertical centerline of the vehicle to indicate overall width, and both of these lamps must be on the same level and as high as practicable.

Laydon is wholly owned by WABCO Europe BVBA (*i.e.,* private company with limited liability), with headquarters in Brussels, Belgium. Laydon and WABCO have developed a collapsible boat tail technology for trailers which improves the overall tractor trailer aerodynamic efficiency. Both OptiTail™ options, the fully automatic and manual versions, currently are installed on the rear doors of a CMV trailer with the upper panels below the trailer's identification and clearance lamps. Laydon notes that installing the upper panels below the identification lights—about 1.25 to 3 inches below the trailer roof—is not the ideal aerodynamic condition, and that the upper panels could yield better aerodynamic flow characteristics if they were mounted flush with the trailer roof. However, mounting the upper panel of the OptiTail™ system flush with the roof will block full view of the trailer identification and clearance lights, in violation of section 393.11 of the FMCSRs.

Laydon is requesting the exemption to allow trailers using its OptiTail™ system to have the required identification and clearance lights mounted lower than currently permitted, at the same location required for flatbed trailers and intermodal chassis. Laydon states that while it has conducted (1) computer simulation analysis, (2) scaled wind tunnel testing, and (3) full scale environmental testing of the flush roof mounted configuration, the temporary exemption is necessary to complete actual performance testing in full environmental conditions by various fleet operators located in multiple areas of the U.S. with different standard travel routes.

In its application, Laydon states:

> The safety impact of the proposed 49 CFR 393.11 exemption would be similar to existing CMVs already in operation, provided the relocation or addition of lower level identification and clearance lamps are installed on the CMV. Assuming additional lamps are installed lower on the trailer and just not relocated, the improved OptiTail™, auto version (AutoTail), would still have the existing centerline identification lamp and both clearance lamps visible when the trailer is traveling at slow speeds. Our AutoTail is self-deploying and self-retracting. The AutoTail will remain retracted until the tractor reaches a speed of approximately 40 mph and remain open until the tractor reduces speed to approximately 6 mph. The AutoTail will continue to remain closed as long as the trailer does not exceed 40 mph. As a result, the current centerline identification and clearance lights would be visible when the tractor trailer is stopped at a traffic light or other slow speed road condition. We are not advocating that this is sufficient to allow the exemption without additional clearance and identification lamps installed lower on the trailer. All CMV trailers have conspicuity materials installed across the width of the trailer. These reflex reflectors will still be visible with the OptiTail™ deployed or retracted. Both the two clearance and three identification lights should be relocated or additionally added to the approximate horizontal plane with other rear lamps. These are generally regarded as the brake and running lamps. This location is the same as found on some CMVs, such as flatbed trailers, with or without ''curtain sides'' and intermodal chassis trailers.

Laydon states that without the exemption, it will be unable to establish and verify the maximum fuel economy and environmental impacts of the OptiTail™ system, which could have long-term impacts on meeting future greenhouse gas or California Air Resources Board fuel economy requirements.

Comments

On March 28, 2019, FMCSA published a notice of the Laydon application (84 FR 11858). The Agency received one anonymous comment that was not relevant to the exemption application.

FMCSA Analysis

FMCSA agrees that it is important for motorists to be able readily to distinguish large trucks and trailers from other vehicles. FMVSS No. 108 and section 393.11 of the FMCSRs ensure this by requiring large vehicles to be equipped with a combination of lights, reflectors, and conspicuity treatments that help indicate the overall height, width, and length of these vehicles. Specifically, all CMVs manufactured on or after December 25, 1968, must, at a minimum, meet the applicable requirements of FMVSS No. 108 in effect at the time of manufacture of the vehicle. The purpose of FMVSS No. 108 is to reduce crashes and deaths and injuries from crashes, by providing adequate illumination of the roadway, and by enhancing the conspicuity of motor vehicles on the public roads so that their presence is perceived and their signals understood, both in daylight and in darkness or other conditions of reduced visibility. FMVSS

No. 108 specifies requirements for original and replacement lamps, reflective devices, and associated equipment. The standard applies to passenger cars, multipurpose passenger vehicles, trucks, buses, trailers, and motorcycles.

Specifically, with respect to clearance lamps and identification lamps, all (1) trucks and buses 80 inches or more in width, (2) semitrailers and full trailers 80 inches or more in width (except converter dollies), and (3) pole trailers must be equipped with:

- Two red clearance lamps, one on each side of the vertical centerline of the vehicle, mounted as high as practicable to indicate the overall width of the vehicle; and
- A group of three red identification lights on the rear of the vehicle, mounted as close as practicable to the top of the vehicle. One lamp is required to be mounted as close as practicable to the vertical centerline of the vehicle, and one on each side with lamp centers spaced not less than 6 inches or more than 12 inches apart.

The grouping of three identification lamps on the top rear of large vehicles is intended to uniquely identify them with the longest sight preview possible. On February 5, 2003, the National Highway Traffic Safety Administration (NHTSA) denied a petition for rulemaking from Sierra Products, Inc. (Sierra), which—among other things—requested that NHTSA amend FMVSS No. 108 to require the identification lights to be mounted at eye height on heavy trucks (68 FR 5863). In denying Sierra's petition, NHTSA stated ''As the mounting height of identification lamps is lowered, the time that nearby drivers will have to identify the vehicle as a heavy truck will lessen. This is contrary to the intent of the requirement. On the other hand, the mounting height of identification lamps has been long established to be ''as high as practicable.'' This is to make nearby drivers aware of the vehicle's size. If these lamps were lowered to eye level, approaching drivers *may not be able to distinguish large commercial vehicles from passenger vehicles.*'' [Emphasis added.]

Notwithstanding the above, the three identification lamps are not the only means by which drivers are ''able to distinguish large commercial vehicles from passenger vehicles,'' as stated in NHTSA's denial of the petition from Sierra. While FMCSA agrees that mounting identification lamps ''as high as practicable'' provides approaching motorists maximum time to identify a CMV, and that lowering the mounting location of the identification lamps reduces that time, FMVSS No. 108 (and, by incorporation, section 393.11 of the FMCSRs) also requires the rear of all trailers and semitrailers to be equipped with conspicuity materials (a strip of alternating red and white retroreflective sheeting or reflex reflectors) installed across both:

(1) The full width of the trailer, as close to the extreme edges as practicable, and as close as practicable to a position not less than 375 mm (14.77 in) and not more than 1525 mm (60.05 in) above the road surface at the centerline with the trailer at curb weight, and

(2) The full width of the horizontal member of the rear underride protection device required by FMVSS No. 224, ''Rear impact protection.'' The horizontal member is required to extend to within 100 mm (4 in) of the side extremity of the vehicle, and be located not more than 560 mm (20.05 in) above the ground at any point.

The presence of these two separate conspicuity treatments on the rear of all trailers and semitrailers, consisting of alternating red and white retroreflective material or reflex reflectors, serves as a clear indication to the motoring public that the vehicle is a large commercial vehicle as opposed to a passenger car. While these conspicuity treatments are not located at or near the very top of the trailer or semitrailer, FMCSA believes they provide a very distinctive visual pattern on the rear of trailers and semitrailers that easily enables motorists to be aware that they are approaching a large vehicle.

It is important to note that Laydon is proposing that the required clearance and identification lights be *relocated* lower on vehicles using the aerodynamic devices, and is not simply requesting an exemption from the regulation because the required lights are obscured by the device. FMCSA believes that relocating the lamps to a lower position is an acceptable approach and ensures an equivalent level of safety for two reasons. First, as Laydon notes in its application, FMVSS No. 108 and section 393.11 of the FMCSRs permit the clearance and identification lamps to be mounted lower on flatbed trailers and intermodal chassis simply because there is no other way to mount the lamps due to the vehicle designs. FMCSA does not believe that locating the clearance and identification lamps in the same manner on trailers and semitrailers using Laydon's aerodynamic devices will pose an unreasonable risk, especially given the conspicuity requirements discussed above. Second, S6.2.2 of FMVSS No. 108 directly addresses vehicle designs when required lamps or reflective devices are obscured by motor vehicle equipment such as ''mirrors, snow plows, wrecker booms, backhoes, winches,'' and also including Laydon's aerodynamic devices. In these instances, S6.2.2 of FMVSS No. 108 requires the vehicle to ''be equipped with an additional lamp or device of the same type which meet[s] all applicable requirements of this standard, including photometry and visibility.'' This is exactly what Laydon is proposing to do—to install the same clearance and identification lamps, but in a lower position on the vehicle.

Some fleets and small-scale operators may not have the technical expertise to move the identification and clearance lamps to a lower position. FMCSA notes, however, that it is the responsibility of each motor carrier to ensure that its vehicles fully comply with the FMCSRs at all times (see 49 CFR 393.1(c)), and this includes the terms and conditions of this temporary exemption. As such, if a motor carrier chooses to use Laydon's device, it must ensure that the required lights are properly moved and are fully operational at all times.

While FMVSS No. 108 and section 393.11 of the FMCSRs require the two conspicuity treatments to be installed on the rear of trailers and semitrailers, neither of the conspicuity treatments is required to be installed on single unit trucks (box trucks). For this reason, FMCSA believes that it is appropriate to limit the use of Laydon's aerodynamic device, when mounted at the top of the vehicle and obscuring the clearance and identification lights, to trailers and semitrailers only at this time.

FMCSA Decision

FMCSA has evaluated the Laydon exemption application. The Agency believes that granting the temporary exemption to allow rear identification lamps and rear clearance lamps to be located lower on trailers and semitrailers, mounted at the same level as the stop lamps, tail lamps, and turn signals, will likely maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption. Granting the exemption will also be consistent with the Agency's February 14, 2018, decision to grant an exemption for motor carriers using a similar aerodynamic device manufactured by STEMCO LP (83 FR 6718).

Terms and Conditions for the Exemption

The Agency hereby grants the exemption for a five-year period,

beginning May 18, 2020 and ending May 19, 2025. During the temporary exemption period, motor carriers will be allowed to mount Laydon's OptiTail™ aerodynamic device at the top of trailers and semitrailers, provided that the rear clearance and identification lights are mounted at the same level as the stop lamps, tail lamps, and turn signals. The exemption will be valid for five years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) Motor carriers and/or CMVs fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 CFR part 381.

Interested parties possessing information that would demonstrate that motor carriers using trailers or semitrailers with Laydon's OptiTail™ aerodynamic device are not achieving the requisite statutory level of safety should immediately notify FMCSA. The Agency will evaluate any such information and, if safety is being compromised or if the continuation of the exemption is not consistent with 49 CFR part 381, will take immediate steps to revoke the exemption.

Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no state shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

James A. Mullen,

Acting Administrator.

[FR Doc. 2020–10593 Filed 5–15–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Limitation on Claims Against Proposed Public Transportation Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA). The purpose of this notice is to announce publicly the environmental decisions by FTA on the subject project and to activate the limitation on any claims that may challenge these final environmental actions.

DATES: By this notice, FTA is advising the public of final agency actions subject to 23 U.S.C. 139(l). A claim seeking judicial review of FTA actions announced herein for the listed public transportation project will be barred unless the claim is filed on or before October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Nancy-Ellen Zusman, Assistant Chief Counsel, Office of Chief Counsel, (312) 353–2577 or Saadat Khan, Environmental Protection Specialist, Office of Environmental Programs, (202) 366–9647. FTA is located at 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency actions by issuing certain approvals for the public transportation project listed below. The actions on the project, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the project to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA environmental project file for the project. Interested parties may contact either the project sponsor or the relevant FTA Regional Office for more information. Contact information for FTA's Regional Offices may be found at *https://www.fta.dot.gov.*

This notice applies to all FTA decisions on the listed project as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, NEPA [42 U.S.C. 4321–4375], Section 4(f) requirements [23 U.S.C. 138, 49 U.S.C. 303], Section 106 of the National Historic Preservation Act [54 U.S.C. 306108], Section 10 of the Rivers and Harbors Act of 1899 [33 U.S.C. 403], Clean Water Act [33 U.S.C. 1251] and the Clean Air Act [42 U.S.C. 7401–7671q]. This notice does not, however, alter or extend the limitation period for challenges of project decisions subject to previous notices published in the **Federal Register**.

The project and actions that are the subject of this notice follow: *Project name and location:* NJ Transitgrid Traction Power System Project, Kearny and Jersey City, New Jersey. *Project Sponsor:* New Jersey Transit Corporation, Newark, New Jersey. *Project description:* The project consists of a central, natural gas-fired power plant and transmission lines to traction power substations that electrify the tracks and operating controls on portions of the NJ Transit and Amtrak systems, the installation of up to 19.6 miles of new electrical lines, the construction of two new electrical substations in Kearny and Jersey City, NJ, and the installation of emergency generators at HBLR Headquarters in Jersey City, NJ. *Final agency action:* Section 4(f) individual use determination; executed Section 106 Programmatic Agreement, dated January 16, 2020; NJ Transitgrid Traction Power System Combined Final Environmental Impact Statement (FEIS)/Record of Decision (ROD), dated April 15, 2020. *Supporting Documentation:* NJ Transitgrid Traction Power System Draft Environmental Impact Statement (DEIS), dated, May 8, 2019. The Combined FEIS/ROD and associated documents can be viewed and downloaded from: *https://njtransitresilienceprogram.com/documents/combined-final-environmental-impact-statement-record-of-decision/.*

Authority: 23 U.S.C. 139(l)(1).

Mark A. Ferroni,

Deputy Associate Administrator for Planning and Environment.

[FR Doc. 2020–10505 Filed 5–15–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0559]

Agency Information Collection Activity: State Cemetery Data Sheet and Cemetery Grant Documents

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The National Cemetery Administration (NCA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each revised collection allow 30 days for public comment in response to the notice. This notice solicits comments on information needed to determine when to begin development of additional acreage for burial space and, in so doing, to anticipate when to provide money to

expand or improve these National Cemeteries.

DATES: 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. Refer to ''OMB Control No. 2900–0559.

SUPPLEMENTARY INFORMATION:

Authority: Public Law 104–13; 44 U.S.C. 3501–21.

Title: State Cemetery Data, VA Form 40–0241 and Cemetery Grant Documents, 40–0895 Series.

OMB Control Number: 2900–0559.

Type of Review: Extension without of an approved collection.

Abstract: VA Form 40–0241 and Cemetery Grant Documents, 40–0895 Series, are required to provide data regarding the number of interments conducted at State Veterans cemeteries and support grant applications each year. This data is necessary for budget, oversight and compliance purposes associated with exiting and establishment of new State and Tribal government Veteran cemeteries.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at insert citation date: Volume 85 No. 45 on Friday, March 6, 2020, page 13238.

Affected Public: Individuals or households.

Estimated Annual Burden: 10,050.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 286.

By direction of the Secretary.

Danny S. Green,

VA PRA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020–10510 Filed 5–15–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

National Research Advisory Council, Amended; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, that the National Research Advisory Council will hold a meeting on Wednesday, June 3, 2020, by teleconference. The teleconference number is 1–800–767–1750, Participant Code #26528. The meeting will convene at 11:00 a.m. and end at 1:00 p.m. This meeting is open to the public.

The purpose of the National Research Advisory Council is to advise the Secretary on research conducted by the Veterans Health Administration, including policies and programs targeting the high priority of Veterans' health care needs.

On June 3, 2020, the agenda will include a discussion regarding research VA is conducting regarding COVID–19 and mental health issues related to COVID–19. Also, the Committee will explore potential recommendations to be included in the next annual report. No time will be allocated at this meeting for receiving oral presentations from the public. Members of the public wanting to attend, have questions or presentations to present may contact Dr. Marisue Cody, Designated Federal Officer, Office of Research and Development (10X2), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, at (202) 443–5681, or by email at *Marisue.Cody@va.gov* no later than close of business on May 27, 2020. All questions and presentations will be presented during the public comment section of the meeting. Any member of the public seeking additional information should contact Dr. Cody at the above phone number or email address noted above.

Dated: May 12, 2020.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2020–10522 Filed 5–15–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on the Readjustment of Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that the Advisory Committee on the Readjustment of Veterans will meet virtually on June 12, 2020 at 12:00 p.m. to 3:00 p.m. EST. The virtual meeting is open to the public.

The purpose of the Committee is to advise the Department of Veterans Affairs (VA) regarding the provision by VA of benefits and services to assist Veterans in the readjustment to civilian life. In carrying out this duty, the Committee shall take into account the needs of Veterans who served in combat theaters of operation. The Committee assembles, reviews, and assesses information relating to the needs of Veterans readjusting to civilian life and the effectiveness of VA services in assisting Veterans in that readjustment. The Committee, comprised of 12 subject matter experts, advises the Secretary, through the VA Readjustment Counseling Service, on the provision by VA of benefits and services to assist Veterans in the readjustment to civilian life. In carrying out this duty, the Committee assembles, reviews, and assesses information relating to the needs of Veterans readjusting to civilian life and the effectiveness of VA services in assisting Veterans in that readjustment, specifically taking into account the needs of Veterans who served in combat theaters of operation.

On June 12, 2020, the agenda will include a review of the Committee Charter, a review of the 20th report of the RCS FACA committee, an overview of the National Center for PTSD by Dr. Paula Schnurr, and a period of open discussion amongst committee members.

No time will be allotted for receiving oral comments from the public; however, the committee will accept written comments from interested parties on issues outlined in the meeting agenda or other issues regarding the readjustment of Veterans. Parties should contact Ms. Sherry Moravy, via email at *VHA10RCSAction@va.gov,* or by mail at Department of Veterans Affairs, Readjustment Counseling Service (10RCS), 810 Vermont Avenue, Washington, DC 20420. Any member of the public seeking additional information should contact Ms. Moravy at the phone number or email addressed noted above. For any members of the public that wish to attend virtually, they may use the WebEx link: *https://veteransaffairs.webex.com/veteransaffairs/j.php?MTID=m33a74c10b401acf2335abb7fa525ace3.* Meeting number: 906 886 652, Meeting Password: apRUBvp$858, or to join by phone: 1–404–397–1596.

Dated: May 13, 2020.

Jelessa M. Burney.

Federal Advisory Committee Management Officer.

[FR Doc. 2020–10591 Filed 5–15–20; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 85 Monday,

No. 96 May 18, 2020

Part II

Department of Agriculture

Animal and Plant Health Inspection Service

7 CFR Parts 330, 340 and 372

Movement of Certain Genetically Engineered Organisms; Final Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 330, 340, and 372

[Docket No. APHIS–2018–0034]

RIN 0579–AE47

Movement of Certain Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations regarding the movement (importation, interstate movement, and environmental release) of certain genetically engineered organisms in response to advances in genetic engineering and our understanding of the plant pest risk posed by genetically engineered organisms, thereby reducing the regulatory burden for developers of organisms that are unlikely to pose plant pest risks. This final rule, which marks the first comprehensive revision of the regulations since they were established in 1987, provides a clear, predictable, and efficient regulatory pathway for innovators, facilitating the development of genetically engineered organisms that are unlikely to pose plant pest risks.

DATES: Effective August 17, 2020. Sections 340.4 and 340.5 are applicable beginning April 5, 2021.

FOR FURTHER INFORMATION CONTACT: Dr. Alan Pearson, Assistant Deputy Administrator, Biotechnology Regulatory Services, APHIS, 4700 River Road, Unit 98, Riverdale, MD 20737–1238; (301) 851–3944.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) administers the regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe are Plant Pests'' (referred to below as ''the regulations'').

These regulations govern the introduction (importation, interstate movement, or release into the environment) of certain genetically engineered (GE) organisms.

Along with the Environmental Protection Agency (EPA), and the Food and Drug Administration (FDA), APHIS is responsible for the oversight and review of GE organisms. In 1986, the Coordinated Framework for Regulation of Biotechnology (Coordinated Framework) [1] was published by the Office of Science and Technology Policy. It describes the comprehensive Federal regulatory policy for ensuring the safety of biotechnology research and products and explains how Federal agencies use existing Federal statutes to ensure public health and environmental safety while maintaining regulatory flexibility to avoid impeding the growth of the biotechnology industry. The Coordinated Framework explains the regulatory roles and authorities for APHIS, EPA, and the FDA. The Coordinated Framework was updated in 2017 in light of advances that had occurred since 1986 in the field of biotechnology.

APHIS first issued these regulations in 1987 under the authority of the Federal Plant Pest Act of 1957 and the Plant Quarantine Act of 1912, two acts that were subsumed into the Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) in 2000, along with other provisions. Since 1987, APHIS has amended the regulations six times, in 1988, 1990, 1993, 1994, 1997, and 2005, to institute exemptions from the requirement for permits to conduct activities for certain microorganisms and *Arabidopsis,* to institute the current notification process and petition procedure, and to exclude plants engineered to produce industrial compounds from the notification process.

While the regulations have been effective in ensuring the safe introduction of GE organisms during the past 30 years, they do not reflect the findings from APHIS' three decades of experience in evaluating GE organisms for plant pest risk or account for developments in genetic engineering over that period. APHIS' evaluations to date have provided evidence that genetically engineering a plant with a plant pest as a vector, vector agent, or donor does not result in a GE plant that presents a plant pest risk. Further, genetic engineering techniques have been developed that do not employ plant pests as donor organisms, recipient organisms, vectors, or vector agents, yet may result in organisms that do pose a plant pest risk. Given these developments, as well as legal and policy issues discussed below, it has become necessary, in our view, to update our regulations accordingly.

On January 19, 2017, we published in the **Federal Register** (82 FR 7008–7039, Docket No. APHIS–2015–0057) a proposed rule [2] intended to revise our regulatory approach from ''regulate first before analyzing risks'' to ''analyze plant pest and noxious weed risks of GE organisms prior to imposing regulatory restrictions.''

Under the January 2017 proposed rule, a stakeholder could request that we conduct a risk assessment to determine whether a GE organism would pose plant pest or noxious weed risks and thus need to be regulated. Regulated GE organisms could be imported, moved interstate, or released into the environment under a flexible, risk-based permitting procedure.

APHIS received 203 comments on the proposal during the comment period. Commenters expressed concerns about many provisions of the proposed rule. Many stated that the proposed requirements would be too burdensome and had the potential to stifle innovation.

After reviewing the comments, APHIS subsequently withdrew the proposed rule. Following the withdrawal, APHIS conducted extensive outreach. Our outreach efforts took place in all regions of the United States and encompassed all sectors of the agriculture supply chain, as well as academic researchers, growers of various crops, and advocacy groups. Organizations ranged in size from small laboratories to larger scale businesses. APHIS also took proactive steps to meet with organizations both supportive and skeptical of agricultural biotechnology. In total, APHIS met with more than 80 organizations, including 17 universities, State departments of agriculture, and farmer organizations.

Much of the feedback received during this process centered on the need to focus regulatory efforts and oversight upon risk, rather than the method used to develop GE organisms. Stakeholders also expressed a desire for flexible and adaptable regulations so that future innovations do not invalidate the regulations. We also received feedback urging us to keep international trade objectives in mind when proposing new regulations and ensuring that new regulatory requirements are transparent and clearly articulated.

The feedback we received led us to update APHIS' regulatory framework, in a manner that further focuses our regulatory efforts on the properties of the GE organism itself rather than on the

[1] To view the 1986 framework, go to *https://www.aphis.usda.gov/brs/fedregister/coordinated_framework.pdf.* To view the 2017 revision to the framework, go to *https://www.aphis.usda.gov/biotechnology/downloads/2017_coordinated_framework_update.pdf.*

[2] To view the 2017 proposed rule, the subsequent withdrawal, all supporting documents, and comments APHIS received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0057.*

method used to produce it. We believed that this regulatory approach would better reflect our current knowledge of the field of biotechnology and would therefore enable us to evaluate GE organisms for plant pest risk with greater precision than the existing framework allowed. The regulatory framework was also intended to enable APHIS to avoid conducting repetitive analyses, to utilize its staff time more efficiently than before, and to provide better stewardship of taxpayer dollars.

On June 6, 2019, we published in the **Federal Register** (84 FR 26514–26541, Docket No. APHIS–2018–0034) a proposal [3] to amend the regulations in accordance with the Secretary of Agriculture's March 28, 2018, statement on plant breeding innovations. The Secretary's statement and the accompanying explanatory details provided clarification on the USDA's oversight over plants produced through innovative, new breeding techniques, including genome editing techniques. (The statement and further details are available at: *https://www.aphis.usda.gov/aphis/ourfocus/biotechnology/brs-news-and-information/2018_brs_news/plant_breeding.*)

We would note also that the June 2019 proposed rule and this final rule are consistent with the President's ''Executive Order on Modernizing the Regulatory Framework for Agricultural Biotechnology Products'' (June 11, 2019, Executive Order 13874). Executive Order 13874 directs the Federal Government to adopt regulatory approaches for the products of agricultural biotechnology that are proportionate to the risks such products pose, and that avoid arbitrary or unjustifiable distinctions across like products developed through different technologies. Among other things, Executive Order 13874 states that regulatory decisions should be science- and evidence-based, taking economic factors into account as appropriate and consistent with applicable law; that regulatory reviews should be conducted in a timely and efficient manner; and that biotechnology regulations should be transparent, predictable, and consistent.

We solicited comments on our proposed rule and its supporting analyses until August 6, 2019. We received 6,150 comments by that date. They were from developers of GE organisms; growers of GE plants for food crops and other uses; trade associations representing both of those groups and sellers of such commodities as corn, soybeans, and grain; scientists representing academic institutions; organic farmers and trade associations representing their interests; consumer and public interest groups; and individuals. Most of the comments, while not form letters, expressed a generalized, similarly themed opposition to GE products. Of the comments that specifically addressed the provisions of the rule, approximately 25 expressed some support for the rule. The comments are discussed below by topic.

Applicability of the Regulations

Exemptions

The June 2019 proposed rule exempted from the regulations certain categories of plants that have been modified. Specifically, § 340.1(b)(1) through (4) proposed to exempt such plants if:

- The genetic modification is solely a deletion of any size; or
- The genetic modification is a single base pair substitution; or
- The genetic modification is solely introducing nucleic acid sequences from within the plant's natural gene pool or from editing nucleic acid sequences in a plant to correspond to a sequence known to occur in that plant's natural gene pool; or
- The plant is an offspring of a GE plant and does not retain the genetic modification in the GE plant parent.

In addition to above-listed categories, proposed § 340.1(c) stated that modified plants would not be subject to the regulations if they have plant-trait-mechanism of action (MOA) combinations that are the same as those of modified plants for which APHIS has conducted a regulatory status review (RSR) and found not to be subject to the regulations under part 340.

The above-listed exemptions elicited a broad spectrum of comments. Some commenters welcomed the regulatory relief offered by the exemptions as written, while others viewed them as too broad and still others as excessively restrictive.

Among the commenters who viewed the exemptions as excessively broad, several commenters stated that APHIS did not provide the ''necessary scientific justifications'' for the exemptions from regulation listed in proposed § 340.1(b)(1) through (3).

The exemptions in § 340.1(b)(1) through (3) are based on the principles listed below. (For reasons discussed later in this document, we are removing from this final rule the exemption contained in § 340.1(b)(4) of the proposed rule, which would have pertained to ''null segregants,'' or the offspring of a GE plant that does not retain the genetic modification in the GE plant parent; while there is still a paragraph (b)(4) in this final rule, it serves a different purpose which we discuss later in this document.)

1. Plants created through conventional breeding have a history of safe use related to plant pest risk;
2. The types of plants that qualify for these exemptions can also be created through conventional breeding; and
3. There is no evidence that use of recombinant deoxyribonucleic acid (DNA) or genome editing techniques necessarily and in and of itself introduces plant pest risk, irrespective of the technique employed.

When a plant meets one of the above-listed exemptions, therefore, it is not expected to pose plant pest risks greater than the plant pest risks posed by plants modified by conventional breeding methods and thus should rightly not be subjected to regulation under part 340. (The term ''conventional breeding'' may generally be used interchangeably with ''traditional breeding.'' In the June 2019 proposed rule, APHIS used both terms, with ''traditional breeding'' appearing more frequently in the text. Based in part on dialogue with other agencies involved in regulating biotechnology, we have elected to use the term ''conventional breeding'' throughout this final rule and its supporting documents, except when the need to quote directly indicates otherwise. For purposes of this rule and its supporting documents, ''conventional breeding'' has the meaning it is understood to have within the context of part 340, based on the examples provided immediately below. Other Federal or State regulations may use the term ''conventional breeding'' in the context of their regulations and attribute slightly different meanings.)

We noted in the preamble to the June 2019 proposed rule that conventionally bred crops have a long history of safe use with respect to plant pest risk and that the long history of conventional plant breeding gives us extensive experience in safely managing any associated plant pest risks. Conventional breeding techniques generally involve the deliberate selection of plants with desirable traits from existing population genetic variation or from new genetic variation

[3] To view the proposed rule, the comments we received, and supporting documents, go to *http://www.regulations.gov/#!docketDetail;vD=APHIS-2018-0034.* Additionally, please note that within the body of this document, that rule and this final rule are referred to at times as the Sustainable, Ecological, Consistent, Uniform, Responsible, Efficient (SECURE) rule. The SECURE rule is the nomenclature used by USDA to discuss the rule with stakeholders.

created through artificial hybridization or induced mutagenesis. As we noted in the June 2019 proposed rule, such techniques include marker-assisted breeding, tissue culture, protoplast, cell, or embryo fusion, and chemical or radiation-based mutagenesis. Products generated solely using such techniques have never been regulated under the part 340 regulations. Although conventional breeding is not risk free, the risks associated with it are, according to a 1989 National Research Council (NRC) report,[4] ''manageable by accepted standards.'' In other words, the types of traits that can be introduced through conventional breeding have not led to plant pest risk concerns.

The types of DNA modifications that occur through conventional breeding by mutagenesis are well characterized (Oladosu, *et al.,* 2016; Kharkwal, *et al.,* 2012). Among the common outcomes that result from mutagenesis are deletions, insertions, inversions, or translocations of DNA and base pair substitutions (Oladosu, *et al.,* 2016) which often result from double strand breaks in the DNA followed by natural DNA repair. Base-pair substitution also results from chemical modification of a base followed by natural DNA repair. These types of modifications occur at a low rate from naturally occurring environmental exposure to ionizing radiation, radical oxygen, chemical compounds, or biological agents such as viruses, or at an elevated rate in response to radiation and chemical-induced mutagenesis. In conventional breeding, these types of DNA modifications are introduced randomly. Individual plants possessing a mutation conferring a useful phenotype are isolated by screening, and random mutations that are introduced and do not convey a useful phenotype are addressed during backcrossing. New plant breeding technologies, such as those used in genome editing, can be used to create targeted double strand breaks in specific parts of the genome that when repaired result in deletions and small insertions, just as from natural environmental exposure or radiation mutagenesis (Chen, *et al.,* 2019). Likewise, new plant breeding technologies can also be used, in a specific, targeted manner, to create base pair substitutions that are similar to the modifications that can be created by random chemical mutagenesis. In other words, the same types of DNA modifications that occur in conventional breeding can also be constructed precisely using new plant breeding technologies (Custers, *et al.,* 2019). We are exempting plants generated using plant breeding technologies that have non-templated insertions and deletions and that have a single base pair substitution, because they could otherwise be created by conventional breeding and pose no increased plant pest risk relative to their conventionally bred counterparts.

The exemption in proposed § 340.1(b)(3) applies to the use of new plant breeding technologies to recreate the introduction of a gene, allele of a gene, or structural variation that could otherwise be introduced by crosses. APHIS notes that conventional methods of plant breeding and new plant breeding technologies often share the same goals with similar results. Human selection of plants has been used for thousands of years; and crossing has been used to introduce alleles into breeding populations since at least the early 18th century (Goulet, *et al.,* 2017). More recently, plant breeders have expanded the source of genetic material that can be used to introduce genetic changes into breeding populations through wide crosses, embryo rescue, and protoplast fusion (Bravo, *et al.,* 2011; De Filippis, 2014; Singh, 1990), as well as the rate of introduction of genetic material through marker-assisted and genomic selection; all of these approaches are considered conventional breeding methods and are used to expand and guide changes in the gene pool available within a population. Genetic engineering can be used to introduce a genetic sequence from any donor source into plants, which cannot be accomplished through conventional breeding. To limit the exemption in paragraph (b)(3) to what is possible in conventional breeding, the third exemption applies only to the introduction of a gene, allele, or structural variant known to occur from a donor source (1) in the same species as the recipient, or (2) in a species compatible via wide crosses, embryo rescue, or protoplast fusion with the recipient species.

The NRC has concluded in multiple studies[5] that there was no evidence of unique hazards inherent in the use of recombinant DNA techniques with respect to plants, and that crops modified by molecular and cellular methods should pose risks no different from those modified by conventional breeding methods for similar traits. Moreover, new molecular methods for editing genomes have been developed since the NRC studies that can be more specific and precise than those evaluated by the NRC studies, and plants modified by these new methods should also pose plant pest risks that are no different from plants that are modified for similar traits by conventional breeding methods. For all of the foregoing reasons, we consider the exemptions to be based on the best available science.

Some commenters stated that APHIS did not adequately consider risk when developing the exemptions. It was stated that the proposed exemptions do not consider potential pest risks or human, environmental, or agricultural impacts on nontarget organisms. A commenter claimed that APHIS regulates risks other than plant pest risks, such as inadvertent introduction to the food supply and economic impacts from gene flow, so there should be scientific evidence that plants exempted from regulations do not pose any of the full range of risks.

We do not agree with these comments. With regard to the commenters who stated that the exemptions failed to consider impacts on non-target organisms, APHIS considers impacts on non-target organisms that are beneficial to plants to be indirect plant pest impacts. It is not accurate to say that APHIS has previously regulated risks other than plant pest risks. Under the current regulations prior to the effective date of this final rule (referred to below as ''the current regulations''), APHIS has imposed measures to limit gene flow from GE plants that already met the definition of a *regulated article.* (Please see the ''Implementation Table'' on *Regulations.gov* regarding the dates when various provisions of this rule become applicable.) In these cases, APHIS considered the GE plants to be regulated articles because they had used a plant pest as the donor organism, recipient organism, or vector or vector agent, and therefore could pose a plant pest risk. As noted in the proposed rule, APHIS' evaluations to date have provided evidence that genetically

[4] National Research Council (NRC) 1989. Field Testing Genetically Modified Organisms: Framework for Decisions. Washington DC. National Academy Press. 185 pp. Retrieved from *http://www.nap.edu/catalog/1431.html.*

[5] National Academies of Sciences, Engineering, and Medicine (NAS) 1987. Introduction of Recombinant DNA-engineered Organisms into the Environment: Key Issues. Washington, DC National Academy Press. 24 pp. Retrieved from *https://www.nap.edu/read/18907/chapter/1.*

National Research Council (NRC) 1989. Field Testing Genetically Modified Organisms: Framework for Decisions. Washington DC. National Academy Press. 185 pp. Retrieved from *http://www.nap.edu/catalog/1431.html.*

National Academies of Sciences, Engineering, and Medicine (NAS) 2016. Genetically Engineered Crops: Experiences and Prospects. Washington, DC National Academy Press. 420 pp. doi:10.17226/23395. Retrieved from *http://www.nap.edu/23395.*

engineering a plant with a plant pest does not in and of itself result in a plant that presents a plant pest risk, however. In cases where GE crops were not subject to regulation, no ''other risks'' such as inadvertent introduction to the food supply or economic impacts from gene flow have been regulated by APHIS insofar as they were outside the scope of the regulations.

A commenter opposed the exemptions listed in proposed § 340.1(b)(1) through (3) on the basis that plants produced through most methods that would be used for genome editing are regenerated from single cells in tissue culture, resulting in somaclonal variation with unpredictable consequences, and that off-target mutations caused by genome editing are more likely than chemical and radiation mutagenesis to be non-random. A second commenter asked that the exemptions be limited so that they apply only to plants produced using techniques that minimize off-target mutations. A third commenter asked whether off-target mutations are considered when determining eligibility for an exemption.

Somaclonal variation has been utilized extensively for breeding purposes, and the resultant new plant variety is not subject to the APHIS regulations in part 340 that we are replacing with this final rule (Krishna, *et al.,* 2016; Neelakandan and Wang, 2012). APHIS is not aware of a reason to mandate government oversight over new plant varieties resulting from somaclonal variation.

Background mutation occurs naturally in plants and does not raise plant pest risk concerns in conventional breeding programs. APHIS does not believe it is necessary to regulate off-target effects of genome editing in plants because (1) the off-target mutation rate from genome editing is low relative to the background mutation rate that occurs in conventional breeding, and (2) whatever changes do occur are likely to be segregated away from the target mutation during the breeding process. Comprehensive CRISPR/Cas off-target analysis on a genome-wide scale has been performed in rice, maize, tomato, and Arabidopsis (Feng, *et al.,* 2014; Feng, *et al.,* 2018; Peterson, *et al.,* 2016; Nekrasov, *et al.,* 2017; Lee, *et al.,* 2018; Tang, *et al.,* 2018). In these cases where the frequency of off-target mutation was measured in CRISPR/Cas expressing lines and their progeny, the authors concluded that the rate of off-target mutation was below the level of background mutation induced during seed amplification or tissue culture (Hahn and Nekrasov, 2019). Although there can be variation in off-target mutation rates due to the nature of the technique used and the biological system to which it is applied, the mutation rates in such conventional breeding techniques as chemical and irradiation-based mutagenesis dwarf the rate associated with such methods.

Due to the nature of plant breeding—in which populations are created and evaluated, and individual plants are selected for the intended modifications—off-target changes are likely to be lost unless they are genetically linked to the targeted modification that is introduced. APHIS wishes to clarify that, for these reasons, off-target mutations are not considered when determining eligibility for an exemption. This is also consistent with APHIS' approach regarding conventional breeding techniques. As noted above, these techniques often have a high mutation rate, but have a history of safe use with respect to plant pest risk. APHIS has modified the regulatory text in § 340.1(b) to indicate that we are considering only targeted modifications when determining eligibility for an exemption.

Some commenters stated that the scope of the exemptions listed in proposed § 340.1(b)(1) through (3) should be broadened to encompass the range of genetic modifications that are accessible to plant breeders through conventional breeding methods, and proposed alternative language that would allow an unlimited number of genetic modifications to be made and exempt from the regulations.

The commenters appear to have interpreted our references in the June 2019 proposed rule and its preamble to plants that could otherwise have been developed through ''traditional breeding methods'' to mean any type and extent of genetic change that is theoretically possible through conventional breeding methods. There are many biological and practical factors that affect a plant breeder's ability to develop a new crop variety by introducing genetic variation and intentionally selecting for desired traits. These include the number of targeted loci and type of desired genetic changes, the genetic distance between the desired changes, generation time, breeding system (sexual or asexual, self-compatibility), ploidy level and genomic complexity, resource availability (time, money, labor, and genomic resources), and other factors. These factors, and thus the extent of intentionally selected genetic variation that can be introduced, vary widely among plant species. Moreover, new plant breeding techniques can make possible more complex combinations of genetic modifications than can practically be achieved through conventional breeding methods (Custers, *et al.,* 2019; Wolter, *et al.,* 2019; Najera, *et al.,* 2019). Currently, APHIS lacks sufficient familiarity to develop a risk-based exemption for products containing complex combinations that might be produced in the future. APHIS is clarifying that the exemptions listed in § 340.1(b)(1) through (3) are based on types of modifications that are easily recognizable to the developers of the organism and on genetic changes that could be practically achieved by conventional breeding methods in any plant species. However, over time, APHIS expects to gain more familiarity with the products of these new plant breeding innovations. Accordingly, we are revising § 340.1(b) to establish a process for listing additional modifications that plants can contain while still being exempted from the regulations. This process is specified in paragraph (b)(4) of § 340.1 in this final rule.

Some commenters inquired how the exemptions in proposed § 340.1(b)(1) through (3) pertain to combinations of genetic modifications or to sequential edits. For example, would a deletion and a single base substitution made at the same time in a plant qualify for exemption? If a single change is made to a plant, when could another change be made that qualified for an exemption? Some commenters argued that there is no valid scientific reason that the exemptions should not allow multiple simultaneous genomic changes to be made. Other commenters asked us to reaffirm that the exemptions are limited to only a single genome editing change, and that a plant containing multiple changes made at the same or different times would not be exempt, or that we delete the exemptions altogether, since genome edits could be made sequentially such that each intermediate organisms would be exempt, cumulatively resulting in a final organism with many targeted changes that would also be exempt. Several commenters requested that APHIS include a process for adding new categories of exemptions and revising exemptions in order to ensure that the regulatory system stays up to date and keeps pace with advances in scientific knowledge, evidence, and experience.

APHIS seeks to clarify that exemptions listed in § 340.1(b)(1) through (3) apply to plants containing single targeted modifications. The exemptions were formulated to apply to what could otherwise be achieved through conventional plant breeding

techniques in any species. As discussed above, the plants that are eligible for exemption would have no increased plant pest risk than conventionally bred plants. APHIS realizes that in some species, a single targeted modification is often less than what could otherwise be developed through conventional breeding. However, as noted above, the extent of intentionally selected variation that could otherwise be introduced through conventional breeding varies depending on the plant species. To establish clear and unambiguous exemptions that could apply to any plant species while enabling for variation in what can be achieved through conventional breeding, APHIS has revised the regulatory text in § 340.1(b).

Initially, the exemptions will apply only to plants containing a single targeted modification in one of the categories listed. APHIS anticipates scientific information and/or experience may, over time, allow APHIS to list additional modifications that plants can contain and still be exempted from the regulations so that the regulatory system stays up to date and keeps pace with advances in scientific knowledge, evidence, and experience. This may include multiple simultaneous genomic changes. If the Administrator determines that it is appropriate to list additional modifications, APHIS will notify the public in the **Federal Register** and will take public comment. After reviewing the comments, APHIS will issue a subsequent notice announcing its determination. This process is provided in new paragraph (b)(4) in § 340.1.

One commenter requested that APHIS document examples of deletions of any size that could be made by conventional breeding.

The first exemption allows a single deletion of any size because radiation can create any size deletion. As mutations are typically detrimental to the organism, what is achievable in practice is limited by the viability and fertility of the organism. Large mutations can be maintained in a heterozygous state but do not tend to undergo homozygous inheritance (Naito, 2005). For example, in Arabidopsis, which has a genome size of 135 Mb (Arabidopsis Genome Initiative, 2000), a radiation-induced deletion of 3.1 Mb was obtained that disrupted 852 genes and was maintainable only as a heterozygote presumably because genes essential for survival are present in the deleted region (Kazama, *et al.,* 2017). Polyploid plants and those with large genomes are better able to accommodate even larger deletions (Men *et al.,* 2002). For example, in hexaploid wheat, X-ray mutagenesis was used to create a mutant, Ph1-, widely used in breeding programs, that has a 70 Mb deletion (Sears, 1977). To put the size of this deletion in perspective, it is larger than half of the entire genome of Arabidopsis.

Some commenters recommended that the exemption in § 340.1(b)(1) be broadened to allow for insertions that occur during the natural DNA repair mechanism after double-strand break of the DNA. In the proposed rule, the exemption in paragraph (b)(1) mentions only deletions.

APHIS agrees with the comment. Deletions, small insertions, and combinations of deletions and insertions are all possible outcomes resulting from the cellular mechanisms used to repair DNA breaks that occur naturally or that are induced during conventional plant breeding, and all have been used in conventional plant breeding (Manova and Gruszka, 2015; Wang, *et al.,* 2016). The exemption in § 340.1(b)(1) has been revised to reflect all of the possible outcomes of natural DNA repair mechanisms that occur in the absence of a deliberately provided repair template.

A commenter asked that APHIS eliminate the exemptions for deletions and single base pair substitutions, arguing that any type of change in a gene sequence can potentially cause phenotypic changes that have significant consequences.

APHIS disagrees with this argument. Naturally occurring single base pair substitutions and deletions are commonly induced and are widely used to generate new crop varieties in conventional mutation breeding, which includes both chemically induced and irradiation-based mutagenesis (Oladosu, *et al.,* 2016; Kharkwal, 2012; Ahloowalia and Maluszynski, 2001). The targeted single base pair substitutions or deletions covered by these exemptions are the same in kind as, and do not pose any increased plant pest risks than, the substitutions or deletions introduced through conventional breeding. Thus, they should not be subject to the regulations.

Many commenters argued that limiting the exemption in proposed § 340.1(b)(1) to a single deletion and the exemption in § 340.1(b)(2) to a single base pair substitution does not take into account that multiple base pair substitutions and/or deletions are routinely and safely introduced into plants using conventional breeding methods, including mutagenesis.

The argument that multiple substitutions or deletions can occur through conventional breeding methods, including mutagenesis, seems to be conflating the specific targeted changes that can be made via genome editing techniques with the multiple random changes that occur during conventional breeding, only one or few of which might contribute to the desired phenotype. In the case of random chemical or radiation mutagenesis, thousands of mutations are introduced into the plant but most are detrimental, or neutral at best. The fact that multiple mutations exist in the plant is a negative feature that needs to be overcome by laboriously self-fertilizing or backcrossing the mutated plant for multiple generations. Even then, a developer may not find an agronomically suitable phenotype. By applying selection, it is possible, though at a very low frequency, to get two desirable mutations in a single mutated line if the mutations are unlinked. It is improbable to get two linked mutations in a single line, particularly if the mutations are sought within the same gene. In contrast, genome editing can easily introduce multiple beneficial changes in one generation, leading to phenotypes that we have not seen by conventional breeding.

The exemptions listed in § 340.1(b) are based on measures that are easily defined, are based on familiarity, and thus are meant to be limited to genetic changes that could practically be achieved by conventional breeding methods in any plant. It is not possible to define a number of such changes greater than one which could practically be achieved by conventional breeding methods in all plant species. The number of changes that can practically be achieved through conventional breeding methods can vary widely from one species to another. For this reason, APHIS is retaining the limitation of a single modification, as this approach ensures that we can identify those plants that pose a plant pest risk. We anticipate that most plants that are not eligible for the exemption and do not pose a plant pest risk will pass through the RSR process quickly.

In addition, as noted above, we are revising § 340.1(b) by adding a new paragraph (b)(4) that establishes a process for listing additional modifications that plants can contain while being exempted from the regulations, based on what could be achieved through conventional plant breeding. Thus, while the exemptions in § 340.1(b)(1) through (3) will initially apply only to plants containing a single modification in one of the categories listed, APHIS anticipates that scientific information and/or experience will,

over time, allow multiple and sequential changes in some species after public notice and comment.

The introductory text of § 340.1(b)(4) provides that the Administrator may propose to exempt plants with additional modifications, based on what could be achieved through conventional breeding. Such proposals may be APHIS-initiated, or in response to a request.

Paragraph (b)(4)(i) sets forth the process for APHIS-initiated proposals. APHIS will publish a notice in the **Federal Register** of the proposal by the Administrator to exempt plants with additional modifications. The notice will make available any supporting documentation, and will request public comment. After reviewing the comments, APHIS will publish a subsequent notice in the **Federal Register** announcing its final determination and responding to the comments received.

Under paragraph (b)(4)(ii), any person may request that APHIS exempt plants developed with additional modifications that could be achieved through conventional breeding. The request will have to include the following supporting information, in writing:

- A description of the modification(s);
- The factual grounds demonstrating that the proposed modification(s) could be achieved through conventional plant breeding;
- Copies of scientific literature, unpublished studies, or other data that support the request; and
- Any information known to the requestor that would be unfavorable to the request.

Paragraph (b)(4)(iii) provides the timeframe for Agency review of such requests. It provides that, after APHIS receives all the information required for a request, APHIS will complete its review of the request and render a final determination within 12 months, except in circumstances that could not reasonably have been anticipated.

Under paragraph (b)(4)(iv) if, after review of the request, APHIS disagrees with the conclusions of the request or determines that there is insufficient evidence that the modification could be achieved through conventional breeding methods, APHIS will deny the request and notify the requestor in writing regarding this denial.

Paragraph (b)(4)(v) provides for Agency actions when we agree with a request. It states that, if APHIS initially determines that the modification could be achieved through conventional breeding methods, APHIS will publish a notice in the **Federal Register** in accordance with the process set forth in § 340.1(b)(4)(i).

Under paragraph (b)(4)(vi), a list specifying the additional modifications allowed will be posted on the APHIS website at *https://www.aphis.usda.gov/aphis/ourfocus/biotechnology.* This list would include both those additional modifications originally proposed by the Administrator and those that originate with a request.

Some commenters suggested a change to the exemption in proposed § 340.1(b)(2) so that it would allow a limitless number of synonymous base pair changes. Synonymous base pair changes, it was stated, do not alter the amino acid composition of the encoded protein. One commenter suggested changing the exemption to allow however many specific and known base pair changes are needed to achieve the intended MOA.

APHIS rejects the first suggestion because synonymous changes can lead, and indeed have been made, to generate significant phenotypic changes, *e.g.,* by altering mRNA splice sites, promoters, and regulatory RNAs. APHIS acknowledges that these types of phenotypic changes could, in principle, also occur through a single deletion, insertion, or base pair change in conventional breeding. However, these types of phenotypic changes are unlikely to be possible in all or perhaps even most genes through deletion or single base pair changes. Moreover, multiple targeted changes within a single gene are generally not likely to be achieved in conventional breeding. Therefore, the exemption will not be broadened to include multiple synonymous base pair changes. However, as discussed below under this same subheading of comment responses, we have revised the exemption in § 340.1(b)(3) to clarify that if multiple sequence changes are needed to generate an allele that will result in the intended phenotype and if those changes are known to occur in the plant's gene pool, the GE plant would qualify for the exemption.

One commenter stated that APHIS should eliminate the exemption in paragraph (b)(3), regarding introducing variation known to occur in the gene pool, because sequences found naturally in closely related, sexually compatible organisms do not necessarily have acceptable risks when introduced into other species. The commenter offered an example, stating that ''the introduced nucleic acids can direct the synthesis of toxins, change metabolism in harmful ways, turn on or off genes and metabolic pathways in the genetically engineered host, and make the genetically engineered organism more susceptible to pests and pathogens, or more fit in the wild and more weedy.''

APHIS disagrees with the comment. The commenter is pointing out harms that potentially could occur, and are no less likely to occur, in conventional breeding programs. However, such harms have not materialized in conventional breeding programs because they rarely occur and are intentionally eliminated during the evaluation and selection process (NRC, 1989).

One commenter wished to know whether the exemption in proposed § 340.1(b)(3) supersedes the exemption in § 340.1(b)(1) and (b)(2). Another commenter felt that the exemptions in paragraphs (b)(1) and (b)(2) were too narrow because polymorphisms, insertions, inversions, and multiple megabase deletions and translocations are abundant in nature and frequently induced in breeding programs through mutagenesis.

APHIS seeks to clarify that § 340.1(b)(3) does supersede § 340.1(b)(1) and (b)(2) in the number of changes that can be made under the exemption. APHIS also seeks to clarify that paragraphs (b)(1) and (b)(2) pertain to products of mutagenesis which have not been observed in the gene pool, whereas paragraph (b)(3) applies only to variation already known to occur in the gene pool. Therefore, the exemption in paragraph (b)(3) allows the introduction of a gene, *i.e.,* a functional unit of DNA that encodes an RNA or protein, or of an allele (a variant form of a gene or, for the purposes of this regulation, a genetic sequence) containing multiple sequence changes as long as the allele is known to occur in the gene pool of the plant. With regard to the comment that the exemptions in paragraphs (b)(1) and (b)(2) are unnecessarily restrictive because there are changes abundant in nature not covered by these exemptions, APHIS wishes to clarify that the duplications, inversions, translocations, and transpositions already known to occur in the gene pool would qualify under the exemption in paragraph (b)(3).

Some commenters suggested deleting ''natural'' from § 340.1(b)(3) because the gene pool of a plant may include variation that has been previously induced through chemical or radiation mutagenesis or that could be introduced via human-assisted wide crosses. Further comments on the exemption in paragraph (b)(3) recommended substituting the phrase ''known to occur'' with some variation of

''otherwise accessible through traditional plant breeding methods.''

APHIS agrees with the first comment and disagrees with the second. APHIS considers the known and accessible gene pool of a plant to include not only genetic sequences that can be introduced to a plant via crosses that can take place without human assistance, but also genetic sequences that can be introduced to a plant via human-assisted wide crosses between distantly related species. In systems for which breeding techniques such as bridging and embryo rescue have been developed to enable wide crosses, distantly related plants are also considered part of the gene pool. However, these categories may not be considered ''natural,'' so APHIS is in favor of deleting this term. APHIS is retaining the phrase ''known to occur,'' however. As discussed above, when we refer to GE plants that could otherwise have been developed through conventional breeding methods, we do not mean any genetic changes that are theoretically possible. Almost any genetic change is theoretically possible, given enough time. APHIS' intention in § 340.1(b)(3) is to exempt from regulation a product that could be practically expected to be pursued and achieved in a conventional breeding program. To qualify for an exemption based on occurrence in the gene pool, the genetic change must be known to occur. We do not intend the exemption to apply to limitless possibilities that are theoretically possible but not currently known to occur in the gene pool. Consequently, the exemption in paragraph (b)(3) has been slightly modified for accuracy and clarity.

Some commenters asked that the exemption in paragraph (b)(3) be expanded to include plants in which an allele has been modified to align with a similar known allele found in a close relative, or in a more distant relative beyond the family level of taxonomy, or that we exempt plants containing any sequence from a plant that is known not to be a plant pest and is routinely used for food.

APHIS considers the known and accessible gene pool of a plant to include not only genetic sequences that can be introduced to a plant via crosses that can take place without human assistance, but also human-assisted wide crosses between more distantly related species. In systems for which breeding techniques such as bridging and embryo rescue have been developed to enable wide crosses, more distantly related plants are also considered part of the known gene pool. APHIS agrees in principle that exchange of genetic information between unrelated species is likely to be safe in most cases. However, APHIS does not have the experience to definitively state that exempting all exchange of DNA between plants will not lead to increased plant pest risk. In cases where genetic material from a more distantly related plant species is introduced into the plant, developers can request an RSR.

A commenter stated that their understanding is that the exemption in § 340.1(b)(3) would include any insertion or other sequence modification of less than 20 base pairs. APHIS disagrees and seeks to clarify that even an insertion or sequence modification smaller than 20 base pairs that does not otherwise qualify for exemptions § 340.1(b)(1) or (b)(2) still has to meet the criteria of paragraph (b)(3) to qualify for exemption under paragraph (b)(3). The exemption does not apply to what is theoretically possible. The genetic variation must be known to occur in the plant's gene pool in order to qualify for the exemption.

A commenter stated that the regulation could clarify that exemption under paragraph (b)(3) covers the introduction of natural or chemically synthesized copies of nucleic acid sequences from one plant species into the same or a crossable plant species, including (a) the targeted insertion or replacement of sequences exceeding 20 base pairs in length (*e.g.,* the insertion or replacement or a promoter, terminator, exon, intron, or small open reading frame, excluding complete genes), (b) the targeted replacement of a cisgenic allele (*i.e.,* perfect allelic replacement), (c) the targeted insertion of a cisgenic sequence at the same or a different location in the genome of the recipient species, and (d) the targeted insertion of a cisgene with a new combination of genetic elements, as plants containing such changes could have occurred naturally or could result from conventional breeding since they fall under exemption under paragraph (b)(3). A second commenter stated that some genetic engineering experiments will replace promoters, altering gene expression patterns in ways that are not attainable by today's breeders.

APHIS does not intend to modify the regulation text per the commenter's suggestion. Exemption under paragraph (b)(3) will exempt from regulation plants that have been modified to introduce a gene known to occur in the plant's gene pool, or that make changes in a targeted sequence to correspond to a known allele of such a gene or to a known structural variation present in the gene pool. Some of the examples provided by the first commenter may thus not be eligible for exemption under paragraph (b)(3). For instance, (b)(3) will not exempt from regulation a plant containing an insertion of a gene that is known to occur in the gene pool if the insertion results in the creation of a gene not known to occur in the gene pool, *e.g.,* a gene that results in the production of a protein or RNA, or a loss or gain of function, that is not known to be produced by plants within the gene pool. However, if a specific modification can be demonstrated to be present in the plant's gene pool, then it can be exempted under paragraph (b)(3). If a developer has a question about whether its plant is exempt from the regulation, the developer can contact APHIS for a consultation.

Some commenters asked how the deletion exemption in § 340.1(b)(1) pertains to diploid and polyploid plants. For example, if a deletion is made to both alleles of a diploid or all four or six alleles in tetraploid and hexaploid plants, respectively, would those plants qualify for the exemption?

APHIS seeks to clarify that exemptions in § 340.1(b)(1) through (3) apply to modifications made to one pair of homologous chromosomes. It is very straightforward in conventional breeding to identify a single allele in a diploid line and then convert the heterozygote to a homozygote in the next generation. However, it is very difficult through conventional breeding to create the same allele in all homoeologous genomes in polyploid plants. Therefore, for polyploid plants, the exemptions would initially apply only to modifications made to one pair of homologous chromosomes. As an example, consider a change to a gene in common wheat (bread wheat). Common wheat has three sets (AA BB DD) of homoeologous chromosomes. A developer can qualify for the exemption if modifying the A genome through a change that qualifies for exemption (b)(1), (b)(2), or (b)(3). If the developer wanted to make the same corresponding changes to the B and D genomes, the developer would go through the RSR process (as described below). Once APHIS determines that this A/B/D plant is unlikely to pose an increased plant pest risk, it will go on the list of plant-trait-MOAs that do not require regulation (*i.e.,* the § 340.1(c) exemption list). At that point, this developer, and any others, would be able to make the same plant-trait-MOA combination and be exempt from regulation under part 340.

Some commenters noted that the exemption in proposed § 340.1(b)(4), *i.e.,* the exemption of null segregants derived from GE plants, is superfluous

because the definition of *genetic engineering* applies only to organisms whose DNA sequence has been modified.

APHIS agrees with these commenters. According to our definition of *genetic engineering,* the genome of null segregants has not been created or modified. Therefore, null segregants do not need an exemption from regulation, and APHIS is removing this exemption from the final rule.

Some commenters stated that the exemption in proposed § 340.1(c) for a GE plant with a plant-trait-MOA combination that has previously undergone an analysis in accordance with § 340.4 and has been found by the Administrator to be unlikely to pose a plant pest risk should be eliminated. One commenter stated that the impact of releasing new GE plants into the environment cannot be accurately predicted or assessed without case-by-case analysis and controlled field experiments. Another commenter stated that every transformation event is unique, and thus potentially has a novel phenotype that must be assessed to determine appropriate regulation. The commenter further stated that the National Academy of Sciences (NAS) has also advocated the use of genetic engineering [*i.e.,* transformation] as ''both a useful and scientifically justifiable regulatory trigger'' because ''there is no scientific basis'' on which to exclude GE organisms from regulatory review prior to evaluation of data on the interactions between ''trait, organism and environment.''

APHIS disagrees with these points. Based on the risk assessments we have performed in accordance with the petition process over 30 years, we have determined that, in many cases, we would have been able to evaluate the plant pest risks associated with a GE organism without field-test data. Rather, APHIS has discovered that the introduced trait of the GE organism provides the most reliable indicator of the organism's potential for deleterious effects on plants and plant products. These observations are expected and are consistent with the findings of reports of NAS (NRC, 1989; NAS, 2016). APHIS will seek additional information, potentially including data from controlled field experiments, in cases where APHIS identifies a plausible pathway to increased plant pest risk.

The same NAS study (NRC, 2002) cited by the commenter stated the following: ''Transgenic organisms have potential environmental risks, but the committee expects that most of them will not produce significant actual environmental risks. Consequently, the committee also suggests that for environmental risk regulatory oversight should be designed to winnow the potentially riskier transgenic crops from the less risky ones before a substantial regulatory burden is imposed on the less risky ones.'' APHIS has designed a system where organisms that pose a plausible plant pest risk are rapidly distinguished from those that do not, based on the RSR process described below under the subheading ''Regulatory Status Review,'' focusing regulation on the former. The exemption that we proposed in § 340.1(c) will apply only to those GE plants that have undergone a risk assessment in the RSR process. The revised regulations are proportionate to risk and are therefore consistent with the recommendation of NAS's study.

Several comments were received on the definition and application of the term MOA as it relates to the exemption in § 340.1(c). The issues raised by the commenters are discussed in detail below.

Two commenters stated that the categories of trait (defined in the June 2019 proposed rule as ''an observable (able to be seen or otherwise identified) characteristic of an organism'') and MOA (defined as ''the biochemical process(es) through which genetic material determines a trait'') could be interpreted so broadly that new GE plants that have a plant-trait-MOA combination similar to that of a nonregulated plant, yet contain unique features with unknown impacts on non-target organisms and the surrounding ecosystem, would not require review by APHIS. They stated that, for example, the ''Cry[6] protein MOA'' could include dozens of possibilities with unknown effects, and that it could even be the case that APHIS review would not be required when any gene encoding a Cry protein that targets broad orders of insect pests is inserted into a plant that had previously been engineered with any other trait and had been found by APHIS not to pose a plant pest risk.

APHIS disagrees with the suggestion that the proposed definition of MOA is too broad. The suggestion is based on a misreading of the definitions and the preamble of the June 2019 proposed rule. As described in the preamble, the MOA refers to the specific manner by which the genetic modification confers the intended trait on the plant. We noted that the same trait can be obtained by different MOAs that would thus be subject to distinct RSRs. In the example cited, the preamble was clear that non-target impacts related to Cry proteins depend on whether the non-target insect has the correct receptor in its gut to bind the Cry protein; thus, for each new Cry protein it will be important to evaluate the potential for non-target impacts. Similarly, the preamble provided an example of RNA interference-based resistance, where it would be important to consider the specific target RNA and its corresponding protein in order to determine whether there could be non-target effects. Moreover, the regulatory text and preamble were clear that it is the specific plant-trait-MOA combination that is the subject of the RSR and decision. Developers could not qualify for exemption under § 340.1(c) by inserting any *cry* gene that encodes a protein targeting a broad order or orders of insects into a plant with any other trait and MOA that was previously reviewed by APHIS.

Another commenter stated that reasonably broad MOA categories should be established that would cover broad protein functional classes, account for all normal polymorphisms found in nature at the DNA and protein levels at the genus level, and account for the normal wide variation in expression seen among transgenic events and backgrounds. An additional commenter recommended that the definition of MOA refer to the biochemical process(es) through which the gene, rather than the genetic material, determines a trait, stating that it is a gene product and not the genetic material that determines the resulting biochemical process. Finally, a commenter requested that the final rule clarify which products would qualify for the exemption in § 340.1(c), noting that APHIS alternately used the terms ''same'' and ''similar'' to describe products that could qualify based on their use of a crop-trait-MOA combination that has already been assessed by APHIS and determined unlikely to pose a plant pest risk than the appropriate comparator(s).

APHIS agrees that in most cases, the MOA could cover all normal polymorphisms of a gene found in nature, even at levels broader than the genus. For example, the outcome of an RSR would apply to genetic material encoding an enzyme that catalyzes a specific biochemical reaction regardless of whether the genetic material is sourced from a plant or a microbe, as long as the enzyme catalyzes the same biochemical reaction regardless of the organism from which the genetic material encoding the enzyme is obtained, and does not catalyze any

[6] A Cry protein is a crystalline protein toxic to certain species of insects primarily produced by the bacterium *Bacillus thuringiensis* (Bt). Genes for Cry proteins have been widely used to confer resistance to insect pests in several types of crop plants.

additional biochemical reactions that differ among the source organisms. APHIS does not agree that the MOA would be so broad as to cover broad functional classes, since broad functional classes could encompass many different proteins that have multiple differences in the biochemical processes in which they participate. Typically, an RSR would be conducted at the level of the MOA of individual genes. If those genes when stacked produce a new phenotype, such as a new biochemical pathway, APHIS will consider the interaction of the gene products in the RSR. Regarding variation in expression, in most cases APHIS anticipates that variation in expression should not affect the outcome of an RSR. However, as we noted in the preamble to the June 2019 proposed rule, there may be cases where it is important to consider where, when, or at what level the genetic material is expressed in the plant. In those cases, APHIS will specify whether and in what way variation in expression limits the outcome of the review.

APHIS will not revise the definition of MOA in response to these additional comments, because some MOAs may not involve changes in gene products but rather changes in genetic material that affect the expression of gene products. As this discussion makes clear, a plant-trait-MOA combination may qualify for the exemption only if the combination is the same as a previously reviewed plant-trait-MOA combination that has been found to be unlikely to pose a plant pest risk. To be clear, a merely ''similar'' combination does not qualify as a ''same'' combination, but a ''similar'' product may qualify for the exemption if it has the same combination as a previously reviewed combination.

One commenter urged that in addition to mutated products of genome editing, the concept of exemptions due to familiarity should be broadened to include plants with transgenic traits that are familiar in type and inherently unlikely to give a significant advantage to wild plants. Examples would be sterility traits, stature reduction traits, and quality traits relevant to industrial processing (*e.g.,* modified lignin in alfalfa and trees). According to the commenter, another class of strong candidates for plant kingdom-wide exemption are the widely used marker genes, such as *nptII* for kanamycin resistance, T–DNA borders, and widely used promoters such as 35S and NOS.

APHIS appreciates these comments. The commenter did not provide any scientific evidence or explanation that would make the comments actionable at this time, however.

Several commenters asked that APHIS clarify the regulation of plants containing stacked traits. One commenter requested that APHIS codify in the regulations that plants developed through conventional breeding that are derived from products determined to not be regulated (either because of an exemption or as a result of an RSR) would themselves be unlikely to pose increased plant pest risk and therefore would not be subject to regulation. Other commenters argued that APHIS should assess the risks of stacked traits, particularly plants containing multiple herbicide resistance traits, using the noxious weed authority.

A discussion of our noxious weed authority in the context of these regulations is presented later in this document.

APHIS notes that in accordance with § 340.1(c), the regulations under part 340 do not apply to a GE plant with a plant-trait-MOA combination that has previously undergone an analysis in accordance with § 340.4 and is not subject to the regulations. APHIS notes that the word ''combination'' used in the regulation text is deliberately enumerated as singular and not plural in order to denote that the exemption applies to a single plant-trait-MOA combination and not a molecular stack of multiple plant-trait-MOA combinations. Plant-trait-MOA combinations that have undergone an analysis in accordance with § 340.4 and are not subject to the regulations may be stacked by conventional breeding methods and would still qualify for the exemption. However, this is not the case for plant-trait-MOAs stacked molecularly; today stacked traits typically have independent MOAs. In the future, we anticipate seeing more interactions between or among the products of genes in molecular stacks, potentially including new MOAs that were not evident in the review of individual traits. For this reason, APHIS anticipates that plants that are the genetically engineered product of more than one previously evaluated combination will be subject to evaluation under § 340.4. In cases where there is no interaction between trait-MOA combinations, we expect to be able to use the results of previous reviews to quickly reach a regulatory status determination.

Finally, several commenters requested clarity on the regulatory status of plant-trait-MOA combinations that were previously deregulated under part 340 or deemed to be not regulated under the ''Am I Regulated'' (AIR) process.

To provide the clarity the commenters requested, we are amending paragraph (c) to exempt from these regulations a GE plant that has a plant-trait-MOA combination contained in a GE plant determined by APHIS to be deregulated under a petition submitted prior to October 1, 2021 pursuant to § 340.6 of the current regulations in part 340. We are also adding a new paragraph (d) to § 340.1, stating that all GE plants determined not to require regulation pursuant to the AIR process will retain their nonregulated status under these regulations.

As we have noted, APHIS will publish a list (referred to earlier in this document as the § 340.1(c) exemption list) of plant-trait-MOA combinations that have been evaluated under our new RSR process and found not to require regulation under part 340. That list may be used by a developer to determine whether its novel GE plant would qualify for exemption under § 340.1(c). GE plants previously evaluated under the petition process will be included on the § 340.1(c) exemption list because such plants will have effectively been evaluated at the MOA level and determined not to pose a plant pest risk.

Plants that have been determined not to require regulation pursuant to the previous AIR process will not be included on the § 340.1(c) exemption list because they will not have been evaluated at the MOA level or by analogous criteria. Such plants will be identified at a separate list, at *https://www.aphis.usda.gov/aphis/ourfocus/biotechnology.* Because the plants to be identified on this separate AIR list were not evaluated under the petition process or under the RSR process, developers will not be able to use the AIR list in determining whether new GE plants they develop should be subject to or exempt from the regulations. At the same time, we have multiple reasons for concluding that the specific plants on the AIR list should retain their nonregulated status under these regulations. Not only do we lack a basis for overturning our prior individualized determinations reached pursuant to the AIR process, we also believe that it is appropriate for us to take into account the importance of preventing potential market disruptions, including potential trade disruptions, and providing regulatory certainty for developers, third parties, and the general public.

Self Determination

Under the June 2019 proposed rule, developers would have the option to determine whether their plants belong to one of the categories listed under § 340.1(b) or (c) and are therefore

exempt from the regulations. As stated in the preamble to that proposed rule, allowing for such ''self-determinations'' would provide developers with regulatory relief and would open more efficient and predictable pathways for innovators to get new modified plants that do not require regulation to market, in turn supporting further innovation. Eliminating the need for redundant evaluations of products would allow APHIS to devote more attention to assessing and regulating GE organisms that are likely to be associated with potential plant pest risks.

While many commenters agreed with the rationale discussed above and welcomed the regulatory relief that allowing for developer ''self-determination'' would provide, others either opposed the concept entirely or expressed reservations. Many in the latter category cited what they believed to be potential risks that could result from allowing developers to determine whether their products are eligible for exemption from the regulations. Some industry commenters questioned whether allowing developers to make such determinations would actually relieve regulatory burden and incentivize innovation to the extent that we anticipated. The comments are discussed in detail in the paragraphs that follow.

Many commenters opposed ''self-determination'' on the ground that allowing developers to regulate themselves could result in conflicts of interest. It was stated that developers of GE products with a financial stake in the outcome should not be allowed to determine which products should be subject to regulatory review. According to these commenters, such an approach would fatally undermine the integrity, rigor, and credibility of what must be an independent regulatory process, weakening Agency ability to protect the public interest, and furthering mistrust in the U.S. Federal regulatory system in the public's eye and among key trading partners. By avoiding the RSR or permitting process, these commenters believed, the developer could get its new product to market without its ever having undergone an objective, third-party review. In allowing developers to determine whether their products are eligible for exemption, according to these commenters, we are effectively abdicating our regulatory authority and not carrying out our mission to protect U.S. agriculture.

We do not agree with these comments. The revised regulations in part 340 recognize that plant products that are the result of modifications that coincide with conventional plant breeding do not pose additional plant pest risk and should not be regulated under these regulations. Products that do not fall within the regulatory scope of part 340 have not been subject to compulsory regulation in the past, and developers have always been able to act accordingly to determine whether their products are subject to the regulations.

It was further argued that allowing developers to determine the regulatory status of their products will result in less transparency and greater risk of commingling with organic and other non-GE crops and will damage consumer confidence. Allowing developers to determine the regulatory status of their products, it was claimed, will result in an overall loss of transparency in that the public would not have access to the data used by developers to make their determinations. Organic farmers would have less information about modified crops grown near their fields than they do now, because the information that informed developers' determinations would remain proprietary, and their ability to take preventive measures would be hindered. Some commenters cited the recent finding in Washington of unapproved GE glyphosate-resistant wheat [7] as an example of risks posed by allowing developers to determine whether their products are eligible for exemption and by reducing our regulatory oversight over GE products more broadly.

We do not agree with these comments. With regard to transparency, we anticipate that many developers whose products fall within an exemption will request confirmation letters because the letters will help them market their products domestically and overseas. Those letters will be posted on the APHIS website and will be available to the general public, including organic and other growers of non-GE crops. Information from previous RSRs will also be available to the public. We do not agree that self-determinations will limit organic growers from learning whether their neighbors are growing GE crops. This information principally comes from conversation with neighbors and from other voluntary interactions and arrangements, and is not based on USDA decisions on regulatory status. We also do not agree that the finding of GE wheat in Washington fields is relevant to the regulatory changes made in this final rule. Under the new regulations set forth in this final rule, the GE wheat involved in the incident would not be eligible for an exemption and would need to go through the RSR process. The commenters are generally confusing a fact-specific compliance issue, which could arise under any number of regulatory schemes, with broader questions about the appropriate regulatory approach. If APHIS were to find that a plant was unlikely to pose an increased plant pest risk, APHIS would make information publicly available regarding the plant, trait, and a general description of the MOA. In cases where GE crops are not subject to regulation because they are unlikely to pose a plant pest risk, no other risks are regulated by APHIS insofar as they are outside the scope of the regulations.

In the preamble to the June 2019 proposed rule, we stated that a developer who made a determination of regulatory status that APHIS found not to be valid would be subject to remedial measures or penalties in accordance with the compliance and enforcement provisions contained in § 340.6 of the June 2019 proposed rule.

Some commenters stated that there is a need for a plan for detection and enforcement in cases where developers incorrectly determine their products to be non-regulated, or where changes in evidence may call a developer's determination into question. Without a record of what plants are being released, according to these commenters, it will be impossible to conduct any kind of periodic surveillance or audit to ensure compliance. These commenters believe that this difficulty may be partly addressed by having a compulsory reporting mechanism whereby a responsible party fills out a form to declare its modification and assert its exempt status. This would create a searchable record. According to such commenters, a database compiled from self-reported data would not offer complete protection against bad actors, but when combined with penalties that are proportional to the degree of harm done by a developer incorrectly making a determination, such a database may aid in correcting incorrect determinations by developers.

APHIS disagrees with the proposal for a mandatory process and the data base proposals associated with it and has instead included provisions in part 340 for a voluntary confirmation process for

[7] On June 7, 2019, APHIS confirmed the discovery of GE wheat plants growing in an unplanted agricultural field in Washington State. The GE wheat in question was resistant to glyphosate, commonly referred to as Round Up. On July 12, 2019, APHIS announced that the GE wheat plants in question were developed by Monsanto (now owned by Bayer CropScience (BCS)) and referred to as MON 71300 and MON 71800. APHIS also announced that there is no evidence that any GE wheat entered commerce or is in the food supply. *https://www.aphis.usda.gov/aphis/ourfocus/biotechnology/brs-news-andinformation/2019_brs_news/wheat_update_jul2019.*

products exempted from the regulation. Voluntary confirmation will be public information, however, and interested parties could search for it of their own volition.

Under APHIS's long-standing regulations, APHIS regulates articles based only upon a narrow and limited plant pest mechanism. The products that commenters are concerned will be ''missed'' or ''overlooked'' in the ''future'' have no current regulatory trigger. Under this rule, APHIS' focus will be on plant pest risk associated with the product, consistent with our legal authority. Consistent with long-standing practices, we will continue to offer voluntary confirmation of regulatory status to those who seek it. APHIS agrees with comments expressing concern that a mandatory process may trigger confusion among both consumers and the international trading partners, by unnecessarily hindering global acceptance of products of biotechnology. That said, if the market demands confirmation of regulatory status, APHIS has created a mechanism for developers to request such confirmation, and for us to provide it.

APHIS also notes that a large number of commenters supported the kind of voluntary confirmation process contained in this final rule for regulatory exemptions, noting public access to the confirmation letters. Those comments noted that a voluntary process would provide domestic and international transparency, be beneficial for marketing of new products, support deregulation processes in other countries, facilitate exports, facilitate the development of new genome edited plant varieties, encourage the continued domestic and global adoption of new traits, and enhance harmonization of global trait approvals.

If a plant pest issue arises from a plant that is exempt from these regulations, APHIS has mechanisms to address such risks subsequently and has a wealth of experience in dealing with such instances. As under the current regulations, a developer could knowingly or unknowingly violate APHIS regulations by transporting, importing, or releasing into the environment a regulated plant without APHIS authorization. The PPA contains authority for the Administrator of APHIS at any point to place such articles under regulation. If a determination made by a developer should be found to be invalid, however, APHIS does have the authority to enforce sanctions. As noted in the preamble to the June 2019 proposed rule, pursuant to sections 7714 and 7731 of the PPA, APHIS may seize, quarantine, treat, destroy, or apply other remedial measures to an organism covered under the regulations that is new to or not widely prevalent or distributed in the United States to prevent dissemination of the organism. Enforcement provisions are also included in § 340.6 of this rule. APHIS has many years of experience in initiating and coordinating enforcement action as appropriate, in cases where compliance issues exist.

Even in cases where we would impose penalties for invalid determinations by developers, some commenters expressed skepticism that those penalties would be efficacious in remediating harm or preventing further harm. In the view of these commenters, if the movement or release of a GE product that had already reached the market based on a faulty determination by a developer resulted in commingling with other crops or the dissemination of plant pests, whatever penalties or remedial actions APHIS would impose would likely neither prove adequate to address injuries to innocent parties nor provide sufficient disincentives to discourage bad actors from making invalid determinations. Elaborating on the latter point, one commenter stated that penalties imposed by APHIS after the fact may not even be legally defensible if we have allowed a developer to determine whether its product is eligible for exemption. Another commenter stated that APHIS, lacking a post-commercialization monitoring program, has little capacity to recall the products of invalid determinations by developers.

We do not agree with these comments. In the event that APHIS discovers that a developer makes an invalid determination, the specific penalties and/or remedial action will be applied case by case, as appropriate. Similarly, whether the discovery of an invalid determination is too late will also be decided on a case-by-case basis. In regard to legal defensibility, the PPA provides ample flexibility and broad civil penalty authority to deter violations of the PPA. For example, the PPA provides statutory maximum penalties of $1,000,000 per violation for any person who willfully violates the PPA.

Other commenters feared that the penalties could be excessive. It was stated that any such penalty applied to a developer must be based on a demonstration of significant economic harm to another entity from the error, and not on technical or minor errors in interpretation. The commenters further stated that in such situations, the penalties must be proportional to that harm.

We agree that penalties must be proportional to the severity of violations and the harms that may result from them, and we will enforce the regulations accordingly. Furthermore, the harms must fall within the harms considered under the PPA. Congress has outlined the factors for consideration in assessing penalties under the PPA. These factors include ''the nature, circumstance, extent, and gravity of the violation or violations,'' as well as the violator's ability to pay, the effect of the penalties on the violator's ability to continue to do business, and any history of prior violations. (See 7 U.S.C. 7734.)

In the preamble to the June 2019 proposed rule, we stated that one of the benefits of ''self-determination'' is that it would enable APHIS to focus its regulatory resources and risk analyses on unfamiliar products and thereby to avoid conducting repetitive analyses on GE products that are very similar to those that we have already evaluated for regulatory status. APHIS would thus be able to utilize its staff time more efficiently, and provide better stewardship of taxpayer dollars than it could under the existing regulations.

One commenter viewed allowing developer-made determinations as evading APHIS' regulatory responsibilities rather than enabling APHIS to use its resources more efficiently. The commenter stated that if GE developers are concerned about delays in getting their products to market because, in their view, APHIS does not have sufficient resources to conduct all reviews in a timely manner, then those developers should lobby Congress to provide more funding to enable APHIS to perform its duties in a more timely manner, as opposed to having APHIS reduce its oversight role.

APHIS disagrees with this comment. The plants that qualify for exemption under part 340 fall into three categories: (1) Those that could otherwise have been developed through conventional breeding methods and have a history of safe use related to plant pest risk that does not require regulation (§ 340.1(b)(1) through (3)); (2) those that have the same plant-trait-MOA combination as other plants that have already been evaluated by APHIS and have been found to be not subject to the regulations (§ 340.1(c)); or (3) those determined to be not subject to the regulations under the AIR process. It should be noted that plants that qualify for exemption under § 340.1(c) are very similar to plants that have been evaluated previously by APHIS. APHIS can utilize its resources most efficiently

by evaluating GE plants that do not fall into these categories and therefore may pose a level of plant pest risk that requires regulation.

Many other commenters expressed skepticism from an opposing perspective about the efficacy of allowing developers to determine whether their products are eligible for exemption. These commenters doubted that such ''self-determination'' would provide the regulatory relief that we claimed in the preamble to the June 2019 proposed rule. One reason given was that most developers would seek certification or confirmation from APHIS that their determinations were valid, given the possible liabilities associated with making incorrect determinations. Such certification would therefore become a *de facto* requirement. One commenter expressed the concern that in order to receive such confirmation, developers would need to provide the information described in proposed § 340.4, which contains information requirements for RSRs. It was further suggested that while academics, startups, and small developers could see some benefit from ''self-determination,'' companies with existing portfolios of GE crops will be in a better position to benefit.

We do not agree with these comments. If innovators choose to forgo the regulatory relief provisions offered by our revision of the regulations in part 340 for any reason, they are welcome to do so. In this final rule, APHIS focuses on plant protection, while also easing regulatory burdens. Accordingly, we also aim to be responsive to repeated concerns raised by small businesses, academic-based researchers, and other innovators who have reported past difficulty successfully seeing products through to commercialization. The approach APHIS has taken is fully consistent with the priorities and direction provided by Executive Order 13874, which we have discussed earlier.

In § 340.1(d)[8] of the June 2019 proposed rule, we indicated that developers may request confirmation from APHIS that the plant is not within the scope of the regulations in part 340. A developer may find a confirmation letter useful in marketing its products domestically or overseas because the letter would serve as verification to an importing country or other party that APHIS concurs with the developer's determination. Confirmation is not required, however, and for developers not seeking confirmation letters, no submission of information to APHIS is required, nor is any response from APHIS. Guidelines for the information that would need to be submitted to enable APHIS to respond to a request for confirmation are discussed below under this same subheading of comment responses.

Some commenters expressed doubt that developers would even be able to employ the ''self-determination'' option due to what they perceived as a lack of clarity surrounding it. It was stated that decisions on a product's regulatory status would be based on APHIS' assessment of plant pest risk, but that because APHIS would define plant pest risk and because APHIS did not provide a list of traits for identification of a plant pest in the proposed rule, a developer would lack the guidance to make a determination safely.

APHIS disagrees with this comment. This rule clearly outlines the kinds of information needed to successfully navigate the APHIS regulatory system, as well as the protection goals and criteria that APHIS will consider as part of this process. Plants that meet the exemptions listed under § 340.1 will not require regulatory oversight under the regulations in part 340. The exemptions in § 340.1(b) are based not on the trait, but on whether the plant could have otherwise been produced through conventional plant breeding techniques. The exemption in § 340.1(c) is based on whether the plant-trait-MOA combination is the same as one that APHIS has previously determined to be nonregulated. APHIS will publish a list of such combinations, which developers may use in determining whether their GE plants qualify for exemption under § 340.1(c). As more GE plants undergo RSRs to determine their regulatory status, that list will grow. A list of traits for identification of a plant pest is not needed in order for developers to determine whether their products meet one of these exemptions in § 340.1(b) or (c).

Several commenters recommended that we provide more certainty about the process by issuing guidance documents to aid developers in making their determinations. Such documents, it was stated, could include, among other things, information requirements and timelines, including timelines for APHIS responses to requests for confirmation. Many commenters stated that, in general, defined timeframes for APHIS regulatory actions are important to improve predictability and to support the planning needed to conduct seasonally based field research, and therefore should be included in the regulations. Most commenters who provided specific timeframes for confirmation requests suggested that APHIS should respond to such requests within 60 days. It was further suggested that to provide developers with additional guidance for making determinations, APHIS should maintain a database of products that have undergone RSRs and been found not to be subject to the regulations.

APHIS has had a longstanding practice of providing guidance to aid the regulated community in complying with the regulations. APHIS will provide guidance to developers regarding the confirmation process. We will also maintain on our website requests for and results of RSRs. That information will aid developers in making their determinations.

Regarding timeframes, in the preamble to the proposed rule, APHIS noted that we anticipate a timely turnaround time in providing confirmation letters. APHIS agrees that providing a more specific timeframe for responses to confirmation requests would improve predictability. Based on our experience with the current AIR process, which is functionally similar to the confirmation process, APHIS has amended § 340.1(e) by adding a sentence indicating that, except in unforeseen circumstances, written responses will be provided within 120 days of receiving a confirmation request containing sufficient detail to determine whether the plant meets one of the exemptions in § 340.1.

One commenter stated that the type of information provided to APHIS by developers should be a description of the crop and the justification for meeting the exclusion, which would be similar to the information submitted for the ''Am I Regulated'' Process.

APHIS agrees with the sentiment expressed in this comment and is therefore setting out guidelines for parties requesting confirmations to submit to APHIS in support of their requests. The guidelines are listed below and will also be posted on the APHIS website at *https://www.aphis.usda.gov/aphis/ourfocus/biotechnology.* In addition, developers who have specific concerns may consult with APHIS.

In communications with APHIS requesting confirmation of exemption from the regulations, requestors will be expected to submit the following:

1. A description of the plant, trait(s), and modification(s).

2. A clear statement of which regulatory exemption the biotechnology developer is claiming for the plant and

[8] Due to the addition of a new paragraph (d) in § 340.1, as described earlier, provisions related to confirmation letters are contained in § 340.1(e) of this final rule.

why the plant qualifies for that exemption.

3. Details about the scientific method used to validate that the plant met the exemption criterion.

APHIS expects that the description of the plant will include both the scientific and common names. The trait information should include a description of the intended and any observed phenotype(s) of the plant. Details about the modification(s) must provide APHIS with a clear understanding of the genetic change in the plant. In the case of § 340.1(c) exemptions, requestors must submit the MOA.

Many commenters advocated that we establish a mandatory process for developers to notify APHIS of their determinations and for APHIS to issue confirmations. (We would note here, however, that there was considerable divergence of opinion on this issue, with 25 commenters expressing support for maintaining a voluntary confirmation process.) Some commenters requested that confirmation be mandatory for all determinations made by developers, while others stated that confirmation should be mandatory only for developer-made determinations of products that will be commercialized. Many requested that the process be streamlined and include information and self-reporting requirements and timelines. It was recommended by some commenters that developers be required to provide notice to APHIS 90 days before putting a product on the market.

We will not be making any changes to this final rule in response to these comments. The confirmation process laid out in the June 2019 proposed rule was voluntary, and switching over to a ''mandatory'' confirmation and/or notification process in this final rule would run counter to the spirit of regulatory relief underlying our new regulatory framework. A voluntary confirmation process allows the market to drive the demand for new plants, avoids codifying a process that may grow antiquated as technology develops, provides developers with a method to obtain confirmation that their products are in fact exempt from the regulations, and avoids differential treatment for genome-edited products that are otherwise equivalent to conventionally bred and/or developed products.

Commenters did not persuasively explain how developers of products that are not subject to the regulations could be compelled to comply with a requirement for mandatory participation in a confirmation process. APHIS notes that even if the commenters had provided a sufficient regulatory mechanism to impose such a requirement, a mandatory process would likely trigger the emergence of trade concerns, as products that are scientifically justified to be exempt would also appear on lists of GE organisms–essentially creating a third category of products that are required to be listed but are otherwise exempt from regulation (in addition to two other categories: (1) Organisms that were subject to RSR and determined not to be regulated by APHIS, and (2) regulated organisms). APHIS further notes that a mandatory process would likely disadvantage the very small-scale, mid-size, and university researchers and innovators that the rule was intended to aid. Lastly, APHIS notes that the proposal for a mandatory confirmation provides no added benefit in plant protection.

Some of the commenters who favored a formal or mandatory confirmation process did so because they questioned the utility of a voluntary process. It was stated that an APHIS confirmation that a determination made by a developer is valid, as provided for in the June 2019 proposed rule, will be a formulaic letter without an accompanying risk assessment. Some trading partners may not view such confirmation letters as sufficient to meet their own requirements for admission of U.S. GE products. It was stated that to keep export markets running smoothly, industry needs an official U.S. attestation that the new traits do not pose a plant pest risk.

We do not agree with these comments. The confirmation letters will state that the product in question meets a regulatory exemption or has a plant-trait-MOA combination that has already been reviewed by APHIS. APHIS currently works with, and is committed to continuing to work with, international trading partners and exporters to resolve trade concerns. International trade issues are discussed in greater detail later in this document.

Some commenters addressed the issue of whether, or how much, information pertaining to determinations made by developers and APHIS confirmations should be made public. Some commenters, citing the need for transparency and certainty, recommended that we post confirmation inquiries and confirmation letters on our website. Others, however, thought that such information should be treated as confidential business information (CBI) and therefore not be made publicly available. One commenter suggested that we use a process similar to that of the existing ''Am I Regulated'' process, under which CBI exemptions could be claimed in the request for confirmation submitted to APHIS, and a non-CBI version of the submission could be made publicly available.

In the interest of transparency, APHIS will post the confirmation letters online. APHIS notes, however, that confirmation letters are subject to claims of CBI and will proceed in implementation of such posting in accordance with all applicable laws and procedures. In accordance with USDA regulations, 7 CFR 1.8(a) through (c), a submitter of confidential commercial information must use good-faith efforts to designate, at the time of submission, any portion of its submission that it considers to be protected from disclosure under Exemption 4 of the Freedom of Information Act (FOIA) (5 U.S.C. 552). When making discretionary releases of records, as is the case with the posting of the confirmation letters online, APHIS follows the FOIA, USDA, and APHIS implementing regulations (7 CFR subpart A and 7 CFR 370.5, respectively), and guidance from the U.S. Department of Justice's Office of Information Policy relating to the handling of confidential business information.

Finally, there were a few comments on proposed § 340.1 that did not fall into any of the categories discussed above.

One commenter suggested that the exemptions should focus on plant species, not variety, as well as the purpose and type of application of genome editing. The commenter stated that genome editing can be used both to produce or improve on a specific characteristic or phenotype, such as by silencing a disease sensitive gene, and to improve existing breeding processes themselves, such as by using gene editing to more efficiently induce double haploids.

The ''purpose and type of application of genome editing'' is just another way of describing the plant-trait-MOA combination. In the example given above where genome editing is used to improve an existing breeding process by more efficiently inducing double haploids, genomic modifications will be made to a specific plant, with a specific trait, having a specific MOA. Recently a widely used haploid inducer in corn was identified to be a defective allele (*matL*) of the gene named Matrilineal (Kelleher, 2017). A haploid induction trait was shown to work in rice by genome editing the *matL* allele (Yao, 2018). APHIS considers this new process to be an example of a plant (rice), trait (haploid induction), MOA (defective pollen specific phospholipase) combination. Upon

completion of an RSR for this plant trait MOA combination, the § 340.1(c) exemption would apply to all varieties of rice, not just the variety it was introduced into.

Another commenter thought that there was a possible conflict between §§ 340.1(c) and 340.2(a). The latter paragraph of the proposed rule stated that a plant with a plant-trait-MOA combination that has not been evaluated by APHIS for regulatory status in accordance with § 340.4 would have to move under permit. According to the commenter, the conflict arises because products we would allow to move without permits based on developers' determinations would not have been evaluated by APHIS.

We do not see such a conflict. When a developer determines that a GE plant falls under § 340.1(c), it is not subject to the regulations in part 340 and therefore does not require a permit for movement. We are making an editorial change to § 340.2(a), however, to clarify that a GE plant will be subject to the regulations: (1) If it has not undergone an RSR in accordance with § 340.4; or (2) if it has undergone an RSR and, as a result of the evaluation, is subject to the regulations. Such GE plants will require permits for movement.

One commenter stated that by allowing developers to determine whether their products are eligible for exemption, we would not be in compliance with the requirement of the Cartagena Protocol on Biosafety that countries list all GE organisms released into the environment in the Biosafety Clearing House.

APHIS notes this comment, and wishes to clarify that the United States is not a signatory to the Cartagena Protocol on Biosafety. APHIS also notes that Article 3 of the Cartagena Protocol on Biosafety does not reference ''GE organisms.'' Instead, Article 3 (g) states that ''living modified organism means any living organism that possesses a novel combination of genetic material obtained through the use of modern biotechnology.'' Many international efforts are underway to align regulatory approaches and to seek compatibility for emerging technologies that were not in existence when existing policies were developed.

Two commenters requested that APHIS develop and issue guidance for developers of non-plant GE organisms to give them an opportunity to determine for themselves whether their products are subject to the regulations and to apply to APHIS for confirmation of regulatory status.

APHIS does not agree that such a new process needs to be developed. Currently, the Agency responds to the developers' questions about whether a specific GE organism, including a non-plant organism, is subject to the regulations. APHIS will continue that practice after this final rule becomes effective.

Scope of the Regulations

Section 340.2 of the June 2019 proposed rule delineated the scope of the regulations. We proposed to regulate, *i.e.,* require a permit for the movement of, any GE organism that:

1. Is a plant that has a plant-trait-MOA combination that has not been subject to RSR; or
2. Meets our proposed definition of a *plant pest;* or
3. Is not a plant but has received deoxyribonucleic acid (DNA) from a plant pest, and the DNA from the donor organism either is capable of producing an infectious agent that causes plant disease or encodes a compound that is capable of causing plant disease; or
4. Is a microorganism used to control plant pests or an invertebrate predator or parasite (parasitoid) used to control invertebrate plant pests and could pose a plant pest risk.

As was the case with the proposed exemptions, commenters expressed a wide range of views regarding the scope of the proposed regulations. While some supported our overall approach, others expressed the view that the proposed rule would either narrow or broaden our regulatory oversight excessively.

Some commenters who favored a broader scope stated that a regulatory approach that provides for regulations of only those GE organisms that are plant pests or pose a plant pest risk is too narrow. Such an approach, it was stated, isolates the GE organism from the environment in which it is used and the process by which it is developed, thereby impeding science-based risk assessment. According to these commenters, other hazards potentially associated with GE organisms and not accounted for in the June 2019 proposed rule need to be addressed. Some concepts discussed in these submissions included the increased potential for commingling with non-GE crops; the potential for contributing to the creation of herbicide-resistant weeds; pesticide overuse; habitat destruction; reductions in insect populations; and increased herbicide use, which, according to the commenters, has been associated with GE crops and may have additional deleterious effects on the environment and on human health.

While we recognize commenters' interests in addressing these concerns, many of these comments are outside the scope of this rulemaking and APHIS's statutory authority under the PPA. Commingling between GE and non-GE crops is generally a market issue unrelated to plant pest risk. Herbicide use is regulated by EPA, not USDA, so is not within the scope of this regulation. The basis for the commenter's claim that GE crops result in habitat destruction is not clear; however, we note that APHIS does not regulate farming practices. USDA's National Resources Conservation Service does have incentive programs to promote more sustainable farming. The current rule includes an RSR process that considers, as appropriate, impacts (if any) of a GE crop on populations of beneficial insects and other non-target organisms beneficial to agriculture.

Some commenters questioned the scientific justifications for the above listed categories of GE organisms that would fall under the regulations. It was stated that APHIS needs to re-cast its entire proposal and frame it around the identification of the characteristics of the organism or phenotypes of concern for which a plausible case can be made, based not on speculation but data and experience, that they present an unreasonable risk to American agriculture. It was further argued that there is no scientific justification for regulating by plant-trait-MOA instead of phenotype associated with the trait.

In order for the regulations under part 340 to enable future innovation while simultaneously protecting American agriculture from potential risks to plant health, it is vital that the regulations be prospective rather than retrospective, while being appropriately tailored to risk. A regulation that enumerated specific phenotypes that APHIS is concerned with would not only be impractical, since a phenotype may be of concern in one plant species but not in another (including depending on whether the plant has sexually compatible relatives, an attribute important for considering the distribution of a phenotype introduced into a plant), but would become immediately obsolete upon issuance. As articulated clearly in numerous studies, including those by the National Academy of Sciences, no entity has the foresight to identify only those phenotypes that present concerns decades into the future. Moreover, the MOA utilized by the developer matters when determining if there is a plant pest risk. The same intended phenotype can result from multiple different MOAs, but each MOA may differ in other phenotypes and thus may differ in their ability to present a plant pest risk and

in the types of plant pest risk they may present.

APHIS thus does not consider the approach of regulating solely by phenotype to be feasible. Instead, APHIS has articulated a regulatory approach that is adaptable to future innovation and continues to protect against risk, even in cases where it is not possible to envision the kinds of products being developed in the future. In particular, we have developed the RSR process in order to determine, based on scientific knowledge and information, if a GE plant contains a plant-trait-MOA combination that could plausibly present an increased plant pest risk than the appropriate comparator plant(s). We will regulate a GE plant only when we identify and are unable to rule out a plausible pathway to increased plant pest risk. In this way, when sufficient data and experience are lacking to rule out a plausible risk identified by APHIS, we have a mechanism to acquire more information to test the specific plausible risk hypothesis before decision making.

The risk-based system APHIS has developed in part 340 appropriately provides entrance for genetically engineered organisms into the regulatory framework and provides appropriate off-ramps from regulation for those products that do not pose plant pest risks. Conversely, a narrowly focused characterization of an intended phenotype, regardless of the plant species or MOA by which the phenotype is conferred, would not provide a sound scientific basis for an entire regulatory program. Many commenters expressed support for our scientific and risk-based regulatory process that evaluates plants based on their plant-trait-MOA combination.

A commenter stated that the restriction in § 340.2(c) covering a non-plant GE organism that has received DNA from a plant pest is unclear and lacking in scientific justification. The commenter questioned whether receiving DNA from a plant pest would likely make the recipient into a plant pest.

The commenter misconstrues § 340.2(c), which states that non-plant GE organisms that receive DNA from a plant pest will be regulated if that DNA is capable of producing an infectious agent that causes plant disease or if the DNA encodes a compound that is capable of causing plant disease. Such non-plant GE organisms could pose a plant pest risk, justifying their regulation under part 340.

Some commenters stated that organisms and microorganisms used to control plant pests should not require regulation if they are not plant pests themselves or do not pose a plant pest risk. One commenter stated that there appears to be a conflict between § 340.2(d) and EPA's regulatory authority under the Federal Insecticide, Fungicide, and Rodenticide Act for microbial pesticides. The commenter further stated that the intent of the PPA for biological control organisms is to facilitate their development, but that APHIS is proposing to require additional regulatory requirements without indicating a need for these extra requirements in terms of protecting against plant pests.

We agree with the first comment (*i.e.,* that organisms and microorganisms used to control plant pests should not require regulation if they are not plant pests themselves or do not pose a plant pest risk), and this rulemaking does not provide for the regulation of biological control organisms if they are not plant pests themselves or do not pose a plant pest risk. As we noted in the preamble to the June 2019 proposed rule, ''GE non-plant organisms that do not pose a plant pest risk would not fall under the scope of the regulations and therefore would not require permits for movement.'' We disagree with the remaining comments. As we noted in the preamble to the proposed rule, while biological control organisms are generally not plant pests, some biological control organisms could be plant pests because their potential effects on organisms beneficial to agriculture could indirectly affect plant health. The PPA provides the authority to regulate such biological control organisms used to control plant pests to ensure that they do not pose a plant pest risk. As with non-GE biological control organisms, the types of GE biological control organisms that APHIS would regulate include organisms that could pose a plant pest risk by lacking sufficient specificity for the target pest and thereby harming beneficial non-target organisms, such as other invertebrate predators or parasites (parasitoids), pollinators, or microbes that promote plant health. Because biological control organisms are almost always intended for eventual release into the environment, it is not sufficient for us to consider only their use in controlling their target plant pest. We must also take into consideration the indirect plant pest risks that the organism may pose due to harmful impacts on non-target organisms that are beneficial to agriculture (*e.g.,* harm to natural enemies of plant pests). If the GE organism is known to have harmful impacts on beneficial non-target organisms, it is consistent with APHIS' authority under the PPA to prohibit or restrict its release. To the extent that we do not know whether a GE biological control organism is sufficiently specific to avoid harming beneficial non-target organisms, it is also prudent for us to place regulatory controls on the movement and release of the GE biological control organism until the impacts on beneficial non-target organisms and any resulting direct or indirect plant pest effects are better understood. In addition, we will exempt biological control organism-containing microbial pesticide products that are currently registered with EPA as microbial pesticide products that are not plant pests.

Definitions

In this final rule, we have revised the definition of *article* to provide greater clarity. The definition in the June 2019 proposed rule was drawn from that provided in the PPA. However, while the PPA indicates that an article may be an object that could harbor noxious weeds, upon review of the provisions of the proposed rule, we have determined that it is not appropriate to consider such an object an article under these revised part 340 regulations. The proposed definition could have been interpreted to suggest that APHIS intends to regulate GE organisms, and require permits for their movement, under the revised regulations based solely on their noxious weed potential. As discussed elsewhere in this document, however, this is inconsistent with APHIS' intent. The revised definition reads as follows: ''[a]ny material or tangible object that could harbor plant pests.''

A commenter stated that we need to define *environment,* because movement under permit includes release into the environment. *Environment* was defined in the proposed rule, however, and we are retaining that definition in this final rule.

In the June 2019 proposed rule, we defined environment as ''[a]ll the land, air, and water; and all living organisms in association with land, air, and water.'' We are retaining that proposed definition without modification in this final rule.

Numerous commenters stated that the proposed definition of *genetic engineering* requires greater clarity. Several commenters asked APHIS to clarify that ''synthetic'' nucleic acids, for the purposes of this regulation, are those that are non-naturally occurring. Some commenters requested that APHIS clarify what is meant by both ''recombinant'' and ''synthetic'' nucleic

acids and cited the definitions and exemptions in the National Institutes of Health (NIH) Guidelines for Research Involving Recombinant or Synthetic Nucleic Acid Molecules'' (*https://osp.od.nih.gov/wp-content/uploads/NIH_Guidelines.pdf*). One commenter stated that they understood the term ''synthetic nucleic acid'' to refer to a sequence that was created ''new from scratch,'' and not to a plant's nucleic acid sequence that was modified.

APHIS does not agree that the term ''recombinant'' requires further definition in these regulations. After nearly half a century of research and development involving recombinant nucleic acids, the term ''recombinant nucleic acids'' is well understood. The definition that APHIS proposed was based on the definition of ''recombinant and synthetic nucleic acids'' contained in Section I–B of the NIH Guidelines. Accordingly, by ''synthetic'' nucleic acids we mean nucleic acids that are chemically or by other means synthesized or amplified, including those that are chemically or otherwise modified but can base pair with naturally occurring nucleic acid molecules. Such nucleic acids are not limited to those that are non-naturally occurring. They could also include nucleic acids with sequences identical to those that are naturally occurring, but which have been synthesized or amplified, rather than constructed by joining nucleic acid molecules (nucleic acids that have been so constructed are recombinant nucleic acids). APHIS agrees that greater clarity regarding the term ''synthetic'' would provide developers and other stakeholders with a clearer picture of the products that are included within the scope of the regulations. Therefore, we are changing the definition of ''genetic engineering'' to ''techniques that use recombinant, synthesized, or amplified nucleic acids to modify or create a genome.'' This change is consistent with the objectives of the Coordinated Framework, in that it aligns our usage of the term ''synthetic'' with that of the NIH.

One commenter believes that the definition for *genetic engineering* should include changes to the epigenome.

APHIS does not agree. Epigenetic changes are caused by endogenous regulatory processes, such as DNA methylation and histone modifications through naturally occurring enzymes. Epigenetic changes are also caused by small naturally occurring RNA molecules. Epigenetic changes reflect an interaction of the genome with the environment that leads to changes in gene expression without changing the sequence of DNA. Epigenetic engineering differs from genetic engineering in that the former merely adjusts the innate potential of the genome of an existing organism, whereas genetic engineering has the potential to create organisms that could not exist but for the technology.

Some commenters recommended that we add a definition of *genetically engineered organism* to provide greater clarity relating to which organisms would be regulated. The following language was a suggested definition: ''An organism developed using genetic engineering, excluding those offspring that do not retain the genetic modification of the parent. For the purposes of this part, a plant will not be considered a genetically engineered organism if it meets any of the criteria outlined in § 340.1(b)(1)(3).''

We do not agree with this comment. At the forefront, the SECURE rule establishes clear exemptions for products that are not subject to regulatory oversight under part 340, and, thereafter, sets forth definitions for *genetic engineering* and for *organism.* Although we are able to offer regulatory relief in part 340 by excluding those products of biotechnology that mimic what can be achieved though plant breeding, APHIS has not, in this rulemaking or prior rulemakings involving part 340, taken the position that genome editing does not constitute genetic engineering. Taking such a position would be inconsistent with the generally accepted scientific characterization of genome editing technology (Knott and Doudna, 2018). While some commenters have asked APHIS to revisit its proposed definition of ''genetically engineered organism'' from the 2017 proposed rule involving part 340, even in that rulemaking APHIS did not take the position that genome editing was outside the scope of genetic engineering. Instead, APHIS explained it was defining ''genetically engineered organism'' for the purpose of establishing regulatory exemptions from part 340, including exemptions for certain organisms created using techniques that fall within the scope of genetic engineering, as follows: APHIS ''would also exclude, from its definition of GE organism, certain organisms that are *created using techniques that fall within the scope of genetic engineering,* but that could otherwise have been produced using traditional breeding techniques . . . .'' (82 FR pp.7008 and 7015, January 19, 2017). As discussed above, the SECURE rule establishes regulatory exemptions at the forefront, which promotes clarity regarding the scope of part 340, and avoids adopting a confusing characterization of techniques of biotechnology.

A couple of commenters stated that the proposed rule lacked a definition of *natural gene pool* and a discussion of its relevance in terms of safety.

The term was used in the regulatory text in § 340.1(b)(3). As discussed above, we have removed ''natural'' from that paragraph. We discussed the relevance of exemption under paragraph (b)(3) to plant pest risk above. We are, however, adding a definition of the term *gene pool* to the regulations in this final rule in response to these comments. *Gene pool* is defined as germplasm within which sexual recombination is possible as a result of hybridization, including via methods such as embryo culture or bridging crosses.

One commenter viewed our proposed definition of *person* as potentially problematic in that it could open APHIS to legal challenges. The commenter expressed concern that because the definition includes not only individuals, business entities, and associations but also any other ''organized group,'' the argument could be made that APHIS falls under the definition. If so, according to the commenter, there might be the possibility of a conflict if decisions under these regulations are taken by the Administrator of APHIS. The commenter requested clarification on this issue.

The definition of *person* would apply to individuals or entities regulated by APHIS, including APHIS. Under the law, a company is an entity that is recognized as a legal person that exists independently, with rights and liabilities. APHIS has, in the past, issued itself permits in conjunction with enforcement of the regulations so that plant products could move legally across state lines. This practice is not inconsistent with the PPA or with the prior or new regulations. Therefore, regulation by APHIS under part 340 will not create conflict or otherwise be adversely impacted.

A commenter stated that the proposed definition of *plant pest* is too broad and could be construed to cover model organisms, such as *Drosophila melanogaster,* that do not have significant negative effects on agriculture. The commenter stated that an overly broad definition is of concern to biomedical researchers because some invertebrates they use could be classified as plant pests. Noting the lack of a mechanism to acknowledge that an organism that consumes plant material is not detrimental to agriculture, the commenter recommended that APHIS establish a mechanism for classifying an

organism as ''agriculturally unimportant within the plant pest category'' and that such a classification have influence on APHIS' regulatory processes.

APHIS appreciates the comment, but does not believe that it is necessary for APHIS to establish such a mechanism. The definition of *plant pest* is based directly on, and does not exceed, the definition of the term in the PPA. The proposed regulations contained an exemption from the requirement for permit for interstate movement for *Arabidopsis thaliana.* In this final rule, we are adding an exemption from some permitting requirements for GE *Drosophila melanogaster,* which we will discuss in more detail below, under the subheading ''Permits.''

Another commenter stated that by adopting a definition of *plant pest* that aligns with the definition provided in the PPA, APHIS would regulate a broad range of GE animals, including those used in medical research, thereby imposing large, new, and unwarranted regulatory burdens on researchers in medical research and other fields.

APHIS disagrees with the comment. As we stated in the preamble to the proposed rule, while the PPA gives APHIS authority to regulate any nonhuman animal as a plant pest, it is longstanding APHIS policy not to regulate vertebrate animals as plant pests. In the absence of such a policy, all herbivores and omnivores could be considered plant pests, and thus subject to regulation, an untenable position since this would require APHIS to consider livestock, such as cows, sheep, and horses, as well as many laboratory research animals, to be plant pests.

In the June 2019 proposed rule, we defined *plant pest risk* as ''[t]he possibility of harm to plants resulting from introducing or disseminating a plant pest or exacerbating the impact of a plant pest.'' Many commenters viewed the proposed definition as vague and potentially problematic due to the terminology we used.

Commenters expressed concern that the words ''possibility of'' in the proposed definition are vague and uncharacteristic of standard risk assessment terminology and methodology, which characterizes risk as either a likely or probable adverse outcome. Some commenters requested that the definition of *plant pest risk* be defined in terms of the likelihood and magnitude of harm. Commenters also expressed concern that the word ''harm'' in the proposed definition is inconsistent with the PPA, and that the regulatory end-point should be risk of causing injury to, damage to, or disease in any plant or plant product. It was stated that the inconsistency and lack of precision in the terminology used in the proposed definition could leave risk-based decisions made by APHIS open to criticism or challenge for not addressing all possibilities for harm, no matter how unlikely.

APHIS agrees with the commenters that greater clarity and consistency in the definition of *plant pest risk* would be useful. APHIS is revising the definition accordingly. We agree that the words ''possibility of'' could be construed in a manner that is inappropriate. Numerous scenarios could be put forward as the basis for events that represent the ''possibility'' of harm without any plausible basis for concluding that such scenarios have any likelihood of occurring. The glossary of the Society for Risk Analysis (SRA), which is available at *https://www.sra.org/sites/default/files/pdf/SRA_glossary_20150622.pdf,* defines *risk* as, among other things, ''the potential for realization of unwanted, negative consequences of an event.'' The SRA glossary makes clear the distinction between the qualitative definition of risk and the metrics that are used to measure or characterize risk, which are framed in terms of likelihood and magnitude of an adverse outcome. We view a qualitative definition as more appropriate for defining risk, and use likelihood and consequence to evaluate scientifically plausible risks identified in the RSR process discussed below under the subheading ''Regulatory Status Review.'' We also find the SRA terminology to be more useful than ''possibility of'' and are revising our definition of *plant pest risk* accordingly. We are also revising the definition to refer to injury to, damage to, or disease in any plant or plant product. Accordingly, this final rule defines *plant pest risk* as ''[t]he potential for direct or indirect injury to, damage to, or disease in any plant or plant product resulting from introducing or disseminating a plant pest, or the potential for exacerbating the impact of a plant pest.''

Importantly, while APHIS defines *plant pest risk* in this rule in reference to the potential for direct or indirect injury, damage, or disease, the RSR process itself is based on standard risk assessment practices and uses a methodology that focuses on a likelihood and magnitude assessment of *plausible* risks. Since the RSR process will require that a plausible risk be identified in order to proceed with further risk assessment, it will not be an open-ended evaluation of any conceivably ''possible'' scenario that could be imagined.

One commenter stated that the term *plant-trait-MOA is* not defined as a combination, though the individual terms are defined in the proposed rule, and that if the combination has its own meaning, APHIS should clarify that.

The term *plant-trait-MOA* refers to three individual terms/factors for analyzing whether certain GE organisms may present a plausible pathway to plant pest risk and by which we determine whether a product actually poses a plant pest risk.

Under the definition of *responsible person* in the June 2019 proposed rule, responsibility for maintaining control over a GE organism under permit during its movement and assuring compliance with all permitting conditions could be given to an individual or an institution. A commenter stated that individuals should not be included under the definition. According to the commenter, responsibility should reside only with the institution with which the signatory or any other individual bearing such responsibility is affiliated. The commenter pointed out that staff often move among jobs well before permit conditions are fulfilled.

As discussed in the preamble to the June 2019 proposed rule, attributing responsibility for a GE organism moved under permit to only an institution may be problematic for enforcement of the regulations, because such responsibility can be diffused, resulting in no individual's being held responsible for compliance with the permit conditions, the regulations in part 340, and the PPA. Our definition ensures that for each permit, there is a single individual who is responsible for ensuring an institution's compliance with permit conditions, regulatory requirements, and the PPA. If this individual moves to a different job or otherwise leaves an institution, responsibility for any permits can be officially transferred, subject to APHIS' approval, to another qualified individual, as described in § 340.5(i)(10) of this final rule (''permit conditions'').

A commenter stated that there is no justification for the requirement, contained in the proposed definitions of both *agent* and *responsible person,* that they be legal U.S. residents, and that there is no means of verifying such a requirement.

We are retaining the requirement, as it would be a stronger mechanism for ensuring accountability in the regulatory program than the existing definition. We have learned through administration of the program that the existing definition is not adequate, and has not provided the necessary framework to hold noncompliant

developers responsible (*e.g.,* academic researchers who returned to their native countries without taking steps to destroy their GE-test material prior to departure).

Finally, we have revised the definition of *State* to read as follows: ''[a]ny of the several States of the United States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other territories or possessions of the United States.'' This definition aligns with that contained in the PPA.

Regulatory Status Review

Section 340.4 of the June 2019 proposed rule set out the RSR process, under which developers may request that APHIS evaluate their novel plants and determine whether or not they fall within the scope of the regulations, *i.e.,* under one or more of the categories in § 340.2. The section contained requirements for submitting requests for reviews and re-reviews, including supporting information; listed the factors that APHIS would consider in the course of its reviews; described the review process; and provided for public notice of RSR determinations. Commenters addressed all these topics.

As noted in the preamble to the June 2019 proposed rule, the RSR process applies only to GE plants. APHIS specifically solicited comments on whether the scope of the RSR should be expanded to include non-plant GE organisms as well as GE plants, whether some equivalent process for evaluating such organisms for regulatory status should be developed instead, and, if so, what factors APHIS should consider in its analyses.

Several commenters did request that APHIS develop a process to evaluate the regulatory status of non-plant GE organisms, based on the subject organism's potential plant pest risk; however, the commenters did not provide specifics on what factors APHIS should consider in its analyses. APHIS believes that further discussion and outreach with impacted developers and other stakeholders on this issue is required before pursuing rulemaking.

We received several comments pertaining to the re-review process. Some commenters stressed the need to consider whether our requirements adequately address the risk of requests for spurious reviews. Noting that we proposed to require that any request for a re-review be supported by ''new, scientifically valid evidence bearing on plant pest risk,'' commenters urged us to clarify what we mean by ''scientifically valid evidence'' in order to ensure that trivial evidence or conjecture, or publications in non-credible online ''scientific'' journals, cannot form the basis of a request. Clarification was also requested as to whether re-reviews can be initiated for all products for which RSRs have been completed or only for those found after an initial RSR to be subject to the part 340 regulations. One commenter stated that in cases of re-reviews initiated by APHIS, APHIS needed to provide for due process by allowing developers adequate time to respond.

APHIS agrees that requests for re-review must be based on ''scientifically valid evidence'' that relates to plant pest risk. APHIS has experience dealing with such requests and will conduct an objective analysis of re-review requests to determine whether re-reviews are warranted. A valid re-review request would apply only to those GE plants or plant products that were previously found to be subject to the regulations after an initial RSR was conducted.

In the June 2019 proposed rule, § 340.4(a)(4) specified information requirements for persons submitting a request for APHIS to conduct an RSR of a GE plant and stated that additional guidance on how to meet the requirements would be found on the APHIS website. A few commenters requested that APHIS either (1) incorporate the additional guidance into the regulations; (2) commit not to change the guidance without public notice and comment procedures; or (3) make clear that the additional guidance is non-binding because any changes made to it would not otherwise be subject to formal notice and comment.

After reviewing these comments, APHIS has decided to pursue the second of the three recommended options. When APHIS seeks to make a substantive change to the information provided on our website, we will indicate the proposed change, provide an explanation for it, and take public comment on it. We will then review the comments and make a determination as to whether to implement the change. In this final rule, we are revising § 340.4 to incorporate the notice-and-comment process. The revised § 340.4 also uses the term ''detailed information'' rather than ''guidance,'' which was used in the proposed rule. We are making this change, which we have placed in a new paragraph (a)(4)(iv), to clarify that in order to satisfy the broad requirements contained in the regulations for information on the comparator plant(s), the genotype of the modified plant, and the new trait(s) of the modified plant, the developer must provide the detailed information indicated on the website. We anticipate that this change will provide more consistency and predictability regarding information requirements than would have been afforded by the June 2019 proposed rule. Such predictability is important for ensuring that developers can adequately comply with the regulations and can plan their product development activities accordingly.

A number of commenters expressed concerns about specific details of how to meet the detailed information requirements for the RSR process that will be maintained on APHIS website. Some commenters were concerned that the requirement for information on the genotype of the modified plant was unclear and could be interpreted as requiring sequence information comparing the entire genome of the modified plant with that of the unmodified plant. Commenters stated that sequence information should be limited to sequence information for the specific genetic modification(s) in the plant. One commenter noted that some gene-edited products could have had genetic material inserted during development that was subsequently segregated away, and that we could clarify that the whole genome sequence information is not required by specifying that the required sequence information pertains to the targeted modified sequence.

APHIS agrees with these comments. It was not our intent to request whole genome sequence information. Rather, we are requesting sequence information on the specific targeted genetic modification(s) in the plant. We have revised the information that will be published on the APHIS website to clarify the sequence information that must be provided.

Some commenters stated that sequence information is not needed to determine whether a GE plant poses a plant pest risk, as long as developers provide the type of modification and describe the genotype by providing information on the insertion, deletion, and/or expressed gene product, and that if sequence information is required, it should be limited only to sequences that confer the trait(s) and should exclude vector sequences that are not in the final plant.

APHIS largely disagrees with these comments. The specified sequence information is needed by APHIS in order to confirm the intended trait(s) at the molecular/genetic level; to understand the MOA for purposes of assessing the plant pest impact(s), if any, of the modification(s); and to assess similarity with previously reviewed GE

plants. For inserted genetic material, APHIS requires the sequence of the entire insert for molecular characterization. All genetic elements integrated into the plant genome need to be described; therefore, vector sequence information is not required if vector sequences are not inserted. For genome editing, the sequence of the entire edited gene or functional motif of a regulatory region (*e.g.,* a transcription factor binding site in a promoter region) is required to understand the targeted sequence modification(s). The characteristics imparted by inserted or edited regulatory sequences (such as expression levels, patterns, and timing) are necessary to verify the full extent of the engineered genetic changes as part of understanding the plant pest risk associated with the modification(s).

Commenters raised concerns about how to meet the information requirements concerning the MOA. One commenter stated that while there may be information on a specific gene product, the precise mechanism of action may not be elucidated.

APHIS recognizes that the MOA may not always be well characterized. As we indicated in the preamble to the June 2019 proposed rule, we are requiring information on the MOA to the extent that it is known. We have revised the detailed information provided on the APHIS website to clarify this point.

Other commenters stated that certain information categories appear to exceed what APHIS has historically asked for when reviewing petitions for nonregulated status under the current regulations, and that RSR information requirements should align with the information APHIS has required previously, should not increase a developer's data submission burden, and should be sufficiently flexible to accommodate the nature of the particular product being evaluated. A commenter stated that gene expression data are unnecessary in many cases and that APHIS should clarify when such data would be required, such as when the intent is to change the expression pattern of a gene. Another commenter stated that information on the production, creation, or enhancement of a reservoir for a plant pest goes beyond the type of information currently submitted by developers in support of petitions for nonregulated status.

APHIS largely disagrees with these comments but recognizes that the preamble to the June 2019 proposed rule lacked sufficient clarity regarding information requirements that apply at various stages of the RSR process. The information developers must submit, as specified in § 340.4(a) of this final rule and on the APHIS website, generally aligns with information APHIS has been seeking previously, will reduce rather than increase a developer's data submission burden, and is intended to be sufficiently flexible to accommodate the nature of the plant being evaluated. Under the petition process, developers have had to submit data and information regarding a broad range of possible harms for evaluation by APHIS, regardless of whether the plant could plausibly pose a plant pest risk. The RSR process differs from the petition process in that APHIS is requesting much less information for the initial review, with no requirement for laboratory or field-test data. If APHIS is unable to identify a plausible pathway by which the GE plant could pose an increased plant pest risk in the initial review, developers will not be required to submit any additional information to APHIS. When there is a plausible pathway to plant pest risk identified, developers will receive feedback about the type(s) of information that APHIS would need to assess the identified plausible pathway and complete a plant pest risk assessment. This information could include field-test data, gene expression data, or other data relevant to assessing whether the GE plant could have increased importance as a host for plant pests. The preamble to the proposed rule discussed some of the types of information that might be required in this situation, but incorrectly made it appear as if this information would be required for all initial reviews. We now clarify that such information could be submitted during the initial review stage, but that any such submission would be optional. To clarify that additional data would be requested on the basis of identified plausible pathways to plant pest risk, APHIS has added the following language to the existing text in § 340.4(b)(3)(i): ''APHIS may request additional information as needed to evaluate the factor(s) of concern.'' We are revising the detailed information that will be published on the APHIS website to make this distinction clear.

One commenter found it difficult to understand how plant-trait-MOA could be adequately evaluated without field trials.

Data from field trials do not provide information about the plant-trait-MOA. As we noted in the preamble to the proposed rule, APHIS' experience in preparing risk assessments in accordance with the petition process indicates that field trial data are generally not necessary unless they address an identifiable plausible pathway to plant pest risk. The introduced trait and MOA provide the most reliable indicators of the organism's potential for plant pest risk. As we also noted in the June 2019 preamble, our conclusions are consistent with findings of reports of NAS.[7] [8]

By having an understanding of the biology and any existing impacts of the plant, the genetic trait to be inserted into the plant, and the MOA, APHIS is able to conduct a review based upon a large body of scientific publications, as well as APHIS' knowledge and experience. Information from field tests would be unnecessary, in most cases, for a determination of regulatory status under these regulations. Accordingly, field test information would not be a generally applicable requirement for the initial RSR and would be requested only as needed when further analysis is required. This approach would not preclude developers from providing information from field tests that they consider pertinent to our analysis. For example, if a developer requested a reevaluation of a GE plant that APHIS had previously considered to be subject to regulation, field test information demonstrating a lack of plant pest risk could be provided in support of that request. Nor would the provisions preclude APHIS from asking for field test information if APHIS considers it necessary in order to conclude review of a particular request.

The revised detailed information requirements that will appear on the APHIS website are listed below.

1. A description of the comparator plant(s), to include common name(s), genus, species, and any relevant subspecies information that would distinguish the plant.

2. The genotype of the modified plant, including a detailed description of the differences in genotype between the modified and unmodified plant, specifically:

a. If genetic material is inserted into the genome, provide information on all inserted genetic material, including:

i. For genetic sequences, the name of the sequence, the donor organism(s) or source, the function of the sequence, the nucleotide sequence, and if applicable, the publicly available sequence identification, protein accession

[7] National Research Council (NRC) 1989. Field Testing Genetically Modified Organisms: Framework for Decisions. Washington, DC. National Academy Press. 185 pp. Retrieved from *http://www.nap.edu/catalog/1431.html.*

[8] National Academies of Sciences, Engineering, and Medicine (NAS) 2016. Genetically Engineered Crops: Experiences and Prospects. Washington, DC: National Academy Press. 420 pp. doi: 10.17226/23395. Retrieved from *http://www.nap.edu/23395.*

number, and enzyme commission number. If inserted genetic sequences have been modified (*e.g.,* codon usage efficiency, gene shuffling), a statement regarding the nature and purpose of the modification, and identification of the modifications by submitting an alignment of the modified sequence with the unmodified sequence.

ii. For regulatory sequences, the function of each regulatory sequence as it relates to the gene sequence and the donor organism(s) or source of each regulatory sequence. Identify promoters as constitutive, inducible, developmental, or tissue specific. If developmental/tissue specific, describe the stage(s)/tissue(s) at/in which the promotor is intended to be active.

b. If genetic material is not inserted into, or was inserted and is no longer present in, the genome, and the genome is modified in a way that does not fall under the exemptions in § 340.1(b), provide:

i. The nature of the modification(s) and the gene(s) and function(s) being modified;

ii. For substituted based pairs, the number of substitutions;

iii. The original unmodified sequence aligned to the targeted modified sequence.

3. A detailed description of the new trait(s) of the modified plant, including:

a. The purpose and intended phenotype of the new trait and available information on the MOA by which the intended trait is conferred;

b. Any expected changes in metabolism, physiology, and development due to the trait/genetic modification, to the extent known;

c. Optional: Any additional experimental data, publications, and other science-based assessments that may be helpful for APHIS' evaluation of the potential of the plant to pose plant pest risks. Such information could include, to the extent that it is known, information about any new enzymes or other gene products produced; where, when, and at what level the introduced or modified genetic material is expressed in the plant; the biochemical action of the genetic material or its product; and how the genetic material or its product participates in or interacts with metabolic, physiological, or developmental processes in the engineered plant or in other organisms. (APHIS does not intend to require submitters to generate experimental data specifically for an RSR. However, if a submitter is aware of information or experimental data in the public domain that may support our assessment, the submitter may include the data.)

The June 2019 proposed rule specified, in § 340.4(b)(1)(i) through (iii), the factors that APHIS would consider when conducting an initial review of the plant pest risk posed by the GE plant and any sexually compatible relatives that could acquire the engineered trait, relative to that posed by their respective non-GE or other appropriate comparator(s). To provide context for the discussion that follows, we are listing those factors below, as they appeared in the proposed rule.

1. The biology of the comparator plant(s) and its sexually compatible relatives;

2. The trait and mechanism-of-action of the modification(s); and

3. The effect of the trait and mechanism-of-action on:

a. The distribution, density, or development of the plant and its sexually compatible relatives;

b. The production, creation, or enhancement of a plant pest or a reservoir for a plant pest;

c. Harm to non-target organisms beneficial to agriculture; and

d. The weedy impacts of the plant and its sexually compatible relatives.

Commenters had concerns and questions about some of the factors. One commenter stated that APHIS should clarify that a comparator could be a GE plant, even though Codex Food Safety Guidelines do not allow a GE crop to be a comparator, because the majority of certain crops, such as corn and soybean, are already GE.

APHIS agrees that in some circumstances a GE plant could be an appropriate comparator for the purpose of evaluating plant pest risk, and notes that the Codex Guidelines address food safety and do not address plant pest risk. Typically, a comparator plant is the non-GE plant from which the GE plant is derived. In some cases it may be appropriate to use another GE variety of the plant as a comparator. This could occur if, for example, a developer is using genetic engineering to add a new trait to an existing GE plant. To date, APHIS has not generally seen the use of a GE plant as a comparator, but this could change in the future as products of genetic engineering become more complex.

One commenter requested that APHIS define how it intends to determine ''distribution, density, or development of the plant and its sexually compatible relatives and weediness across plant types.'' Another suggested that we add a definition of *weediness* because it is mentioned in the context of the RSR.

APHIS is making no changes to the rule in response to these comments. The plant pest risk assessment framework document that accompanied the proposed rule described how the distribution (including density) of the GE plant and its sexually compatible relatives can be predicted by the biological properties of the plant compared with the known distribution and properties of the comparator(s), in the context of the receiving environment. The development of the GE plant and its sexually compatible relatives can similarly be predicted. Assessment of these factors is important for determining whether the GE trait(s) could increase the prevalence or alter the distribution of the plant or its sexually compatible relative(s) in such a way that they could have increased importance as hosts for plant pests. It is also important to point out that consideration of weediness in this manner has long been a part of the plant pest risk assessments conducted in response to petitions for nonregulated status since the 1990s, under the regulations that we are replacing in this final rule. This final rule does not change this analysis, and does not expand the scope of APHIS' consideration of weediness in evaluating plant pest risks as compared with the scope of consideration that was present in APHIS' exercise of its authority under the regulations that we are replacing.

Some commenters had concerns about the factor ''harm to non-target organisms beneficial to agriculture,'' and asked us to shift our focus to adverse effect on trophic functional groups beneficial to agriculture and to articulate a scientific rationale as to how a plant, whether GE or not, could pose a plant pest risk on the basis of its potentially harming an insect predator or pollinator.

Beneficial organisms such as predators and pollinators fall squarely under APHIS' authority because predators and pollinators are essential to plant health, and harm to these organisms may result in greater injury or damage to plants. APHIS analyses are based on whether a GE trait introduced into a plant will had adverse impacts on non-target organisms beneficial to agriculture. Non-target organisms beneficial to agriculture encompass a broad range of organisms that provide ecosystem services. Focusing on certain trophic guilds is not adequate to address all aspects of plant pest risk to non-target organisms beneficial to agriculture. For example, some GE traits may have greater effects on closely related groups of insects, regardless of the trophic guild of members of that group. Focusing on trophic levels may also expand the scope to impacts

outside of agriculture. When there is a scientifically plausible link to harm to non-target organisms beneficial to agriculture, the information needed for a plant pest risk analysis would be determined on a case-by-case basis, accounting for the particular biology of the GE plant, the MOA of the GE trait, and the environment.

In addition to listing the factors discussed above, proposed § 340.4(b) set out the components of the RSR process, including making determinations and providing public notice of such determinations. Proposed paragraph (b)(1) stated that when APHIS receives a request for an RSR, APHIS will conduct an initial review of the potential plant pest risk posed by the GE plant and any sexually compatible relatives that could acquire the engineered trait, relative to the plant pest risk posed by their respective non-GE or other appropriate comparator(s), based on the factors discussed above. Proposed paragraph (b)(2) stated that if APHIS is unable to identify potential plant pest risks in the initial review, the GE plant will not be subject to the regulations. Proposed paragraph (b)(3)(i) stated that if APHIS does identify potential plant pest risks in the initial review, APHIS will conduct an evaluation of the factor(s) of concern to determine the likelihood and consequence of the potential plant pest risk posed by the GE plant. Proposed paragraph (b)(3)(iii) stated that if the GE plant is found unlikely to pose a plant pest risk and, therefore, not to require regulation under part 340, then APHIS will post the finding on its website. Proposed paragraph (b)(3)(iv) stated that if APHIS is unable to find the GE plant unlikely to pose a pest risk, then the plant will require regulation, and its movement will be allowed only under permit in accordance with § 340.5.

Commenters expressed numerous concerns about this process as we described it in the proposed rule. Some thought that we provided insufficient detail, especially concerning the distinction between the initial review and the additional evaluation that some GE plants would need to undergo. Others took issue with some of the terminology that we used, stating that it lacked clarity and could lead to confusion about our regulatory focus and decision making process. Numerous commenters proposed alternative language, in some cases arguing that their proposed alternatives were more consistent with standard risk assessment terminology and the PPA than what we had proposed. Commenters also stated that in order for regulation to be appropriately calibrated with actual risk, our decision-making criteria should incorporate the concept that the plant pest risk posed by the GE plant should be greater than that posed by the plant from which it was derived.

APHIS agrees with many of these comments. In this final rule, we have amended § 340.4(b) to provide additional detail and clarity and to incorporate the concept that in order for regulation to be appropriate, the plant pest risk posed by the GE plant or its sexually compatible relatives must pose an increased plant pest risk relative to the comparator(s).

Regarding terminology, we have revised § 340.4(b) to indicate that in the initial reviews, we will make determinations concerning whether further review is necessary based on a finding of ''plausible,'' rather than ''potential,'' plant pest risks. We view the former term as more precise and more in keeping with standard risk assessment terminology. Further, since the RSR process will require that a scientifically plausible risk be identified in order to proceed with further risk assessment, the revision will ensure that the initial review will not be an open-ended evaluation of any conceivably possible scenario that could be imagined.

As noted earlier in this document, in connection with the discussion on confirmation letters, some commenters saw a need for timeframes for APHIS regulatory processes for purposes of predictability and business planning. Commenters raised the issue in connection with the RSR as well. We agree with the commenters on the need for timeframes and are adding them to paragraphs (b)(2) and (3), as discussed below.

Revised § 340.4(b)(1) contains provisions related to the initial review. The introductory text states that when APHIS receives a request for an RSR of a GE plant, APHIS will conduct an initial review to determine whether there is any plausible pathway by which the GE plant, or any sexually compatible relatives that can acquire the engineered trait from the GE plant, would pose an increased plant pest risk relative to the plant pest risk posed by the respective non-GE or other appropriate comparator(s), based on the factors listed in paragraphs (b)(1)(i) through (iii) (also listed above), which remain the same as those in the proposed rule.

Revised § 340.4(b)(2) provides that except in unforeseen circumstances, APHIS will complete the initial review within 180 days of receiving a request that meets the requirements specified in this section. If APHIS does not identify a plausible pathway by which the GE plant or its sexually compatible relatives would pose an increased plant pest risk relative to the comparator(s) in the initial review, the GE plant will not be subject to the regulations. APHIS will post information on the plant and trait and a general description of the MOA on its website.

Regarding the timeframe, while the RSR process is new to APHIS, we anticipate that in many cases the initial review may be completed rapidly (that is, within 60 to 90 days). However, for plants that APHIS has infrequently authorized in the past, we anticipate that additional time may be required to compile information on the appropriate comparator(s) needed to conduct the initial review. In addition, we anticipate that additional time may be required to compile the information on less familiar or more complex MOAs needed to conduct initial reviews. Based on our experience, we anticipate that we will generally be able to complete reviews of less familiar plants and MOAs within 180 days, barring unforeseen circumstances.

Revised § 340.4(b)(3)(i) states that if APHIS does identify a plausible pathway by which the GE plant or its sexually compatible relatives would pose an increased plant pest risk relative to the comparator(s) in the initial review, the requestor may apply for a permit and/or request that APHIS conduct an evaluation of the factor(s) of concern to determine the likelihood and consequence of the increased plant pest risk.

Revised paragraph (b)(3)(ii) states that for those GE plants for which such an evaluation is conducted, APHIS will publish the results of the evaluation in the **Federal Register** and will solicit and review comments from the public. Soliciting public comments will allow APHIS to collect information we might have missed and receive additional comment. Except in circumstances that could not reasonably have been anticipated, APHIS will complete these steps within 15 months of receiving a request for an RSR that meets our requirements. This evaluation will be similar to the current petition process, and will include, in addition to public notice and comment, preparation of any applicable National Environmental Policy Act (NEPA) analysis; hence, the longer timeline.

Revised paragraph (b)(3)(iii) states that if APHIS finds that the GE plant and its sexually compatible relatives are unlikely to pose an increased plant pest risk relative to their comparator(s), the GE plant is not subject to part 340 and APHIS will announce the final determination in a subsequent **Federal**

Register notice and post the finding on its website. If APHIS does not make such a finding, the GE plant will remain regulated, and its movement will be allowed only under permit in accordance with § 340.5.

Due to the changes made in § 340.4(b)(2) and (b)(3)(iii), we are not finalizing proposed paragraph (c), as it is no longer necessary. (There is a paragraph (c) in § 340.4 of this final rule, but it discusses when the section becomes applicable, and is discussed later in this document.) APHIS does not agree with other changes to the regulatory text suggested by some commenters. Specifically, the commenters recommended that we predicate our decisionmaking on whether the GE plant poses an ''unacceptable plant pest risk'' or an ''unacceptable'' or ''unreasonable'' ''increase in plant pest risk.''

APHIS appreciates these comments and has given them full consideration. APHIS does not find these terms to be necessary for purposes of our decisionmaking, nor have we concluded that such terms would provide the necessary precision to become the foundation for regulatory analysis and decisionmaking. For example, these terms could be interpreted to take into account considerations unrelated to plant pest risk and, if used as a regulatory benchmark, could be used to attempt to place APHIS risk assessors in the position of deemphasizing scientific considerations. As such, APHIS does not make changes to the regulatory text under in part 340 as suggested by the commenters.

A commenter stated that just as the MOA for achieving a phenotypic trait in a GE organism should be taken into account, the MOA for achieving the genotype changes used to achieve those phenotypic traits should be taken into account as well. According to the commenter, the reason why APHIS regulations have historically been ''event-specific'' [9] is that genetic material is inserted into recipient plants in an essentially random manner during the genetic engineering process which can create mutations in recipients at rates of ~30–60 percent, and that uncharacterized genetic material/DNA can unintentionally become incorporated into recipients about 20 percent of the time.

We do not agree with this comment. As noted above, we have not seen evidence in the scientific literature that there are unique hazards that arise solely from the use of recombinant DNA techniques, as compared with more conventional plant breeding techniques.

One commenter stated that putting RSR results on the web would encourage copycats rather than innovators.

We do not agree with this comment. As discussed later in this document, certain sensitive RSR information will be eligible for CBI exemptions and, therefore, protected.

Permits

Paragraphs (a) and (b) of proposed § 340.5 contained, respectively, permit issuing and application requirements. Proposed § 340.5(f) contained requirements for APHIS review of permit applications.

In the June 2019 proposed rule, APHIS proposed to remove timeframes for review of permit applications so as to ensure that APHIS has the appropriate time to evaluate each permit application based upon the plant pest risk posed by the GE organism and the complexity of the application. Some commenters opposed the change and requested that we retain those requirements in the regulations or otherwise incorporate into this final rule ''reasonable'' timeframes to provide greater certainty for developers about the length of the process. Commenters had various suggestions as to the length of the timeframe(s). One commenter, for example, recommended that APHIS be allowed 10 days to review applications for permits for interstate movement and 30 days for release permit applications. It was also recommended that we establish timeframes for making determinations on permit amendments and for review and comment by State and Tribal officials on permit applications.

Although we recognize the need for certainty about the length of the process, our experience has been that some permit and notification applications take a minimal amount of time and others take longer, and we anticipate this to continue. A review of our experience over the last 2 years demonstrates that 45 days is currently sufficient to authorize import and interstate movement permits, while up to 120 days are often needed to authorize release permits. Therefore, APHIS is adding a new § 340.5(h)(5) [10] containing timeframes for review of permit applications. New paragraph (h)(5)(i) states that except in circumstances that could not reasonably have been anticipated, interstate movement and import permits will be approved or denied within 45 days of receipt of a complete permit application. New paragraph (h)(5)(ii) states that except in circumstances that could not reasonably have been anticipated, release permits will be approved or denied within 120 days of receipt of a complete permit application. New paragraph (h)(5)(iii) states that in cases where an environmental assessment or environmental impact statement is necessary to issue the permit, the 120-day period will be extended.

Paragraph (h)(3) of § 340.5 contains requirements for inspections related to permitted activities. The paragraph states that all premises associated with the permit are subject to inspection before and after permit issuance, and that all materials associated with the movement are subject to sampling after permit issuance. In addition, the responsible person and agents must provide inspectors access to premises, facilities, release locations, storage areas, waypoints, materials, equipment, means of conveyance, documents, and records related to the movement of organisms permitted under part 340.

A commenter stated that APHIS should define waypoint in a manner that accounts for the fact that applicants for permits may not be able to legally guarantee access to all waypoints, such as those that may be the sole property of a third-party shipping company.

APHIS will work cooperatively with the permit holder if there is need to gain access to a waypoint not under the permit holder's control. A permit holder will not be held responsible for providing access that is outside the permit holder's power to grant or deny.

In § 340.5(h)(3), APHIS mandates that all materials associated with activities conducted under permit would be subject to sampling. One commenter questioned the need to include this requirement in the regulations. According to the commenter, the PPA gives APHIS authority to conduct investigations, including sampling, when required. The commenter stated that sampling has never been done outside the scope of an investigation,

[9] Event-specific is used to distinguish the genome position of the same DNA insertions after transformation. As noted by the commenter, the same DNA introduced into a plant by transformation will insert randomly in the genome. To distinguish the fact that the position of the same inserted DNA varies between transformations, each transformation is referred to as an event.

[10] As explained below, we are adding new paragraphs (e), (f) and (g) to § 340.5. As a result, except where otherwise indicated by a specific reference to the proposed rule, for purposes of this discussion, paragraphs will be referred to by their designation in the regulatory text of this final rule.

and that practice should remain. The commenter said that if APHIS decides to move forward with inclusion of a sampling requirement, it should clearly describe how those samples will be handled, the level of confidentiality that they will be subject to, and the specific uses for which samples may be taken in order to protect confidential business information. The commenter further stated that such samples are of proprietary research materials and valuable enough to be targets of misappropriation if not handled appropriately.

APHIS appreciates the comment and wants to reassure the regulated community that sampling will be done only when necessary. APHIS accepts that regulated material is proprietary property of the regulated entity and will ensure the taking only of quantities of samples required for diagnostic evaluation. The language in § 340.5(h)(3) is consistent with APHIS' authority under the PPA to conduct inspections. When sampling is done, APHIS follows strict chain of custody protocols. APHIS will protect all proprietary information and CBI associated with sampling, and APHIS will share results only within USDA (marking documents containing CBI to ensure protection of such information) and with the regulated entity.

Paragraphs (c) and (d) of proposed § 340.5 contained, respectively, exemptions from permitting requirements for interstate movement for GE *Arabidopsis thaliana* and *Agrobacterium tumefaciens,* subject to certain conditions. Some commenters suggested that we consider additional exemptions. One such commenter requested that in addition to *A. thaliana,* APHIS should exempt specialty crops, in which an allele has been edited to align with a similar, known allele in a close relative. Another commenter pointed out that disarmed versions of *Agrobacterium rhizogenes* have a record for transformation that is equally useful and safe as the record for disarmed versions of *A. tumefaciens.* The commenter requested that the exemption for ''disarmed *Agrobacterium tumefaciens*'' be broadened to ''disarmed Agrobacterium strains'' or ''disarmed members of the *Rhizobiales*'', such as *Ochrobactrum haywardense.* Using the same reasons and arguments, the commenter stated that APHIS should consider exempting *Nicotiana benthamiana.* It was also suggested that because disarmed viruses are commonly used in plant molecular biology studies, any pathogen with the pathogenicity demonstrably removed could be exempted. Some commenters favored even broader exemptions, stating that most types of transgenic plants should also be exempted when shipments are small or in a form in which persistence in the environment is very unlikely. The lack of such exemptions, according to these commenters, impedes collaborative research and breeding substantially.

We agree with these comments in part. Historically, *A. thaliana* and *A. tumefaciens* have been exempted from permitting requirements for interstate movement because interstate movement of the organisms has not resulted in the dissemination of plant pests within the United States. *A. thaliana* has been a research model plant species, and the research community is very familiar with the biological and ecological characteristics of the species. We have had extensive experience assessing the plant pest risks associated with the interstate movement of both organisms. In both cases, the plant pest risks are very low, and safeguards exist that can adequately mitigate those risks. APHIS agrees that other disarmed *Agrobacterium* species can be exempted from the requirement of permits for importation or interstate movement and has revised 340.5(d) accordingly. While some strains of disarmed *Agrobacterium* species may cause mild plant disease symptoms in some cases, importing them or moving them interstate presents very low plant pest risk given their specific usage in transforming plants, their lack of persistence in the newly transformed plants, and existing practices for shipping *Agrobacterium* strains. We do not have sufficient experience with the order *Rhizobiales* to further broaden this exemption at this time. Other GE organisms, such as specialty crops, have not been exempted before, and APHIS does not have extensive experience assessing their plant pest risks. Therefore, APHIS does not think it is appropriate to exempt such GE plants at this time in the same way as *A. thaliana* and *A. tumefaciens.*

As noted earlier in the discussion of the definition of *plant pest,* we are adding to this final rule an exemption from the requirement for permits for import and interstate movement for GE *Drosophila melanogaster* in response to public comments that this organism does not have significant negative impacts on agriculture. This exemption is contained in a new paragraph (e) of § 340.5. This exemption excludes strains that have been engineered to propagate through a population by biasing the inheritance rate (*e.g.,* gene drives), because such strains could be designed to persist in the environment and we do not have sufficient experience to conclude that such strains would not pose a significant plant pest risk. We have also revised the exemption text for *Arabidopsis thaliana* and *Agrobacterium* strains in § 340.5(c) and (d), respectively, to conform with the revised definition of *genetic engineering,* which is not limited to the insertion of ''cloned'' genetic material into an organism.

In response to comments about interagency coordination, which are discussed in detail below under the subheading ''Statutory Authority, Jurisdiction, and Interagency Coordination,'' we are adding a new paragraph (f) to § 340.5, which contains an exemption from permitting requirements for any microbial pesticide that is currently registered with the EPA as a microbial pesticide, so long as the microorganism is not a plant pest as defined in § 340.3. The addition of this exemption ensures that these organisms will not be subject to duplicative regulation.

Also in the interest of interagency coordination, as well as other considerations discussed in detail later in this document in the section pertaining to plant incorporated protectants (PIPs), we are also adding a new paragraph (g) to § 340.5 that exempts from the permitting requirement for movement of any GE plant modified solely to contain a PIP that is currently registered with EPA as a pesticide product pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. 136 *et seq.*) or that is currently exempted from FIFRA pursuant to 40 CFR 174.21.

Numerous commenters expressed concerns about our proposed permit conditions. Those issues are discussed individually in the paragraphs that follow.

One commenter viewed the permit conditions in general as excessively strict. The commenter stated that the conditions strive toward zero risk, as opposed to the Coordinated Framework criterion of unreasonable risk. It is important to maintain measures commensurate to risk, according to the commenter.

We do not agree with this commenter's suggestion that our permit conditions are too strict or are striving toward zero risk. Our permit conditions are set to ensure containment and confinement of the organism under permit. They are designed to be commensurate with the risk posed by the GE organism. The commenter did not offer specific guidance on how we should apply the ''unreasonable risk'' standard.

Some commenters requested that we clarify the distinction between standard permit conditions that apply to all GE organisms and those that apply only to GE plants or to GE microorganisms or insects.

We believe that the standard permit requirements, as listed in § 340.5(i)(1) through (10) of this final rule, make this distinction clear. As written, all the standard conditions listed in § 340.5(i) of this final rule, except for paragraph (i)(6)(ii) (which pertains specifically to GE plant volunteer monitoring), are applicable to all GE organisms. Therefore, we are not making any changes in response to these comments.

One commenter recommended that we adopt a hybrid permit system under which performance standards are primarily used as the enforcement mechanism. According to the commenter, specific permit conditions should be added only when scientifically justified.

We will not be making any changes to the final rule as a result of this comment. Some of the standard permit conditions in § 340.5(i) are, in fact, performance standards, consistent with the commenter's recommendation. For example, paragraph (i)(1) states that ''[t]he organism under permit must be maintained and disposed of in a manner so as to prevent its unauthorized release, spread, dispersal, and/or persistence in the environment.'' Under paragraph (i)(6), records related to permit activity by the responsible person must ''be of sufficient accuracy, quality, and completeness to demonstrate compliance with all permit conditions and requirements under this part.''

Nonetheless, we do not believe that a sole or primary regulatory focus on performance standards would be desirable for the regulations in part 340. As noted in the preamble to the June 2019 proposed rule, Office of Inspector General (OIG) audits conducted in 2008 and 2015 recommended, among other things, that APHIS generally reduce its reliance on performance-based standards in the regulations in part 340. APHIS agrees with the OIG recommendations. While performance standards offer the advantages of administrative streamlining for APHIS and flexibility for regulated parties, there are also significant disadvantages to a performance-standard-based regulatory approach. The absence of specific measures that constitute compliance with the regulations in performance-based standards introduces an element of uncertainty into the process of determining whether a regulated party is in compliance with the regulations. Enforcing the regulations, and thereby protecting U.S. agriculture from plant pest risks, would thus be made more difficult than it is when compliance measures are clearly enumerated in specific permit conditions, as they always have been under the regulations in part 340 and will continue to be as a result of this rulemaking. Because permit conditions specify which actions need to be taken by the responsible person to be in compliance with the regulations and do not rely as much on subjective determinations (by both the responsible person and APHIS personnel) as do performance standards, the permitting system can provide more risk-appropriate oversight, better regulatory enforcement, and transparency.

A commenter questioned the necessity of the requirement in § 340.5(i)(6) for the submission of a report of no environmental release for all authorized locations in which an environmental release of a GE organism did not occur. It was stated that this provision is inconsistent with the policy approach of the Coordinated Framework and represents regulatory overreach that should be set aside. The commenter saw no risk mitigation value in this requirement.

APHIS appreciates the commenter's concern but disagrees with the commenter's arguments. A permit authorization often covers many sites, and planting may never occur at some sites. Similar to the need for a post-planting report (PPR) to indicate which sites are planted and when, APHIS needs to know which sites were not planted, so as to provide efficient and appropriately focused oversight. APHIS thinks that the submission of a report of no release can help APHIS track the status of all authorized test field locations in order to account for and sufficiently monitor all such locations, thereby preventing the accidental release of GE organisms into the environment. Additionally, this requirement addresses recommendations issued by USDA's OIG, following audits performed in 2015.

One commenter stated that developers may operate under multiple permits for multiple plant-trait-MOA combinations at one time. The commenter stated that plant lines within these multiple permits are planted in proximity to one another to facilitate comparative science and to utilize resources in the most efficient way possible, and that if APHIS were to issue each permit with different conditions, of which the developer may learn only weeks before planting, these materials may have to be physically separated from each other or research would need to be abandoned, inhibiting innovation and increasing the cost to develop new products.

APHIS does not consider such scenarios to be likely. The permit conditions for non-plant-made pharmaceutical and industrial (PMPI)-producing plants are based on the reproductive ecology of each species and the receiving environment. APHIS anticipates that such permit conditions will generally be consistent across multiple permits for the same species. The timeframes for the issuance of permits that have been added to the regulations will enable developers to plan adequately to meet the specified permit conditions.

One commenter stated that APHIS should specify in the regulations timeframes for the submission by the responsible person of reports of activities under permit that are required under § 340.5(i)(6).

We do not agree with this comment. The types of reports to be submitted and the timing of their submission will vary by species and, therefore, will be included in each permit in the supplemental permit conditions, rather than in the regulations.

One commenter recommended that we allow for changes in the designation of a responsible person via a notification process.

We do not agree with this comment. In § 340.3, we define *responsible person* as the person responsible for maintaining control over a GE organism under permit during its movement and for ensuring compliance with all conditions contained in any applicable permit as well as other requirements in part 340. In § 340.5(i)(10), we state that the responsible person for a permit remains responsible unless a transfer of responsibility is approved by APHIS. The requirement for APHIS approval is necessary to ensure that, in the event a transfer becomes necessary, the new responsible person is aware, prepared, and equipped to work with APHIS. That provision does not apply, however, to an agent, a term defined in the June 2019 proposed rule as someone designated by the responsible person to act on behalf of the permittee to maintain control over an organism under permit during its movement and to ensure compliance with permit conditions. A change in agent may be effected through a notification.

One commenter requested that we not require Global Positioning Satellite (GPS) coordinates in permit-related records, a requirement that, according to the commenter, is effectively a permit condition, though it is actually

contained in § 340.6, the section covering recordkeeping. The commenter stated that information on actual acreage shortly after planting would suffice.

APHIS disagrees with this comment. GPS coordinates allow APHIS to fully utilize Geographic Information System capabilities to oversee what will be released within the defined authorized area. For example, APHIS uses GPS coordinates information to determine whether a proposed release site happens to be on Federal land or critical habitat.

Paragraph (j) of § 340.5 addresses permit denials and withdrawals. One commenter stated that APHIS must make it clear that denial should occur only to prevent an unreasonable risk to U.S. agriculture. The commenter further suggested that APHIS should include assurances that a permit will be presumptively issued unless APHIS can present a plausible argument that failure to comply with the permitting conditions would result in such an unreasonable risk. Another commenter suggested that the rule should be clarified to indicate that a permit application may be withdrawn by the applicant as well as the Administrator.

We will not be making any changes to the final rule as a result of these comments. Under § 340.5(j)(1), the Administrator may deny a permit application if he or she concludes that the proposed actions under permit may not prevent the unauthorized release, spread, dispersal, and/or persistence in the environment of the GE organism; if the responsible person or agent has materially failed to comply with any provision of these regulations; or if the responsible person or agent has failed to comply with any other regulations issued pursuant to the PPA or the PPA itself. Permits will also be denied if the responsible person or agent does not agree in writing to comply with permit conditions or to allow inspection by APHIS. These conditions are necessary to protect U.S. agriculture. Regarding withdrawal, the existing regulations do not specify that a permit application may be withdrawn by the applicant. Nonetheless, under current regulations, applicants may request withdrawal of permit applications prior to the issuance of the permit. This will continue to be the case when the revised regulations become effective.

One commenter stated that developers may operate by covering multiple plant-trait-MOA combinations under a single permit. According to the commenter, permits may be requested by location, with many experiments, containing multiple plant-trait-MOA combinations, planted in the same location. The commenter submits that if a permit is terminated due to a completed RSR, the termination should not apply to the entire permit, but only to the individual plant-trait-MOA which was reviewed.

APHIS responds that in such cases, the permit would not be terminated, and that the specific plant-trait-MOA combination for which the RSR was completed (resulting in a determination that the plant-trait-MOA GE plant combination is not subject to part 340) would no longer be regulated under that permit. APHIS would continue to provide oversight for plant-trait-MOAs that are still under permit.

One commenter requested clarification on permit amendment provisions, particularly as they applied to APHIS-initiated amendments in § 340.5(l)(2). The commenter expressed a concern that APHIS may arbitrarily initiate modifications to an existing permit and stated that APHIS should have no authority to initiate such amendments without scientific evidence.

APHIS will not initiate a permit amendment process without sufficient scientific justification. Under § 340.5(l)(2), APHIS will initiate a permit amendment process upon determining that such an amendment is needed to address the plant pest risk posed by the GE organism or the activities allowed under the permit. In such cases, APHIS will provide notice to the responsible person of the amendment(s) and the reasons for it.

Another commenter questioned whether we should include provisions for amending permits in the regulations at all. It was stated that we were reducing our flexibility by including such provisions.

Contrary to the commenter's assertion, we believe that the provisions for permit amendments allow for greater regulatory flexibility by enabling a rapid response to changing circumstances. We have included these provisions to provide an opportunity for a responsible person to request an amendment to permit conditions when circumstances have changed, as opposed to our having to withdraw the permit, which would necessitate that the responsible person then reapply. Under the permit amendment provisions, APHIS would also have the flexibility to amend a permit rather than revoking it if needed to address new or previously unknown plant pest risks presented by the organism.

Another commenter recommended that APHIS specify a timeframe for review of permit amendments requested by a responsible person. The commenter stated that furthermore, APHIS should notify the requestor if the amendment request is deemed to be within or outside the scope of the existing permit.

The timeframe for the review for the permit amendment will be the same as for new permit applications and depends on the complexity of the requested change. Consistent with past practice, APHIS will continue to let requestors know if an amendment is outside the scope of an existing permit.

Finally, we are making an editorial change to paragraph (l)(1) in § 340.5 to clarify the circumstances under which (1) APHIS will approve an amendment request from a permit holder and (2) APHIS will instead require a new permit application. Specifically, we are providing examples of situations where each would apply. APHIS will allow a permit to be amended if relatively minor changes are necessary. Requests for more substantive changes will result in a denial of the amendment request and necessitate a new permit application.

Paragraph (m) of § 340.5 contains requirements for shipping under permit. Paragraph (m)(1) contains a performance standard, stating that all shipments of organisms under permit must be secure shipments. Paragraphs (m)(2) and (3) contain, respectively, documentation and labeling requirements, and paragraph (m)(4) contains provisions related to treatment and disposal of shipping containers and packing materials.

One commenter stated that if APHIS' intent in paragraph (m)(1) is to allow developers to make determinations regarding the types of containers used during transport so long as they fit the above stipulations, that represents an improvement. If this change, however, is meant to be more restrictive, especially with the removal of a variance option, then the responsible person or agent should be able to make changes to shipping container options, if needed.

Paragraph (m)(1) is performance-based. It does not prescribe specific container requirements. The change to the regulations is meant to make the performance standard more explicit while at the same time making the requirements less prescriptive. Based on the definition of *secure shipment* (''Shipment in a container or a means of conveyance of sufficient strength and integrity to withstand leakage of contents, shocks, pressure changes, and other conditions incident to ordinary handling in transportation''), APHIS does not anticipate that shipping variances will be needed.

One commenter requested that we revise the language in § 340.5(m)(4) to take into account reusable shipping containers. The commenter

recommended that we replace the word ''treated'' with ''cleaned to remove the organism before reuse.''

In response to this comment, we are revising the paragraph to read as follows: ''Following the completion of the shipment, all packaging material, shipping containers, and any other material accompanying the organism will be devitalized consistent with supplemental permit conditions, or disposed of to prevent unauthorized release.''

Other issues raised by commenters in relation to permits included concerns about the rigor and integrity of the process, safety of environmental releases under permit, field testing, implementation of the permitting requirements, and the formatting of permits.

One commenter, noting that the definition of *movement* in § 340.3 includes release into the environment, stated that there can be no assurances beforehand of a safe outcome of such a release. The commenter stated that all GE organisms that are to be released into the environment should be subject to strict testing requirements.

APHIS acknowledges the commenter's concerns about safely releasing GE organisms into the environment. For reasons discussed earlier in this document, it is our view that categories of organisms that fall under the exempted categories in § 340.1(b) and (c), as well as GE plants that have been subject to an RSR in accordance with § 340.4 and for which APHIS has not identified a plausible pathway by which the GE plant or its sexually compatible relatives could pose an increased plant pest risk relative to the comparator(s), can be safely released into the environment without the need for a permit. The movement, including release into the environment, of all other GE organisms will be allowed only under permit and subject to strict standards and, if appropriate, supplementary permitting conditions to effectively mitigate any risks that may be associated with such movement or release.

A commenter stated that granting developers the option to move GE plants under permit in lieu of an RSR raises concerns regarding the integrity and robustness of the regulatory process.

Providing a developer the option to move a GE plant under permit rather than requesting an RSR affords that developer the benefit of maximum flexibility in the research and development of novel GE plants. The provision does not, however, provide the developer a means of evading regulatory scrutiny of new GE plants, as the commenter appears to believe. Permits are a form of regulation, and movement of GE plants under permit regularly occurs under our current regulations. An RSR results in a determination, based on our evaluation of plant pest risk, that a GE plant either is not subject to the regulations, and can be moved with no further restriction under part 340, or is subject to the regulations and may be moved only under permit. Whether a product requires movement under permit as a result of an RSR, or because the developer has chosen the permitting option in lieu of the RSR, the GE plant will still be subject to a rigorous screening process. The developer will have to submit a permit application, along with all supporting information required under the regulations. APHIS will carefully review the application and, if warranted, approve it. Prior to issuance, the developer/responsible person will be required to agree in writing that he or she understands and will comply with all the standard and supplementary conditions listed on the permit. Compliance is monitored after a permit has been issued. Our permitting process is a longstanding and rigorous one that ensures that GE plants are moved only under conditions that provide safeguards against the risk of dissemination of plant pests.

Temporary Transition Provisions

One commenter recommended that the implementation of the new permitting provisions and elimination of notifications should be phased in so as not to disrupt seasonal field activities. Other commenters stated that given the magnitude of the changes in regulatory requirements that we proposed, we should phase in implementation so as to allow regulated parties to adjust their operations to comply with the new requirements. Some commenters recommended that we develop timelines for compliance with each component of the proposed regulation. Recommendations ranged from 30 days (30 days each for the confirmation and RSR processes) to two years (for compliance with all of the new processes). Commenters also requested that we provide guidance on the new regulatory framework to aid them in making the transition.

APHIS appreciates the commenters' concerns and supports a phased approach to implementation. This final rule identifies a date when each of the rule's sections becomes applicable. Implementation of this rule will occur as follows.

Thirty days following the publication of this rule, APHIS will discontinue receiving new AIR requests. This will allow developers sufficient time to make such requests following publication, while also ensuring that, to the best of the Agency's ability, all such requests have been acted on by the time the rule becomes effective. The exemptions identified in § 340.1, and the confirmation letter process described in that section, will become effective and will be implemented 90 days after the publication date of this rule. (Please note, however, that some of the exemptions in paragraph (c) of § 340.1 are contingent on implementation of RSR, which will not occur until April 5, 2021.) In the intervening 60-day period, developers can self-determine regulated status according to the legacy definition of *regulated article;* APHIS is available to respond to requests for assistance in such determinations. Alternatively, developers may seek permits or use the legacy notification process during that time period in order to import regulated articles, move them interstate, or release them into the environment.

The remaining provisions in this rule also will become effective (that is, will appear in the CFR) 90 days after the publication of the rule. However, they are applicable as follows: Beginning April 5, 2021, APHIS will implement the permitting provisions in § 340.5; beginning April 5, 2021, APHIS will undertake a phased implementation of the RSR process described in § 340.4 by accepting requests for reviews involving corn, soybean, cotton, potato, tomato, and alfalfa; and beginning October 1, 2021, APHIS will accept requests for RSR involving any genetically engineered plant. We have revised proposed §§ 340.4 and 340.5 to include these specific applicable dates.

Until RSR is available for a particular crop based on the schedule set forth in the previous paragraph, APHIS will continue to receive petitions for determination of nonregulated status for the crop in accordance with the current regulations in § 340.6. Accordingly, developers may submit petitions for deregulation for any GE plants through April 4, 2021; beginning April 5, 2021, APHIS will discontinue receiving petitions for corn, soybean, cotton, potato, tomato, and alfalfa, but will continue to receive petitions for all other GE plants and organisms. As is currently the case, a developer may seek a permit or use the notification process instead of, or in addition to, submitting a petition. On October 1, 2021, APHIS will discontinue receiving petitions altogether. Similarly, all currently issued notifications and permits will remain valid until the expiration dates specified in such authorizations, and

APHIS will continue to receive notifications and permit applications pursuant to the processes in the current regulations in §§ 340.3 and 340.4, as well as the operational practices associated with those regulations, through April 4, 2021. Beginning April 5, 2021, the notification process will be discontinued, and all applications for permits must be submitted in accordance with the regulations identified in this final rule.

This phased implementation mitigates potential disruption to seasonal field activities and will provide developers with the opportunity to review and adjust to the provisions in this final rule.

Commenters stated that APHIS must maintain oversight over field trials, and that such trials should be allowed only under permits that mandate stringent gene containment protocols with a management goal of full containment. According to the commenters, safeguards and monitoring must be required for the organism during field trials, and monitoring should include tracking changes associated with ecosystem harm, such as degradation of water quality, air pollution, climate impacts, or loss of biological resources. It was also stated that APHIS should publish the results of APHIS supervised field trials where they will be publicly accessible, and that permit requirements should include buffer zones for GE crop fields that adjoin organic and non-GE crop fields to reduce GE trait and chemical drift.

APHIS has established and will continue to establish appropriate oversight requirements for crops grown under permit, including isolation requirements based on the reproductive ecology of the plant species to prevent gene flow to plants not under the permit. APHIS does not believe that ecosystem impacts, such as degradation of water quality, air pollution, climate impacts, or loss of biological resources unrelated to plant pest risk, require tracking or monitoring under the part 340 regulations, and notes that growing non-GE plants may give rise to similar impacts. Under this rulemaking, there is no requirement that developers submit field-trial data to APHIS, although they may do so if they choose to support an RSR or confirmation letter request. As we noted in the preamble to the proposed rule, APHIS' experience in preparing risk assessments in accordance with the petition process indicates that field trial data are generally not necessary unless they address an identifiable plausible pathway to plant pest risk. The introduced trait and MOA provide the most reliable indicators of the organism's potential for plant pest risk. If field data are needed to address a plausible plant pest risk hypothesis, those data bearing on whether an organism posed a plant pest risk would be published in support of APHIS' decision making on the regulatory status of that plant.

A commenter stated that APHIS should further clarify the length of time after a permit expires during which access to materials and premises must be allowed. The commenter was concerned that such access could be misinterpreted to be in perpetuity, which is unnecessary.

We would require the responsible person to allow access to where the organisms regulated under part 340 are located, including field test sites after trials are harvested or terminated, throughout the volunteer monitoring period described in the permit, which may continue after permit expiration. Access to premises where regulated organisms are maintained must be allowed throughout the volunteer monitoring period even if the permit has expired, unless the product has been devitalized or APHIS has conducted an RSR and determined it to be not subject to part 340.

Two other recommendations by commenters were that we develop a publicly available database listing all permits issued by APHIS and their requirements, and that we provide for pre-approvals of containment facilities for high-risk organisms, with permits tiered to the approved facility number.

We thank the commenters for these suggestions. APHIS may explore these ideas in the future as we develop more experience with permits under the new regulations, though we do not believe that it is necessary to implement (or to decide whether to implement) these ideas immediately. For example, our ongoing experience with permits involving containment facilities may lead us at some point to consider a specific pre-approval process for certain facilities as suitable for higher-risk organisms.

Finally, one commenter stated that each permit should contain introductory text describing the unreasonable risk to U.S. agriculture that the permit is designed to prevent. The commenter further stated that if no such plausible description can be proffered, then APHIS would have no reason for exercising oversight over, or requiring a permit for, the movement of the GE organism for which APHIS intends to issue the permit.

Under the new regulations, GE organisms will be required to move under permit for one of three reasons: (1) Because APHIS has conducted an RSR and has found a likely or indeterminate plant pest risk; (2) because the developer has opted to go directly to seeking a permit rather than requesting an RSR; or (3) because the GE plant or non-plant organism fits under one of the regulated categories in § 340.2. We do not see the need for the introductory text that the commenter recommends, which is likely to be duplicative or unnecessary in many if not all cases.

In addition to the substantive changes discussed above, we are making a couple of corrections to § 340.5(b)(1) and (b)(2)(ii). In the former paragraph, which contains general information requirements for permit applications, we are adding ''the organism's genus, species and any relevant subspecies and common name information.'' Under the latter, which contains information requirements for permits for interstate movement and listed, among other things, in the June 2019 proposed rule, ''a description of the method of shipment, and means of ensuring the security of the shipment against unauthorized release of the organism,'' we are including a requirement that the quantity of the GE organism also be listed. In both cases, the requirements were in the current regulations but were inadvertently omitted from the June 2019 proposed rule.

Record Retention, Compliance, and Enforcement

Numerous commenters identified concerns about the record retention requirements described in proposed § 340.6. Issues discussed included overall clarity and scope, timeframes, and reporting requirements.

Some commenters suggested that we needed to clarify our recordkeeping and reporting requirements by adding more specific detail about what information APHIS will require and when.

The reporting and recordkeeping requirements in § 340.6 of the June 2019 proposed rule did provide specific details regarding the types of records that need to be kept and the timeframes for retention, in paragraphs (a) and (b), respectively. At the same time, the requirements that we proposed align with our historical approach, which has provided flexibility based on variations in operations performed by different entities and different subparts of a single entity. As reflected in § 340.6(a)(1), which refers the reader back to the permit-related reporting and recordkeeping requirements in § 340.5, many of the recordkeeping and reporting requirements of this

rulemaking will depend on the nature of the GE organism and the intended activity and will be included in the permit conditions.

It was suggested that some of the proposed information requirements were duplicative. One commenter stated that APHIS requires information about the location of a field release site to be included in the permit application and then requests the same information again after planting, resulting in duplicate or nearly duplicate records requests. The commenter stated that APHIS also requests the identity of the material being planted (the construct ID) on the application and then requests the same information again on the planting report. According to the commenter, during inspections this information is often requested a third time. The commenter stated that this duplication could be eliminated with no detrimental effects on compliance by having applicants provide it on the permit application and then having APHIS verify it during inspection.

These requirements are not duplicative, and it is not particularly onerous to comply with them. Information submitted in a permit application is used for specific release site analysis. Post-planting reports provide APHIS with critical information related to the activity that has been conducted under an APHIS-issued authorization. The information submitted post-planting facilitates effective compliance oversight. Planting does not occur for every genetic construct and location that is approved in an authorization. APHIS needs documentation (post-planting report) of which constructs are planted at each specific field release site in order to perform effective compliance oversight. Additionally, this requirement addresses recommendations issued by USDA's OIG following audits performed in 2015.

A commenter recommended eliminating the requirement in § 340.6(a)(2) that records be kept to identify all locations where organisms under permit were stored. The commenter noted that while APHIS regulates interstate movement, the proposed definition of *move* does not include ''store.''

We do not agree with this comment. Under § 340.5(b)(2)(i), all permit applications must include, among other things, information on the origin and destination of a GE organism moved under permit, including information on addresses of all intermediate and final destinations. Additionally, § 340.5(b) states that within the permit application, locations and destination(s) of regulated organisms shall be included. A storage facility is considered by APHIS to be a destination (premises). APHIS needs to know where the regulated GE organism has been maintained in order to perform effective compliance oversight.

We received comments that supported our proposed timeframes for record maintenance and other comments that expressed concerns about the timeframes.

One commenter raised concerns about APHIS's ability to respond to incidents effectively if APHIS retained records associated with regulatory activities for only 2 years.

The commenter may have misunderstood the recordkeeping requirement in § 340.6(b). The requirement that all records indicating that an organism that was imported or moved interstate under permit reached its intended destination be retained for 2 years applies to the responsible person(s) rather than APHIS. APHIS did not propose any changes to the duration or type of records that APHIS will retain. The proposed 2-year retention requirement did represent an increase from the one in the existing regulations, which was 1 year. APHIS believes that this 2-year record retention requirement provides sufficient time to ensure that regulated material has safely and securely reached the intended destination, without imposing an undue burden on regulated parties.

One commenter viewed the requirement to retain records of permitted activities for 5 years as burdensome for small entities and urged us to ameliorate that burden by offering small entities an option to deposit such records electronically with APHIS for retention.

We do not agree with this comment. APHIS does retain the records of permitted activities that are submitted to APHIS, such as required reports and other information needed to determine compliance. Large and small regulated entities also generate and retain records that they may not be required to submit to APHIS but are kept to demonstrate compliance with permit conditions and for the entities' own stewardship purposes. Should those types of records be submitted to APHIS for retention, they would then be considered Federal records subject to the Freedom of Information Act (FOIA), which, among other things, would give rise to considerable administrative burdens for APHIS, which would be obliged (for instance) to protect submitters' confidential business information in maintaining such records and responding to FOIA requests. Furthermore, adopting the commenter's recommendation could raise concerns about disparate treatment. The comment did not include size criteria or definitions or a description of a process that would enable APHIS to make a fair determination of who could or could not submit documents for APHIS to retain.

Finally, one commenter recommended that APHIS utilize the APHIS-initiated amendment procedure for site-specific enforcement in instances of noncompliance and amend § 340.6(c)(i) to explicitly allow the Administrator to deny an application or withdraw a permit ''in whole or part.'' The commenter contended that this would provide APHIS the flexibility to apply site-specific, measured enforcement.

APHIS agrees with the intent of the comment but disagrees with the suggestion that a regulatory text change is necessary, because the permit-amendment provisions in § 340.5(j)(2) already allow us sufficient flexibility to respond to compliance issues in the manner recommended by the commenter.

Confidential Business Information (CBI)

Commenters took divergent views on the issue of the proposed Confidential Business Information (CBI) exemptions in the proposed rule. Some thought the exemptions, as explained in the preamble to the proposed rule, did not provide enough protection for submitters, while others thought that the exemptions were too broad.

Several commenters stated that CBI protections should extend to information pertaining to MOA and other information required to be submitted for an RSR or needed by APHIS to confirm a determination by a developer that its product is exempt from these regulations. Some commenters also suggested that submitters may forgo seeking confirmation or an RSR, and may opt to go under permits, if the MOA will be made public after a product has come through the confirmation or RSR process, because submitters want to protect that information.

As noted in the preamble to the proposed rule, APHIS intends to release a general description of the plant, the trait, and the MOA of GE plants that go through an RSR, but APHIS would do so without revealing CBI. APHIS would similarly release a general description of the plant, trait, and, as applicable, the MOA associated with confirmation requests, again without revealing CBI. APHIS wants to clarify that we are not requiring submitters to waive their

applicable CBI claims. Further, as we noted in the preamble, certain technical information, such as data that could be used to re-create an organism and that were not otherwise made publicly available by the submitters, may be eligible for CBI designation. To the extent that CBI claims exist, APHIS will review them, consistent with applicable laws and statutory authorities, on a case-by-case basis. Submitters will be given the opportunity to review and comment on a proposed general description prior to public disclosure. Regardless of CBI determination, developers will have the flexibility to select the regulatory options, whether RSR or permit, that they deem best for their business needs.

Other commenters expressed concern that extensive granting of CBI designations could impede the ability of developers to determine whether their products are eligible for exemption, and could impede peer-reviewable risk assessment. These commenters favored posting confirmation requests and responses and RSR determinations online. It was suggested that if such data are not available, developers will lack the necessary information to make reliable determinations for their GE plants and may choose permitting instead. According to these commenters, this would attenuate the regulatory relief that is one of the objectives of this rulemaking.

APHIS will post confirmation requests and responses, as well as determinations of nonregulated status pursuant to the outcomes of initial RSRs, on the APHIS website, with CBI redacted. When additional review is requested, as discussed earlier in this document, the analysis, outcome, and supporting documents will be published in the **Federal Register** and on the website, also with CBI redacted. We recognize that, in some cases, information necessary for researchers and developers to make determinations pursuant to § 340.1(c) may not be made public, due to CBI claims.

Commenters also expressed the view that mandatory field trial data should not be eligible for CBI exemption.

Under this rulemaking, there is no requirement that developers submit field-trial data to APHIS, though they may do so if they choose to support an RSR or confirmation letter request. As noted above, APHIS would allow only CBI exemptions that are consistent with applicable case law and statutory authorities.

A commenter requested that we clarify how the process for submitting CBI exemption requests and justifications for exemptions differs from the process that occurs under the current regulations.

The process for submitting and justifying CBI claims will not change under this rulemaking. Persons submitting any document to APHIS in accordance with the regulations must identify those portions of the document deemed to be CBI. Each page containing such information must be marked ''CBI Copy.'' A second copy of the document must be submitted with all such CBI deleted, and each page where the CBI was deleted must be marked ''CBI Deleted.'' In addition, any person submitting a CBI exemption request must justify the request by demonstrating how each piece of information to which the request applies is a trade secret or is commercial or financial information and is thereby privileged or confidential.

Economic Analysis

Some comments directly addressed the economic analysis that accompanied the June 2019 proposed rule. It was claimed that the analysis was light on data characterizing the potential economic and social impacts of the proposal. It was also stated that we did not offer sufficient analysis of the challenges of assuring other countries that imports of GE products from the United States are safe and meet the importers' requirements.

In the analysis accompanying the June 2019 proposed rule, we did request comments from the public on the potential economic impacts of the rule on affected entities. Most of the commenters who addressed potential economic impacts did so as part of a broader discussion of other issues, such as the potential economic effects of commingling, rather than addressing the economic analysis directly. Commenters did not supply actual data that would have aided us in characterizing potential social and economic impacts of the proposed rule. We do discuss potential international trade issues at some length later in this document.

Regulation of Plants That Produce Plant-Made Pharmaceuticals and Industrials (PMPIs)

We stated in the June 2019 proposed rule that the likelihood existed that most, if not all, GE PMPI-producing plants that are currently under APHIS permits could be determined to be not regulated if an RSR found them to be unlikely to pose a plant pest risk. We also noted that our proposed rule envisioned that were this to occur, such plants could be grown outdoors without the need for APHIS permits and without APHIS oversight.

We received many comments on this issue. Some commenters expressed concern that the proposed change to our regulatory approach to PMPI-producing plants would weaken or eliminate APHIS' oversight of them. Others favored less regulatory oversight of PMPI-producing plants than that provided in the existing regulations. Still others requested that we provide greater clarification of our regulatory approach to PMPI-producing plants under this rulemaking and emphasized the need for cooperation among regulatory agencies. These varying viewpoints are discussed in greater detail below.

Some commenters stated that as a result of this rulemaking, APHIS would abdicate its oversight role, leaving the planting of PMPI-producing plants essentially unregulated. As a result, according to these commenters, our agricultural food systems could be made vulnerable to introduction of experimental GE crops, and environmental quality and human health could be negatively affected based on the end use of those crops for pharmaceutical or industrial purposes. One commenter expressed concern that PMPI-producing plant developers would be able to determine for themselves whether their products are eligible for exemption. All of these commenters urged us to maintain our existing level of regulatory oversight of PMPI-producing plants.

Some commenters favored still more stringent requirements. They argued in favor of more restrictive oversight of PMPI-producing plants than was provided for in either the proposed rule or the existing regulations. They asserted that allowing PMPI-producing plants to be grown outdoors without APHIS oversight does not comport with the OIG's recommendations on regulating PMPI-producing plants to prevent inadvertent release.

Finally, a few commenters stated that they did not consider PMPI-producing plants to present inherent risks and argued that developers of PMPI-producing plants should be able to sufficiently self-regulate the planting of such plants. Some of these commenters took the view that APHIS' regulatory oversight over PMPI-producing plants was, if anything, already excessive and would remain excessive or become still more so under the proposed rule. One commenter stated that developers should be given the option to be regulated by the agency most relevant to their GE products. Other commenters stressed the need for APHIS and FDA to have a memorandum of understanding

(MOU) for the regulation of PMPI-producing plants.

After considering the comments received, we have decided to continue to maintain regulatory oversight of PMPI-producing plants by continuing to require permits for their movement. We are adding this requirement to § 340.2 of this final rule as paragraph (e), which states that a permit is required for the movement of a plant that encodes a product intended for pharmaceutical or industrial use. Accordingly, PMPI-producing plants will not be eligible for the RSR process. We also have determined that APHIS can continue to exercise oversight of PMPIs pursuant to our existing statutory authority under the PPA. We discuss how we arrived at this determination below.

The commenters who favored more stringent oversight of PMPI-producing plants than under the current regulations often considered them to present a significant inherent risk by virtue of being PMPI-producing plants and/or considered our existing regulations in part 340 to contain inadequate safeguards.

We do not agree that more regulatory oversight of PMPI-producing plants than under the current regulations is warranted, and we do not consider our current regulatory framework to provide inadequate safeguards. Since 1994 (58 FR 17047), we have required permits for the movement of plants that produce pharmaceutical compounds. In 2003, APHIS published an interim rule in the **Federal Register** (68 FR 46434–46436, Docket No. 03–038–1) that extended this permitting requirement to plants that produce industrial compounds; that same year, we implemented additional safeguards for PMPI-producing plant field trials that exceeded those previously in effect. These added safeguards, which were implemented as permitting conditions, included requiring location coordinates, authorizing release only in low-production geographies for the particular crop at issue, requiring dedicated equipment, and providing for frequent inspections of each trial site.

Since 2003, permits for field trials of PMPI-producing plants have made up a small percentage of the overall permits that APHIS has issued pursuant to the regulations in part 340. In the intervening 17 years, we have not encountered any issues with field trials of PMPI-producing plants that call into question the overall adequacy of our permitting conditions for PMPI-producing plants. Furthermore, over time, APHIS has regulated a large number of field trials of non-PMPI producing plants under permit conditions for diverse plants, traits, MOAs, geographic locations, and agroecological conditions. Regardless of whether the plant is a PMPI-producing plant or not, these permit conditions have been successful in ensuring that genetically engineered plants are confined to the field trial location. Based on our experience in permitting field trials of genetically engineered plants, we are confident in our ability to devise appropriate permit conditions to ensure confinement of all regulated plants, including PMPI-producing plants as we have done for the past 17 years.

For this same reason, we do not consider it necessary to regulate PMPI-producing plants as Federal noxious weeds in accordance with our regulations in 7 CFR part 360, one of the options which we mentioned in the proposed rule. We believe that doing so could suggest that APHIS has identified unique risks associated with PMPI-producing plants based on our data since 2003; this is not the case. Instead, we agree with those commenters who have asked us to maintain our current level of regulatory oversight based on the framework first elucidated in 2003.

The commenters who urged us to continue to exercise a similar or greater level of regulatory oversight of PMPI-producing plants do raise a salient point: PMPI-producing plants are not developed for food or feed use and can encode compounds that are intended to have a physiological effect in humans or animals. This is important for several reasons.

First, in the 2003 interim rule that required permits for plants that encode for industrials, we stated that APHIS' regulatory experience and scientific familiarity lay primarily at the time with GE plants produced for food or feed. This remains the case; while the Agency certainly has more familiarity with PMPI-producing plants than we possessed in 2003, PMPI-producing plants account for less than one percent of the total number of GE plants for which we have issued permits, and none have been designated nonregulated. Accordingly, the Agency still has significantly more experience with GE plants that produce food or feed than with those that produce PMPIs.

Second, as we set forth in the proposed rule, the intended use of PMPIs makes them differently situated than other GE plants regulated by APHIS, such that additional evaluation beyond RSR may be needed. We therefore consider it appropriate to maintain the status quo and continue to require permits for PMPI-producing plants.

In such instances when the risks associated with a plant or organism are not fully understood, APHIS has interpreted its authority under sections 7711 and 7712 of the Plant Protection Act and its predecessor statutes to provide a basis for regulating the plant or organism based on our best understanding of the risks presented (see 58 FR 17047; 68 FR 46434–46436).

Accordingly, APHIS will continue to exercise its authority under the Plant Protection Act to maintain regulatory oversight of PMPI-producing plants. FDA has authority under the Federal Food, Drug, and Cosmetic Act (FFDCA, 21 U.S.C. 301 *et seq.*) to take action to have foods withdrawn from the market if they contain PMPIs not approved for use in food. FDA also regulates drugs and human biological products under the FFDCA and therefore would have oversight over such products from PMPI-producing plants. FDA has not traditionally overseen field trials of PMPI-producing plants. APHIS will maintain the status quo by continuing to require permits for movement and environmental release of all PMPI-producing plants. It is not clear to us how an MOU between FDA and APHIS would be beneficial in providing oversight.

One commenter recommended that we list categories of the types of PMPI-producing plants that could generate food adulteration, should they find their way into the food supply, and regulate only those types of PMPI-producing plants.

Another commenter stated that we needed to clarify and possibly refine our overall regulatory approach to PMPI-producing plants. The commenter expressed a concern that a lack of clarity may result in unnecessary costs and time delays in bringing new products to market, thereby disproportionately impacting smaller developers and limiting the availability of new opportunities for farmers. As an example of a possible refinement to our regulatory approach, the same commenter suggested that in regulating PMPI-producing plants, APHIS should consider the likelihood that PMPI-producing plants will be produced in niche crops, which can be readily segregated from commodity crops, thus reducing the potential for their entering the food chain.

APHIS does not plan to develop a list of food adulterants or of categories of the types of PMPI-producing plants that could generate food adulteration. As noted above, the primary oversight authority in matters concerning food

safety involving plants, such as whether the presence of a particular substance in a food would make it adulterated, rests with FDA rather than APHIS. With regard to the latter comment, in establishing permitting requirements for PMPI-producing plant field trials, APHIS does take into consideration the specific crop in which the PMPI is produced.

Regulation of Plant-Incorporated Protectants (PIPs)

As noted in the preamble to the June 2019 proposed rule, certain plants are genetically engineered to produce PIPs, meaning that they produce pesticides. PIPs fall under the regulatory oversight of EPA. However, because EPA generally only requires Experimental Use Permits for field tests on 10 acres or more of land, only APHIS has historically exercised regulatory oversight over plantings of PIP-producing plants on 10 acres or less of land.

Under the provisions of the June 2019 proposed rule, there would be a likelihood that many PIP-producing plants that are currently regulated under APHIS permits or notifications could be determined not to be covered by the regulations after RSRs, because such plants are unlikely to pose greater plant pest risks by comparison with their comparators. Such plants could therefore be grown outdoors without the need for an APHIS permit and without undergoing APHIS oversight. Thus, Federal oversight over small-scale (10 acres or less) outdoor field test plantings of some PIPs would rest solely with EPA.

Commenters expressed a broad range of views regarding the scope of our regulatory oversight over PIP-producing plants. Some commenters expressed the view that APHIS should leave the regulation of PIPs entirely to EPA. Others stated that APHIS should continue its oversight over PIP-producing plants in coordination with EPA to ensure that PIPs are regulated at all scales. Concerns were expressed by some commenters about what they perceived as potentially a broadened regulatory scope. It was stated that small releases of PIP-producing plants that are not currently subject to APHIS regulations could be regulated under the proposed rule.

After reviewing these comments, we have decided that the approach presented in our June 2019 proposed rule remains appropriate. All PIPs, as noted in that rule, are properly under the regulatory oversight of EPA; to date, EPA has not seen a need to exercise oversight over PIP-producing plants planted on 10 acres or less because APHIS has exercised such oversight.

Accordingly, APHIS will continue to conduct oversight over PIP-producing plants at all scales unless the PIP-producing plant were to meet the conditions for an exemption from regulation in our revised regulations, or were determined following RSR not to be covered by the regulations. If APHIS determines that a PIP-producing plant is not regulated under these regulations; EPA would still retain regulatory authority and may decide to require an Experimental Use Permit and provide oversight of field trials under 10 acres. APHIS has avenues for cooperation with EPA, such as an agreement to provide oversight assistance to EPA under the Economy Act, should EPA decide that oversight of small PIP field trials is appropriate.

We have, however, decided to modify this final rule slightly to clarify the nature of this interaction between APHIS and EPA regarding PIPs. As noted above, we are adding a new § 340.5(g) stating that a permit is not required for the movement of any GE plant modified solely to contain a PIP that is currently registered with EPA as a pesticide product pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. 136 *et seq.*), or that is currently exempted from FIFRA pursuant to 40 CFR 174.21.

Under FIFRA, EPA is authorized to regulate pesticides. Pursuant to FIFRA, EPA regulates certain PIPs as ''substances,'' and has established a registration process for their use as pesticides. In determining whether to grant a registration for a PIP with pesticidal properties, EPA conducts ecological risk assessments to determine what risks are posed by the PIP and whether changes to the use or proposed use are necessary to protect the environment. The product is registered under FIFRA and thereby eligible for sale on the market if the results of the risk assessment indicate that the pesticide will not pose any unreasonable risks to wildlife and the environment. Environmental effects considered include effects on nontarget organisms. A PIP that is currently registered will have undergone such a risk assessment and will therefore have been determined not to pose unreasonable risks to other plants. For that reason, we can exempt, and have decided to exempt, such PIP-producing plants from our regulations.

We can also exempt, and have decided to exempt, modified PIP-producing plants that EPA has exempted from FIFRA pursuant to 40 CFR part 174.21. Section 25(b) of FIFRA allows EPA to promulgate regulations to exempt from the requirements of FIFRA any pesticide which the Administrator determines is ''of a character which is unnecessary to be subject to [FIFRA] in order to carry out the purposes of [FIFRA].'' Pursuant to this statutory authority, EPA's regulations in 40 CFR part 174.21 set forth criteria used by EPA for exempting PIPs from FIFRA requirements, including that the genetic material encoding the PIP or leading to the production of the PIP is from a plant that is sexually compatible with the recipient plant. These criteria currently do not pertain to GE plants containing PIPs.

However, if EPA were to establish criteria for exemption from FIFRA for certain additional plants containing PIPs, plants meeting those criteria would, by statute, have been determined by EPA to be of a character unnecessary to be subject to FIFRA in order to carry out the purposes of FIFRA. Because EPA could not make such a broad determination without consideration of the effects of such plants on the environment, including risks to other plants, we are exempting such plants from APHIS permitting requirements, as well.

Other commenters expressed concern that small releases of PIP-producing plants that are not currently subject to APHIS regulations could be regulated under this rule.

It is true that a GE PIP-producing plant that is not created using a plant pest as a donor organism, recipient organism, or vector or vector agent, was previously exempt from APHIS regulations under part 340 but could fall within the scope of these revised regulations if it does not qualify for an exemption under § 340.1 or under new § 340.5(g). This is, in fact, true of all GE plants that are created without the use of a plant pest donor organism, recipient organism, or vector or vector agent. However, as we discuss at greater length in the economic analysis that accompanies this final rule, we believe the number of producers and products that may be newly regulated as a result of this rule is extremely small. Moreover, we are not aware of any GE PIP-producing plant that has been produced to date without the use of a plant pest as the donor organism, recipient organism, or vector or vector agent.

Finally, one commenter stated that regulating PIPs more strictly than regulating chemicals is not scientifically justifiable. The commenter noted that EPA considers biological pesticides, including PIPs, to ''generally pose less risk than most conventional pesticides.''

This comment pertains to EPA's regulatory structure for PIPs. As such, it is outside the scope of the current rulemaking.

International Trade Implications

A number of commenters expressed the concern that the regulatory approach that underpins this rulemaking is out of step with that of key international markets and governments. It was suggested that the rule could result in greater asymmetry in regulatory approach between APHIS and U.S. trading partners, thereby endangering U.S. export markets, and that obtaining international acceptance of our new regulatory approach should be a precondition for finalization. A commenter further stated that we need to balance our regulation of GE organisms with the need for industry to comply with international markets that are sensitive to the unintended presence of GE organisms in non-GE products.

The fundamental APHIS protection goal under our regulations in part 340, which stem from and are delimited by our statutory authority to regulate plant pests under the PPA, is to protect agriculture against increased plant pest risks resulting from GE organisms. This regulatory approach has always been different from that of other national systems, which may not necessarily focus on plant pest risk and instead may be technique-based. Nevertheless, our trading partners have historically judged our approach to be acceptable, as it is transparent and science- and risk-based. Trading partners that have understood and accepted our regulatory system will not find our updated approach to meeting the same objectives confusing. Thus, we do not see this revised system as less compatible with those of our trading partners than in the past. As we have in the past, we will continue to provide technical expertise, information, and explanation to our trading partners regarding our regulatory system and determinations of regulatory status.

It was further stated by commenters that a possible consequence of the unwillingness of trading partners to accept our new regulatory approach could be the undermining of the progress being made in the Global Low-Level Presence Initiative (GLI), in which countries (including the United States) are striving to achieve a science-based and risk-based approach that would allow for a commercially achievable tolerance for the presence of a biotechnology-enhanced trait that (1) has been approved as safe by an exporting country based upon scientific analysis and CODEX-adopted risk assessment principles, but (2) has not yet been approved by an importing country. Additionally, the commenter interpreted the U.S.-Mexico-Canada Agreement (USMCA) to expressly commit all three countries to develop a low-level presence policy for imports.

To maintain global acceptance for its regulatory approach, APHIS needs to continue to maintain and enhance its credibility and its leadership role in the field of biotechnology regulation. It was with that goal in mind that we proposed these new regulations, which reflect both the knowledge we have gained, over the more than 30 years since we first promulgated our biotechnology regulations, and new developments in the field.

While it is gratifying that the APHIS system of regulation is perceived to provide protection against commingling or low level presence of plant products that are unwanted or are unauthorized in foreign (or even domestic) markets, the PPA, under which these regulations are promulgated, does not authorize APHIS to use the potential for low level presence as a basis for determining regulatory status or for monitoring what has been commercialized. USDA recognizes the focus of the Codex Guideline for the Conduct of Food Safety Assessment of Foods Derived from Recombinant DNA Plants (2003) and the associated annex addressing low level presence, an international standard. However, we note that the subject of this guidance and its agreed-upon annex is for food safety alone. USDA–APHIS reviews GE plants for the potential for plant pest risk, not food safety.

Finally, we disagree with the commenter's interpretation of the USMCA. We note that it instead stipulates that each Party shall adopt or maintain policies or approaches designed to facilitate the management of any LLP Occurrence. It does not mandate development of an overarching policy.

Elaborating on the concerns discussed above, some commenters emphasized the need for APHIS to develop and execute an international engagement strategy with our trading partners that explains the rationale for APHIS' pre-market regulatory approaches.

For 30 years, APHIS has consistently engaged and led in many international contexts to provide knowledge of its regulatory policy, science, and systems to encourage the safe development and trade of the products of agricultural biotechnology. Most recently, APHIS has worked to implement the Presidential Executive Order *Modernizing the Regulatory Framework for Agricultural Biotechnology Products* (June 11, 2019, E.O. 13874) to ''provide leadership in international fora to promote scientific competency, understanding of the U.S. regulatory approach, and regulatory compatibility worldwide for biotechnology products.'' [11] For the past several years, APHIS has shared rationales, experience, and information on potential regulatory changes with U.S. trade agencies (*e.g.,* the United States Trade Representative, the Department of State, the USDA Foreign Agricultural Service), U.S. trading partners, like-minded countries, and other countries in order to garner understanding and support for this updated regulatory approach. APHIS intends to continue such engagement.

Statutory Authority, Jurisdiction, and Interagency Coordination

We received many comments regarding our statutory authority, or lack thereof, to implement our proposed regulations. Some commenters claimed that we did not have such authority, while others expressed the view that we were abdicating the authority we do possess and, in some cases, failing to meet our statutory obligations. Some of these issues have already been discussed elsewhere in this document in relation to topics such as allowing developers to determine whether their products are eligible for exemption.

As noted above, we base our determinations of regulatory status on whether a GE plant or its sexually compatible relatives could pose an increased plant pest risk relative to the comparator(s). One commenter asserted that the PPA gives the Secretary the authority to develop regulations for the movement of plant pests only, and not the authority to develop regulations for the movement of organisms that pose a plant pest risk.

We do not agree with this comment. In addition to the authority to regulate the movement of plant pests under § 7711 of the PPA, including ''[a]ny article similar to or allied with any of the'' specific plant pests listed in § 7702(14), as cited by the commenter, we note that § 7712 of the PPA specifically provides the Secretary with broad authority to protect plants by regulating the movement of, among other items, plants and articles in order to *prevent* the introduction or dissemination of a plant pest within the United States.

[11] National Strategy for Modernizing the Regulatory System for Biotechnology Products. September, 2016.

As noted many times in this document, for GE organisms that fall under the regulations, permits are required for three activities: Importation, interstate movement, and environmental release. One commenter asserted that regulation of environmental releases done within a State or territory is unconstitutional.

We do not agree with this comment. The impact of an unauthorized environmental release may extend beyond the borders of the State in which the GE organism was released. *See Atay* v. *County of Maui,* 842 F.3d at 701–02 (''Under the PPA, 'movement' is defined broadly and expressly includes a plant's 'release into the environment,' [7 U.S.C.] § 7702(9)(E), such as open-air field testing of GE plants. Experimental GE plants grown on test fields in Maui are without doubt involved in interstate commerce. Setting aside the global market for GE seed crops, seeds and other organisms carried afield by wind or other vectors ''do not acknowledge State lines.'' 52 FR 22892, 22894 (June 16, 1987).'') (citation omitted); *id.* at 702 (''While the phrase 'movement in interstate commerce' within the meaning of the PPA's preemption clause may be narrower than the full scope of Congress's Commerce Clause power, we find that the phrase encompasses federally regulated GE crops grown in Hawaii. [The plaintiff's] narrower interpretation, which would limit the scope of the preemption clause to local laws addressing plants that are in the act of traveling to or through at least one other State, is less consistent with the statute's larger context and purpose, which clearly envisions the dissemination of plants and seeds from fields as implicating movement in interstate commerce. See, *e.g.,* 7 U.S.C. 7711(a). Indeed, Congress expressly recognized in the PPA that 'all plant pests, noxious weeds, plants, plant products, articles capable of harboring plant pests or noxious weeds regulated under this chapter are in or affect interstate commerce.' *Id.* § 7701(9).'') (citation omitted).

In contrast to the comments discussed above, which questioned the reach of our authority to regulate, other comments faulted us for not using our authority to regulate noxious weeds under the PPA. It was stated that by not considering noxious weed potential as a criterion for determining regulatory status of GE organisms, we restrict our authority under the PPA. One commenter argued that APHIS is statutorily obligated to integrate and apply the noxious weed authority to GE crops.

APHIS recognizes that genetic engineering may be used to introduce a trait that increases the distribution, density, or development of a plant or the weedy impacts of the plant, factors that are considered aspects of a plant's weediness. Accordingly, we would continue our current practice of considering the weediness of the unmodified plant and whether the new trait could in any way change the weediness. We would also consider potential effects on the weediness of other plants with which the engineered plant can interbreed, because it is relevant to the assessment of the plant's plant pest risk. Plants and their sexually compatible relatives could have increased importance as reservoirs for plant pests if they are distributed differently, are more prevalent, or are altered with respect to the time period during which they serve as a host for plant pests due to the introduced trait. As part of the RSR, APHIS would continue to consider whether the trait might change plant pest interactions, establishment, and persistence for both the plant engineered and any other plants with which it can interbreed. If the plant had the potential to be a truly troublesome and impactful weed, we would need to consider whether the plant with the specific trait being evaluated should be considered for regulation pursuant to our separate statutory authority to regulate noxious weeds and the regulations issued under that authority. The proposed regulation does not change this analysis.

APHIS disagrees with the proposition that APHIS is statutorily obligated to integrate noxious weed authority into a revised part 340. In the PPA, Congress identified plant pests and noxious weeds as separate concerns, and delegated authority to the Secretary to determine how to best use this authority. See, *e.g.,* 7 U.S.C. 7711, 7712, 7754, 7758(c); *see also Center for Food Safety* v. *Vilsack,* 718 F.3d 829, 843 (9th Cir. 2013) (''Plant pests and noxious weeds are regulated under separate regulatory frameworks. Regulations for plant pests are contained in 7 CFR parts 330 and 340 while the regulations governing noxious weeds are contained in 7 CFR part 360. The separate regulatory frameworks for plant pests and noxious weeds are consistent with standards of the statute treating plant pests and noxious weeds separately. Indeed, the PPA kept in place the separate regulatory frameworks for plant pests and noxious weeds that were originally promulgated under the Federal Plant Pest Act and the Federal Noxious Weed Act.'') (Citing 7 U.S.C. 7758(c)). We also do not perceive a basis at this time for overhauling part 360 noxious weed regulations, which we believe have functioned well over the years, or establishing alternate regulations in title 7 governing noxious weeds.

Other commenters expressed the concern that by asserting our statutory authority narrowly and emphasizing deregulation in this rulemaking, we could be creating a regulatory vacuum. It was suggested that States or localities may take advantage of that vacuum and assert their own authorities, possibly intervening to disrupt necessary field trials.

With regard to overall scope, the regulations proposed under part 340 are functionally equivalent to the rules under which APHIS has been operating for essentially three decades. Under the existing regulations, APHIS communicates with and cooperates with State and local governments as appropriate and as circumstances warrant, including for coordination of enforcement and permitting activities. APHIS does not anticipate that the working relationship with State and local governments will be changed in any significant way based upon issuance of this rule. Federal courts have already considered the applicability of preemption principles in this area, including by applying the Plant Protection Act's express preemption provision, 7 U.S.C. 7756. *See generally Atay* v. *County of Maui,* 842 F.3d at 698–705.

Some commenters addressed issues of interagency and intra-agency coordination in the regulation of GE products. A commenter suggested that we needed to coordinate with EPA to improve the commercial availability of herbicide resistant crops, concomitant with the registration of herbicides for use on those crops. The commenter stated that the asynchronous timing of USDA's deregulation of an herbicide-resistant crop cultivar and of EPA's associated herbicide registration has led to some scenarios in which growers are tempted to illegally apply unregistered herbicide formulations. Another commenter stated that duplicative regulations from oversight agencies, including FDA, EPA, and APHIS, should be streamlined into a common regulatory oversight regime depending on the product and its intended use.

The interagency working group which drafted the Coordinated Framework sought to ensure regulation adequate to ensure health and environmental safety while maintaining sufficient regulatory flexibility to avoid impeding beneficial innovation. The former commenter

believes that a delay in USDA regulatory decisions to better coordinate with EPA registration decisions will curtail growers and applicators from illegally applying unregistered herbicide formulations. However, USDA needs to consider whether additional regulatory burden is warranted or legally appropriate, given that the pesticide activity noted is already considered to be illegal by existing regulation. We note that one of the purposes of the Coordinated Framework is to ensure that there is a standard mechanism for communication and, to the extent possible, coordination among FDA, EPA, and APHIS as they perform their respective regulatory functions. USDA and EPA are in communication over the overarching purpose of coordination as it pertains to the pesticide regulatory issues identified by the commenter. At the same time, this rule does not impose delays on USDA decision making based on factors within the regulatory jurisdiction of other agencies, nor do we think that such delays would be appropriate.

With regard to the latter commenter, while FDA, EPA, and APHIS have distinct areas of regulatory oversight relative to GE organisms, the Agencies are committed to implementing Executive Order 13874, including its requirements that EPA and USDA streamline regulations and guidance documents within their purview and that these agencies ''use existing statutory authority, as appropriate, to exempt low-risk products of agricultural biotechnology from undue regulation.'' Where areas of overlapping jurisdiction exist, the Agencies are seeking to avoid redundant regulation. For example, FDA has jurisdiction over animals, including insects, but does not regulate when another agency is regulating, as APHIS is with GE moths and bollworm. With this rule, APHIS is avoiding redundant regulation with regard to microbial pesticides and plant incorporated protectants. As noted above, new § 340.5(f) states that a permit is not required for any GE microorganism product that is currently registered with the EPA as a microbial pesticide, so long as the microorganism is not a plant pest as defined in § 340.3. Similarly, § 340.5(g) states that a permit is not required for the movement of any plant modified solely to contain a plant incorporated protectant that is currently registered with the EPA or exempt from EPA regulations.

Finally, multiple commenters recommended that we provide greater clarity regarding the regulatory jurisdiction of two agencies within APHIS—Biotechnology Research Services (BRS) and Plant Protection and Quarantine (PPQ)—that regulate, among other things, GE and non-GE plants, respectively. The commenters expressed concern that some of the revisions we proposed, in particular those in § 340.2, may create opportunities for duplicative regulation of products under part 340 by BRS and under 7 CFR part 330 by PPQ.

The regulations in part 330 govern the movement of plant pests, biological control organisms, and associated articles, such as soil. Prior to a final rule [12] published in the **Federal Register** on June 25, 2019 (84 FR 29938–29967, Docket No. APHIS–2008–0076), the regulations in part 330 had specifically exempted from regulation under that part any plant pests that had been genetically engineered, as that term was defined in § 340.1. In the June 25, 2019 final rule, that specific exemption was removed from part 330. In its place, a requirement, currently found in § 330.200(a), was added. This new requirement provided that plant pests, biological control organisms, and associated articles that are not authorized for importation, interstate movement, or environmental release in accordance with part 330, and are not explicitly exempted from regulation under part 330, must be authorized for importation, interstate movement, or environmental release under other regulations in title 7 of the Code of Federal Regulations in order for that movement to be lawful.

The intent of this revision was to signal that there are multiple parts in title 7 of the Code of Federal Regulations, not just part 330, that contain requirements regarding the importation, interstate movement, or environmental release of plant pests, biological control organisms, or associated articles. However, we agree with the commenter that one of the unintended effects was to cause confusion within this rulemaking concerning the clear delineation between the requirements for the movement of GE plant pests, which are found in part 340, and the requirements for plant pests that had not been genetically engineered, which are found in part 330.

Accordingly, we are revising § 330.200 to indicate that GE plant pests and biological organisms are exempted from regulation under part 330, and are regulated under part 340.

A commenter expressed the concern that this rulemaking does not further the Coordinated Framework established in the 1980s among USDA, FDA, and EPA regarding federal biotechnology regulation. The commenter states that the proposed rule amended part of this Coordinated Framework without fully engaging EPA and FDA and did not reflect a truly holistic approach, in the spirit of the Framework, to updating the regulatory landscape for certain GE plants. The commenter strongly believes that APHIS should follow the intent of the Coordinated Framework.

APHIS has continued to coordinate with our Coordinated Framework partners at FDA and EPA on an ongoing basis, and we are committed to continuing this coordination with the implementation and operationalization of this rule. In 2017, the three agencies collaborated on an update to the Coordinated Framework. This update was intended to:

- Clarify which biotechnology product areas are within the authority and responsibility of each agency;
- Clarify the roles each agency plays in regulating different product areas, particularly for those products that fall within the scope of multiple agencies, and how those roles relate to each other in the course of a regulatory assessment;
- Provide a standard mechanism for communication and, as appropriate, coordination among agencies while they perform their respective regulatory functions, and identify agency designees responsible for this coordination function; and
- Specify the mechanisms and timelines for regularly reviewing, and updating as appropriate, the Coordinated Framework to minimize delays, support innovation, protect health and the environment and promote public trust in the regulatory systems for biotechnology products.

The updated Coordinated Framework is available at: *https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/2017_coordinated_framework_update.pdf.*

Additionally, as part of the rulemaking process, EPA and FDA have had the opportunity to comment on this proposal and to provide meaningful insight that informed this process.

Another commenter stated that language in the section of the proposed rule describing regulation of PMPI-producing plants suggests that the Coordinated Framework for regulating GE crops in the United States is not nearly as ''coordinated'' as is necessary to ensure the safety of our food supply. According to this commenter, a statute should be enacted to create a new Federal agency that would have explicit authority to provide oversight over all GE organisms (plants, animals, and GE

[12] To view the rule, its supporting documents, or the comments that we received, go to *https://www.regulations.gov/docket?D=APHIS-2008-0076.*

microorganisms) for all possible risks, including plant pest and noxious weed risks, environmental risks to beneficial organisms as well as to ''neutral'' organisms like monarch butterflies, and human health risks such as those associated with animal carcinogens and probable human carcinogens like glyphosate.

Regulation of PMPI-producing GE plants is discussed above. The remainder of this comment is outside the scope of the current rulemaking and of APHIS' regulatory authority. We note, moreover, that scientific evidence does not support the conclusion that GE organisms, as a class, present risks that are different in degree or kind from the risks that are presented by comparable non-GE organisms (NRC, 2010; NAS, 2016b)

NEPA Implementing Regulations

As noted earlier, the June 2019 proposed rule proposed that the notification and petition processes be removed from the regulations. Concurrently, we proposed to remove language pertaining to notifications and petitions from the NEPA implementing regulations in 7 CFR part 372. Specifically, we proposed to remove language pertaining to notifications from § 372.5(c)(3)(iii), and to remove language pertaining to petitions from paragraphs (b)(7) and (c)(4) of § 372.5. These changes were proposed to make the NEPA regulations consistent with the proposed revised part 340.

Several commenters recommended that APHIS revise its NEPA implementing regulations to ensure that individual actions taken under the proposed rule are appropriately addressed and to describe the type of environmental analysis and documentation that will generally be developed. One commenter stated that APHIS should revise § 372.5(b) to include the proposed RSR as a type of action that normally requires an environmental assessment but not necessarily an Environmental Impact Statement. Another commenter recommended that APHIS clarify that certain actions are not expected to have an impact on the environment and therefore qualify for a categorical exclusion from the requirements of NEPA.

APHIS disagrees with the suggestion that part 372 needs to be further revised to more specifically describe the type of environmental analysis that is necessary for individual actions under the final rule. Actions will be accompanied by appropriate environmental analysis based on the degree of environmental impact, consistent with the final programmatic environmental impact statement (PEIS). In regard to the new proposed RSR, APHIS stated in the final PEIS that RSRs will be accompanied by an appropriate environmental analysis depending on the degree of environmental impact.

APHIS seeks to further clarify APHIS' NEPA obligations under various circumstances. When a modified plant qualifies for one of the exemptions in § 340.1(b), (c), or (d), the plant is not subject to part 340 at all and APHIS renders no determination regarding its plant pest risk. Therefore, APHIS will not complete a NEPA analysis for the plant.

In the case of RSRs, whether conducted before or after a person requests a permit, only some outcomes will require analysis pursuant to NEPA. If, after initial review, APHIS finds a plausible pathway to increased plant pest risk, APHIS will conduct a Plant Pest Risk Assessment (PPRA) to evaluate the factor(s) of concern. In this situation, APHIS will complete a NEPA analysis, as appropriate, for an unconfined environmental release. Finally, when permits are issued for confined environmental release, NEPA will apply as appropriate. Under most circumstances, confined environmental releases are categorically excluded in part 372 from the need to prepare an Environmental Assessment or an Environmental Impact Statement.

List of Taxa

In the preamble to the June 2019 proposed rule, we noted that we were proposing to remove the list of taxa containing plant pests from the regulations. Instead, APHIS proposed to maintain a list of taxa that contain plant pests on its website. We explained that the list on the website would be more useful and reliable than a static list of taxa, which becomes outdated. We solicited public comment on the proposed change.

Commenters supported this change. One commenter, however, suggested that it would be useful to maintain a version history on the website, so that developers can be aware of the latest updates. The commenter also recommended that whenever the website is updated, APHIS should send an email notification to stakeholders. Another commenter requested clarification on how the list would be maintained and modified.

APHIS agrees with the comment. Since taxonomic designations sometimes change and new plant pests are continually being discovered, APHIS will maintain a version history for the list of taxa that contain plant pests and will provide an email notification to stakeholders when the list is changed.

Oversight and Transparency

Some commenters expressed the concern that the regulatory framework set forth in the June 2019 proposed rule would result in an overall weakening of APHIS' regulatory oversight over GE products. Commenters discussed a number of potential consequences of what they regarded as diminishing APHIS' oversight role. As noted earlier in the discussion pertaining to allowing developers to determine whether their products are eligible for exemption, commenters were concerned that there could be an increased risk of commingling of non-GE crops with GE crops. It was also stated that because GE crops are already associated with greater herbicide and pesticide use than non-GE crops, the rule could result in the development of more herbicide- and pesticide-resistant pests and weeds, leading to increased environmental and human health risks. Some commenters stated that we needed to strengthen, rather than loosen, our regulatory oversight.

We have addressed many of these issues earlier in this document and the PEIS (§§ 4.3.5 Agricultural Weeds and HR management; 4.6.2 Domestic Socioeconomic Environment; and 4.6.3 International Trade). Additional discussion is presented below, under the heading ''General Opposition to GE Products.'' As we have noted, however, these issues are mostly outside the scope of the current regulations and of our statutory authority under the PPA.

It was also suggested that the proposed new regulatory framework could lead to a loss of transparency. Growers of non-GE crops, as noted above, could lose access to information about neighboring GE crops. According to some commenters, the public would also lose access to important data. In particular, field-test data would no longer be available to the public because the submission and publication of such data would not always be required under the proposed rule.

One commenter recommended that in addition to providing the information currently set forth in the proposed rule, APHIS should establish on its website a single list of all GE organisms that are being released into the environment. According to the commenter, that list should include all plant-trait-MOA combinations, all RSRs, all permitting, and all confirmations of developers' determinations of an exemption. The commenter believes that with a complete and accurate list of all GE organisms that have been released into

the environment, food industry stakeholders and the public will be able to determine which GE plants have entered the food supply. Further, according to the commenter, a transparent and comprehensive list will provide helpful information if any food safety and environmental threats materialize. In the commenter's view, this information will also be important for international trade because it may prevent unnecessary trade barriers from being constructed based on inaccurate information about which GE plants may be entering a country without the proper regulatory approval. Also, according to the commenter, it will improve consumer confidence about GE plants because consumers will realize that their existence is not being hidden from them. The commenter recommended that to be as useful and as transparent as possible, the list should include information about the plant, the type of modifications or edits performed, the changed traits, a summary of data about the benefits of the traits, and any testing for safety concerns.

We do not agree with these comments. Under this rule, APHIS will continue to make information available that is related to permits issued under § 340.5. APHIS will also make information available concerning responses to confirmation requests under § 340.1 and RSR requests and results under § 340.4. The information will be available at *https://www.aphis.usda.gov/aphis/ourfocus/biotechnology.* As to organisms that are not regulated by APHIS, APHIS is not in the best position to provide accurate and up-to-date information about such organisms. In this regard, APHIS notes that pursuant to Executive Order 13874, USDA, EPA, and FDA recently released a unified website that provides a one-stop-shop for information about the actions that the Federal Government is taking to oversee the development of agricultural biotechnology products. See *https://usbiotechnologyregulation.mrp.usda.gov/biotechnologygov/home.* The website provides links to relevant USDA, EPA, and FDA websites. See *https://usbiotechnologyregulation.mrp.usda.gov/biotechnologygov/resources.*

General Opposition to GE Products

Many individuals who commented opposed the rule because of their concerns about GE products generally. An issue of particular concern, raised by a large number of commenters, was the possibility of unsafe GE products' getting into the food supply without consumers' knowledge. Many of the commenters favored labeling of foods derived from GE products. Commenters expressed the view that genetic engineering techniques are not as safe as conventional breeding methods and that all products developed using genetic engineering should be regulated, with no exemptions allowed. Others stated that we should require long-term testing of GE products prior to allowing commercialization. It was further stated that in light of these considerations, our proposed regulatory approach, with its focus on unfamiliar products developed using genetic engineering, does not adequately evaluate products of genetic engineering for potential long-term risk. Many commenters argued that all GE organisms should be subject to assessments of their long-term effects on the environment and human health and also evaluated for indirect economic effects. Commenters also claimed that the proposed rule, with its deregulatory emphasis, favored certain economic interests at the expense of public health and safety and the environment.

One commenter further stated that APHIS or a new GE organism-specific agency should provide oversight over all GE organisms for all possible risks, including any associated with the MOA used for gene insertion, *e.g.* extra antibiotic-resistance genes, insertional mutations, and unintended changes in the inserted genetic material. According to this commenter, APHIS should require developers of GE organisms to utilize the precision of the technology available to identify the off-target effects of genetic engineering and to ensure that associated risks are minimal.

The comments discussed above appear to be based on the premise that the genetic engineering process itself is inherently risky. As we noted in the preamble to the June 2019 proposed rule, and in this document, available evidence, including reports from the National Academies of Sciences, Engineering, and Medicine cited earlier in this document, does not support this view. Moreover, the comments discussed above do not reflect an accurate understanding of the limits of APHIS' statutory authority, as explained elsewhere in this preamble.

In the reports we cited, issued in 1987 and 1989, respectively, by the NRC,[13] [14] it was stated that there was no evidence for unique hazards inherent in the use of recombinant DNA techniques and that with respect to plants, crops modified by molecular and cellular methods should pose risks no different from those modified by conventional breeding methods for similar traits. A key conclusion from these reports, taken together, is that it is not the process of genetic engineering *per se* that imparts the risk, but the trait or traits that it is used to introduce. A more recent NAS report, issued in 2016, reaffirmed this conclusion.[15]

Several commenters took a position diametrically opposed to the comments discussed above. The commenters stated that there is no scientific rationale for the continued regulation of plant products developed using genetic engineering techniques and legacy methods.

We do not agree with this comment. As discussed above, responsibility for regulating GE and non-GE plants for plant pest risk is divided between APHIS BRS and APHIS PPQ. In both cases, plants and plant products are regulated or not regulated based on the risk of introducing or disseminating plant pests that may be posed by their movement or release into the environment. Because some (but not all) GE and non-GE plants are associated with increased risk, it is necessary for APHIS to regulate such plants in order to carry out its mission of protecting U.S. agriculture.

Concerns were expressed by the organic farm industry regarding the economic impact that the regulatory relief offered to developers in this rulemaking would have on organic farmers, particularly as it relates to the issue of GE crops commingling with organic crops. The commenters stated that APHIS must consider how it will address the needs of USDA-certified organic operations to prevent commingling with GE organisms. Such considerations, it was stated, were not addressed in the proposed rule. The commenters asserted that the USDA National Organic Program regulations prohibit the use of genetic engineering in the production of agricultural products marketed as organic in the United States. According to these commenters, even inadvertent presence of GE organisms can jeopardize the organic status of an otherwise compliant organic product, and can lead to loss of markets and significant industry disruption. Organic farms that reported crop loss from the presence of GE organisms between 2011 and 2014

[13] Introduction of Recombinant DNA-Engineered Organisms Into the Environment: Key Issues. 1987. NRC. Washington, DC. National Academies Press (US).

[14] Field Testing Genetically Modified Organisms: Framework for Decisions. 1989. NRC (US) Washington (DC). National Academies Press (US).

[15] NAS. 2016. Genetically Engineered Crops: Experiences and Prospects. Washington, DC: The National Academies Press. doi: 10.17226/23395.

reported an average loss of $70,000 per farm (2014 USDA Organic Survey).

APHIS has fully considered these factors from an economic perspective and would refer the commenter to the economic analysis accompanying this final rule. APHIS in that analysis expanded the discussion of the various costs, including the costs associated with buffer strips, spatial and temporal isolation, and the loss of premiums associated with the risk to organic and non-GE growers from cross-pollination or commingling. We note that organic crops and non-GE products that are kept separate from their GE equivalents are treated as value-added crops commanding premiums that vary according to prevailing supply and demand conditions. Organic and other identity-preserved crops generally receive a price premium, a premium adversely impacted by the unintended presence of GE traits. The premiums compensate farmers and traders for incremental costs they incur, including those borne to maintain the segregation of non-GE and other IP production from GE crops throughout the supply chain (through buffer zones, spatial and temporal isolation, etc.). In the United States, the coexistence of GE and non-GE production systems has been left to market forces. Non-GE growers bear costs of coexistence and, in turn, pass those costs on to purchasers of non-GE crops (Kalaitzandonakes and Magnier, 2016).

One commenter stated that in addition to the threat of economic harm from unintended presence of GE plant material, farmers who unintentionally grow patented GE seeds or who harvest crops that are cross-pollinated with GE traits could face costly lawsuits by biotechnology companies for ''seed piracy.''

The issue raised by the commenter is outside the scope of the plant pest authority delegated to APHIS under the PPA.

Some commenters argued that APHIS should conduct ongoing monitoring and assessment of GE product impacts both in pre-market field trials and following commercialization in order to protect the integrity of conventional and organic seed and crops from prohibited substances and excluded methods, including the methods of genetic engineering. According to these commenters, safeguards and monitoring must be required for the organism post-commercialization, and the FDA GRAS (Generally Recognized as Safe) notification process is not enough for such safeguards. In these commenters' view, monitoring should include tracking changes associated with ecosystem harm, such as degradation of water quality, air pollution, climate impacts, or loss of biological resources. The commenters believe that this process must be rigorous, transparent, and inclusive of APHIS's plant pest and noxious weed authority under the PPA.

APHIS does not agree with these comments. Once APHIS determines that a plant product does not pose a plant pest risk, APHIS has no further authority to regulate it as such and to mandate requirements for the submission of data unless there are new facts, such as a compliance incident, that warrant such action. The FDA regulates human and animal food from GE plants as FDA regulates all food within its regulatory jurisdiction. The existing FDA safety requirements impose a clear legal duty on everyone in the farm to table continuum to market safe foods to consumers, regardless of the process by which such foods are created. It is unlawful to produce, process, store, ship or sell to consumers unsafe foods. Comments concerning FDA's process and requirements should be directed to FDA.

One commenter discussed the need for compensating organic and other growers of non-GE crops who could suffer harm as a result of this rulemaking. It was argued that we need to establish a compensation mechanism for those harmed by commingling, and that liability in cases of commingling caused by GE crops should rest with the developers or patent holders. One commenter also recommended that we establish a fair compensation mechanism for losses caused by herbicides drifting from fields planted with herbicide-resistant GE plants.

We thank the commenters for these recommendations; however, they fall outside the scope of the regulations in part 340, which establish the oversight and regulation of certain GE organisms. Regarding the final comment, application protocols/practices for pesticides are established and enumerated through EPA's labeling requirements. Once APHIS determines that a plant product does not pose a plant pest risk, it is not subject to our regulations in part 340 unless there are new facts, such as a compliance incident, that warrant such action.

Additional Comments

Commenters offered a number of additional recommendations that are beyond the scope of the current rulemaking. Some commenters recommended that we invest in research to develop lower-cost rapid testing technology. It was further suggested that we commit resources to researching, tracking and analyzing incidences of unintended GE presence and associated economic losses at all levels of the supply chain. One commenter recommended that we coordinate with the USDA Agricultural Marketing Service to establish contract protections for organic and identity preservation grain growers to ensure that they have fair access to testing data and recourse.

We thank the commenters for these recommendations. As noted above, however, all of these recommended activities would fall outside the scope of the regulations in part 340, which establish the oversight and regulation of certain GE organisms.

One commenter stated that APHIS should consider protection goals that align with making U.S. agriculture more sustainable, more environmentally friendly, and less in need of future ''solutions'' to genetic-engineering-produced noxious weed problems that involve developing additional GE crops engineered to be tolerant of different, more noxious herbicides.

This comment is outside the scope of these regulations. The PPA provides for detection, control, eradication, suppression, prevention or retardation of plant pests or noxious weeds.

Another commenter expressed concern over biodiversity and food security in the context of accelerating climate change. The commenter stated that genetic uniformity leads to disease susceptibility and that biodiversity management systems need to be improved in terms of equity. According to the commenter, we need systems that support keeping diverse seeds in use, but genetic engineering has gone hand in hand with large monoculture production.

This comment is outside the scope of these regulations. We note, however, that the concerns identified by the commenter do not seem specific to genetic engineering.

Other commenters expressed concerns about corporate concentration and what they viewed as related feedback loops of seeds and chemical use. Particular concern was expressed over the possible consolidation of the seed industry that commenters thought could result from this rulemaking. It was stated that legal and government systems favor the largest companies, and that efforts to check the power of the largest seed companies have been overridden or have fizzled out.

APHIS acknowledges the concern that the commenters have raised on this topic. The regulations proposed under part 340 are intended to streamline and offer additional regulatory relief to developers of all sizes. We anticipate

that since smaller-scale business and academics have limited resources and capacity to navigate regulatory systems, this rule will provide especially acute benefits to smaller researchers and businesses. APHIS has outlined and provided detailed descriptions of this dynamic in the economic analysis accompanying this regulation.

Some commenters opposed the elimination of the notification and petition procedures contained in the existing regulations. It was stated that APHIS should not eliminate the petition process without more clearly defining a streamlined, predictable path through which responsible individuals can establish that their innovation no longer needs to be reviewed by APHIS prior to release and commercialization. Commenters opposed eliminating the notification procedure because they were concerned that doing so would require many developers to go to permitting, potentially disrupting business practices. Alternatives suggested by these commenters included adding provisions for streamlined permitting with standardized conditions for low-risk organisms and returning to requiring individuals to provide information on how they intend to meet performance standards.

In many ways, the APHIS evaluations for notifications under current regulations are very similar to those done for permit applications, but the notification procedure relies on applicants' agreeing to meet the performance-based standards described in the regulations rather than submitting an application for APHIS review describing the specific measures that they will employ for the activity (as is the case for permits). With permits, but not with notifications, APHIS can accept the proposed measures or add to them, and the result is a set of binding customized permit conditions.

We will not be making any changes in response to these comments. As we noted in the preamble to the June 2019 proposed rule, the notification procedure in the current regulations relies upon performance-based standards. Since the specific measures that constitute compliance with the regulations are not enumerated in the performance standards, it can be difficult for APHIS inspectors to determine whether a notification holder is in compliance. This uncertainty can make enforcing the regulations, and thereby protecting U.S. agriculture from plant pest risks, more difficult than it would be if compliance measures were clearly enumerated as they are in specific conditions under a permit. For this reason and to comply with OIG recommendations with which we agreed, we proposed to eliminate the notification procedure. We do not agree with the recommendation to provide streamlined permit conditions for low-risk organisms. The standard permitting conditions in § 340.5(i) are needed to ensure that activities conducted under permit for all GE organisms can be performed with adequate mitigations for plant pest risk. Differences in the level of risk associated with different organisms will be reflected in the supplemental permitting conditions.

The current petition process for GE plants stems from the manner in which *regulated article* is defined. As noted above, the current regulations consider a GE organism to pose a plant pest risk and therefore be a regulated article if the donor organism, recipient organism, vector, or vector agent is a plant pest. Under the proposed regulations, however, we would evaluate whether an organism would require a permit for movement based on the characteristics of the organism itself rather than on the method by which the organism is genetically engineered. Based on the proposed change in approach, APHIS believes that the petition process is no longer necessary and is removing the petition process from the regulations. (As discussed previously in this document, however, until RSR is available for a particular crop, we will continue to receive petitions under the process for that crop.)

Some commenters advocated that we retain the existing regulatory framework rather than adopting the one we proposed. In the view of one commenter, the proposed rule constituted a shift from a streamlined, performance-based regulatory approach to a more prescriptive one. The commenter saw that shift as a step backwards. Another commenter expressed a preference for the process-based approach of the existing regulations rather than the product-based one that we proposed. The commenter stated that APHIS should regulate biotechnology products based on the process by which they are created, using genetic engineering as the trigger for regulatory review, to ensure that none evade oversight entirely.

For reasons discussed at length in this document and in the June 2019 proposed rule, we do not agree with these comments.

One commenter viewed our overall regulatory approach as not sufficiently flexible to take into account the relative risk levels associated with different crops. The commenter recommended that we consider such differences when making determinations about the appropriate levels of regulation for different crops. We do not agree with this comment. Our assessment of the risks associated with specific GE crops will be reflected in our RSR determinations and in the permit conditions we assign.

One commenter stated that our policy on low-level presence of Regulated Genetically Engineered Plant Materials, discussed in the 2008 proposal, is absent from this one.

APHIS intends to continue its support of U.S. trade agencies to address low level presence issues, as is further discussed above. This approach is consistent with APHIS' statutory authority to regulate plant pests, as further explained above.

One commenter stated that the June 2019 proposed rule lacked the summary of commenters that is common to proposed rules from other agencies. The commenter stated that APHIS should publish such a summary in the final rule and should hold at least one public consultation with stakeholders that do not have a direct or indirect financial interest in the proposed regulations.

We do not agree with this comment. As we noted in the preamble to the June 2019 proposed rule: ''Following the withdrawal of the January 2017 proposed rule, APHIS conducted extensive outreach to Land Grant and public university researchers, as well as small-scale biotechnology developers, agriculture innovators, and other interested stakeholders. In total, APHIS met with more than 80 organizations, including 17 universities, State Departments of Agriculture, and farmer organizations.'' In this final rule, we have further delineated the nature of these discussions.

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the processes in this final rule, we have prepared a final environmental impact statement (EIS). The final EIS is based on a draft EIS, which we drafted after soliciting public comment through a notice in the **Federal Register** to help us delineate the scope of the issues and alternatives to be analyzed. The final EIS responds to public comments, analyzes each alternative and its environmental consequences, if any, and provides APHIS' preferred alternative. The EIS was prepared in accordance with: (1) NEPA, as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions

of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the final EIS are available on the *Regulations.gov* website (see footnote 3 in this document for a link to *Regulations.gov*) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Executive Orders 12866, 13563, 13771 and Regulatory Flexibility Act

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

This final rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which 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, and equity considerations). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis also provides a final regulatory flexibility analysis that examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available on the *Regulations.gov* website (see footnote 1 in this document for a link to *Regulations.gov*) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

The revisions to part 340 in this final rule create the framework for more focused, risk-based regulation of the GE organisms that pose plant pest risk. Under this rule, certain categories of plants are exempted from the regulations in part 340. Developers are able to determine, when appropriate, whether their products fit into one of the exempted categories and are therefore not subject to APHIS' regulations.

The rule also provides for a process to determine the regulatory status of a plant under part 340. GE plants having the same plant-trait-MOA combination as those previously found by APHIS to be not subject to the regulations will not be regulated, nor will they be required to undergo an RSR. GE plants found likely to pose a plant pest risk and GE plants that are not eligible for an RSR will be allowed to move only under permit. For plants that do not fall into any of the exempted categories and are eligible for an RSR, developers have the option of either requesting a review or requesting a permit for the movement (including importation, interstate movement, or environmental release) of their organism in lieu of an RSR. Developers of GE organisms that are plant pests will continue to need permits to import, move interstate, or environmentally release those organisms.

Shipping standards under this rule are less prescriptive and more generally applicable, and the rule provides for the issuance of multi-year permits. The provisions for record retention, compliance, and enforcement have been altered to ensure that APHIS has sufficient information to monitor compliance with its regulations and maintain effective oversight of regulated GE organisms, in accordance with provisions of the 2008 Farm Bill and recommendations of the 2015 USDA OIG report on GE organisms. These changes improve the efficiency and clarity of the regulations.

The amendments in this rule will benefit developers, producers, and consumers of certain GE organisms; public and private research entities; and APHIS. There will be no decrease in the level of protection provided against plant pest risks. The regulatory framework, including the RSR process used to determine regulatory status established under this rule, will provide cost savings to some plant developers and will allow for reallocation of APHIS resources to Biotechnology Regulatory Services (BRS) priorities.

Under this rule, APHIS regulatory oversight (through permitting) will not be required for plants that fall into one of the exempted categories or have been assessed by means of an RSR and have been found unlikely to pose an increased plant pest risk relative to its comparator. Direct regulatory costs to some plant developers will be reduced for the development of GE plants for which APHIS permits are no longer necessary. Savings to the regulated community will result from a reduced need to collect field data, fewer reporting requirements, and lower management costs. Costs now associated with petitions for non-regulated status will be reduced or eliminated where APHIS permits are no longer necessary.

Cost savings for these entities are expected to more than offset the new costs. APHIS estimated the cost savings for two regulatory oversight scenarios where USDA either has sole regulatory authority or shares oversight with EPA and/or FDA, based on a study of the costs encountered by private biotechnology developers as they pursue regulatory authorization of their innovations. When only APHIS has regulatory oversight, compliance cost savings under the rule could range from $1.6 million to $5.6 million ($3.6 million on average) for the development of a given GE plant. If EPA and/or FDA also have an oversight role in the development of a given GE plant, compliance cost savings could range from $551,000 to $937,000 ($744,000 on average; see Table A below and Table 5 of the RIA). From 1992 through September 2019, an average of just under 5 petitions were processed (granted non-regulated status or the petition withdrawn) in a given year, with a high of 14 in 1995. As the rule is expected to spur innovation, we expect the number of new GE plants developed annually to increase over time. In particular, the rule may provide impetus to the development of new horticultural varieties, where the costs of acquiring non-regulated status in the past may have been prohibitively high relative to the potential market.

In the following estimate of impacts, we use the average cost savings reported above per GE plant developed and assume the annual number of new GE plants developed under the rule without APHIS permits ranges from 5 (the current annual average number of processed petitions) to 10 (twice this average). We further assume that about 20 percent of those new GE plants are solely within the purview of APHIS oversight, and that the remaining 80 percent will also be under the purview of FDA and/or EPA oversight. If five new GE plants are developed annually without APHIS permits (all with no APHIS permit, but four still with EPA and/or FDA evaluation), the annual savings would be $6.5 million.[16] If 10 new GE plants are developed annually without APHIS permits (all with no APHIS permit, but 8 still with EPA and/or FDA evaluation), the annual savings will be $13.1 million.[17]

New costs borne by regulated entities under the rule will include rule familiarization and recordkeeping. Annual recordkeeping costs are based

[16] 1 × $3,573,500 = $3,573,500. 4 × $744,000 = $2,976,000. $3,573,000 + $2,976,000 = $6,549,500.

[17] 2 × $3,573,500 = $7,147,000. 8 × $744,000 = $5,952,000. $7,147,000 + $5,952,000 = $13,099,000.

on information collection categories that were described in the Paperwork Reduction Act section of the proposed rule, and are estimated to total about $1,070,000. New maintenance and record retention requirements in this rule should not significantly affect permit holders. While some of the specific records required under this rule were not explicitly included in the current regulations, they have been required as part of the supplemental permit conditions that accompany an issued permit. These records are integral to the activities under the permit and should already be maintained by the permit holder as a normal part of business operations and therefore readily be accessible. About 1,250 distinct entities have applied for permits or notifications under part 340. APHIS estimates that each of those entities will spend a total of about 24 hours becoming familiar with the provisions of this rule, at a total one-time cost of about $1.5 million.

Some plants that would not have been regulated under previous regulations in part 340, because a plant pest was not used in their development, would now be under the purview of APHIS oversight. APHIS expects the number of plants in this category will be very small, likely less than 1 per year based on historical activity. For those few instances where an APHIS permit is required, developers could incur new costs associated with permitting ranging from about $13,000 to $671,000, depending on recordkeeping, reporting, stewardship, and testing requirements.[18]

In accordance with guidance on complying with Executive Order 13771, the primary estimate of the annual net private sector cost savings for this rule is $8.3 million. This value is the mid-point estimate of the net private cost savings annualized in perpetuity using a 7 percent discount rate.

Current annual APHIS personnel costs for conducting genetic engineering related activities that will be affected by this rule total about $3.4 million. These include compliance activities, inspection activities, 'Am I Regulated' (AIR) process activities, notification activities, permit activities, and petition activities. Under this rule, APHIS' overall annual personnel costs of regulating GE plants are not expected to change. While the volume of specific activities will change, the overall volume of regulatory activities, the general nature of those activities, and the level of skills necessary to perform those activities will not change.

Costs to APHIS of implementing this rule include outreach activities, developing guidance documents, training, and adjusting the permit system. APHIS estimates that public outreach, guidance and training will cost about $77,000. Requests for RSRs and response letters under the rule will be handled in a manner similar to the current AIR process, outside the electronic permitting system and without incurring new costs.

Certain plants are genetically engineered in order to produce PMPIs. To date, PMPI-producing GE plants regulated by APHIS have been genetically engineered using a plant pest as the donor, vector, or vector agent, and thus fall under the scope of regulated article in the current regulations in part 340. In this rule, APHIS will maintain its oversight of PMPI-producing plants. In this final rule, we are adding this requirement to § 340.2, as paragraph (e), which states that a permit is required for the movement of a plant that encodes a product intended for pharmaceutical or industrial use.

Certain plants are genetically engineered to produce PIPs, meaning that they produce pesticides. APHIS has regulated those PIP-producing plants that are captured by current regulations, *i.e.,* when plant pests or plant pest sequences are used. The PIPs also fall under the regulatory oversight of EPA. However, because EPA generally requires Experimental Use Permits (EUP) only for field tests on 10 acres or more of land, APHIS has exercised regulatory oversight of PIP plantings on fewer than 10 acres. Under this rule, GE PIP-producing plants that are unlikely to pose an increased plant pest risk relative to their comparators will not be regulated by APHIS following an RSR. Therefore, under this rule Federal oversight of GE PIPs will rest solely with EPA. EPA may decide to require EUPs for all, some, or none of the PIPs for test plantings on fewer than 10 acres of land, and may conduct inspections of all, some, or none of the PIPs that are under permit. EPA may also exempt certain PIPs from requirements under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA). Current inspection costs incurred by APHIS average roughly $800 per inspection.

A quicker APHIS evaluation process will mean a shorter period of regulatory uncertainty that may facilitate developers' ability to raise venture capital. Reduced regulatory requirements may also lead to greater participation by public and private academic institutions in genetic engineering research and product development. These indirect benefits of the rule may spur genetic engineering innovations, particularly in small acreage crops where genetic engineering has not been widely utilized due to the expense of regulation.

In general, new plant varieties, including GE crop varieties, are not required to be reviewed or approved for food safety by the FDA before going to market. However, the developer is responsible for ensuring product safety and developers of GE plant varieties have routinely consulted with FDA prior to marketing new varieties to resolve food safety or other questions about food within FDA's jurisdiction.

APHIS expects that stewardship practices currently used to conduct field trials of GE plant varieties will be maintained under the new rule. It will be in a plant developer's best interest to supervise and control the development process as at present, to prevent undesired cross-pollination or commingling with non-GE crops. Developers have various legal, quality control, and marketing motivations to maintain rigorous voluntary stewardship measures. APHIS therefore believes that developers will continue to utilize strict control measures for field testing even in cases where APHIS does not require a permit.

Farmers who adopt GE crops may benefit from the rule. GE crop adoption varies by crop and technology and can affect yields, net returns, and pesticide use. Fernandez-Cornejo, *et al.* (2014) showed that planting insect-resistant cotton and corn seed is associated with higher net returns when pest pressure is high. The extent to which adoption of herbicide tolerant (HT) traits affects net returns is mixed and depends primarily on how much weed control costs are reduced and seed costs are increased. HT soybean adoption is associated with an increase in total household income because HT soybeans require less management and enable farmers to generate income via off-farm activities or by expanding their operations. Farmers may benefit by having access to a wider variety of traits as well as a greater number of new GE crop species,

[18] Additional recordkeeping and reporting costs could be about $13,000 annually for a field trial that requires 25 reports per year. Because few plants tested in the field are likely to demonstrate commercial viability, we expect they would be tested on a limited number of sites. Additional stewardship costs could range from about $20,000 to $120,000. In the rare case in which a plant demonstrates commercial viability and warrants further data collection under the RSR process, the developer could incur additional testing costs, which under current regulations are estimated to range between about $152,000 and $538,000. Because the data required under the RSR process will be more targeted than under the current process, testing costs would likely be closer to the lower bound.

affording them a broader selection of crops to suit their particular management objectives. Among the types of innovations expected are crops with greater resistance to disease and insect pests; greater tolerance of stress conditions such as drought, high temperature, low temperature, and salt; and more efficient use of fertilizer. These types of traits can lower farmer input costs (water, fertilizer, pesticide) and increase yields during times of adverse growing conditions.

As mentioned, regulatory costs are expected to be lower under this rule, thereby potentially spurring developer innovation, especially among small companies and universities. Consumers will benefit from a wider variety of available products, including ones with improved taste, storage longevity, or nutritional content. In terms of the potential benefits of GE crop plants, an emerging area of interest is the nutritional modification of crop plants through the use of biotechnology to provide human health benefits. Some of these types of modifications are discussed in the EIS in section 4.4.1.4. They include rice varieties developed to provide vitamin A and to address iron and folate deficiency; wheat varieties with reduced levels of celiac-disease-triggering gliadins and with increased levels of lysine and zinc; and cyanide-free cassava. Innovations may also benefit consumers through lower prices for existing products.

In addition to the compliance costs associated with regulation, there are opportunity costs of delayed innovation if the approval process for a plant is longer than necessary to ensure safety with reasonable scientific certainty. Regulatory delays mean that the benefits of innovation occur later than they would otherwise and most likely at lower levels. The forgone benefits due to delayed innovation can be substantial and developers, producers and consumers all lose from regulatory delays. The forgone benefits stemming from even a relatively brief delay in product release can overshadow both research and regulatory costs.

It should be noted that while the rule will alter APHIS' evaluation process for GE plants, it is not expected to affect the evaluation of such plants by FDA or EPA or foreign regulatory agencies, the actions of whom may affect the opportunity costs of regulatory delay. When FDA and/or EPA also have a regulatory role, substantial time savings due to the rule are most likely to be realized in those instances in which the APHIS process takes the longest time. When APHIS is the only agency with oversight (as with many new horticultural varieties such as petunias or carnations modified to produce different flower color, morphology, or longevity), there could be significant time savings over the current petition process.

Some farmers (*e.g.,* growers of identity-preserved crops, including organic, other non-GE and other agricultural commodities segregated for specific purity and quality tolerances) could be indirectly negatively impacted by increased GE innovations. Identity preservation (IP) refers to a process or system of maintaining the segregation and documenting the identity of a product. Crops with unique product quality traits such as low linolenic canola require IP to capture the added value. Similarly, organic commodities must be produced according to specific criteria and segregated in the marketplace in order to receive premium prices. Some consumers choose not to purchase products derived from GE crops and instead purchase commodities such as those labeled ''non-GMO.'' In addition, the USDA organic standard does not allow for the intentional use of GE seeds. In cases where crops intended for the non-GE or other identity-preserved marketplaces contain unintended GE products, their profitability may be diminished. Unintended GE presence and diminished profitability may also occur for identity-preserved GE crops with special attributes. Such crops are more likely to be developed under the new rule.

Effects of this rule on the variety of GE crop species grown in the United States and their wider adoption may increase the possibility of cross-pollination or commingling. As commercial acreage of any given GE crop increases and as a greater variety of crops are modified using genetic engineering, the potential for more instances of unintended presence of a GE organism increases. Costs incurred by growers of organic and other identity-preserved varieties who seek to prevent such unintended presence may increase.

Entities potentially affected by the rule fall under various categories of the North American Industry Classification System. Economic data are not available on business size for some entities. Nonetheless, based on industry data obtained from the Economic Census and the Census of Agriculture, we can assume that the majority of the businesses affected by the rule will be small.

Table A provides a summary statement of the expected direct costs and cost savings of the rule:

TABLE A—EXPECTED COSTS AND COSTS SAVINGS OF THE RULE FOR THE BIOTECHNOLOGY INDUSTRY AND FOR APHIS

[2016 dollars]

Biotechnology Industry One-time industry-wide costs of rule familiarization	$1,468,000.	
Annual industry-wide recordkeeping costs	$1,070,000.	
Annual cost of permits for plants not previously regulated [1]	$13,000 to $671,000.	
Developer Savings per Trait [2]	Lower Bound Estimate	Upper Bound Estimate.
APHIS sole regulatory oversight	$1,559,000	$5,588,000.
APHIS oversight together with FDA and/or EPA oversight	$551,000	$937,000.
APHIS Biotechnology Regulatory Services Annual costs for public outreach, training, and e-permitting [3]	$77,000.	

[1] The number of plants in this category is expected to be very small, likely less than 1 per year based on historical activity. The range in cost shown is for one permit. The actual cost will depend on additional recordkeeping, reporting, stewardship, and testing requirements.

[2] These savings are shown on a per trait basis. On average, if five new GE plants are developed annually without APHIS permits (all with no APHIS permit, but four still with EPA and/or FDA evaluation), the annual savings will be $6.5 million. If 10 new GE plants are developed annually without APHIS permits (all with no APHIS permit, but 8 still with EPA and/or FDA evaluation), the annual savings will be $13.1 million.

[3] Requests for regulatory status and response letters under the rule will be handled in a manner similar to the current 'Am I Regulated' process, outside the electronic permitting system and without incurring new costs.

Executive Order 12372

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

Executive Order 12988

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

Executive Order 13175

The USDA's Office of Tribal Relations (OTR) has assessed the impact of this rule on Indian Tribes and determined that this rule has Tribal implications; however, OTR has determined that Tribal consultation under Executive Order 13175 is not required at this time.

If a Tribe requests consultation, APHIS will work with the OTR to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), some of the information collection requirements included in this final rule have been approved under Office of Management and Budget (OMB) control number 0579–0085 and some of the information collection requirements were filed under OMB comment-filed number 0579–0471, which has been submitted to OMB for approval. When OMB notifies us of its decision, if approval is denied, we will publish a document in the **Federal Register** providing notice of what action we plan to take.

E-Government Act Compliance

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

Congressional Review Act

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

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List of Subjects

7 CFR Part 330

Customs duties and inspection, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

7 CFR Part 340

Administrative practice and procedure, Packaging and containers, Plant diseases and pests, Reporting and recordkeeping requirements, Transportation.

7 CFR Part 372

Environmental impact statements.

Accordingly, we are amending 7 CFR parts 330, 340, and 372 as follows:

PART 330—FEDERAL PLANT PEST REGULATIONS; GENERAL; PLANT PESTS, BIOLOGICAL CONTROL ORGANISMS, AND ASSOCIATED ARTICLES; GARBAGE

■ 1. The authority citation for part 330 continues to read as follows:

Authority: 7 U.S.C. 1633, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

■ 2. In § 330.200, paragraphs (b) and (d) are revised to read as follows:

§ 330.200 Scope and general restrictions.

* * * * *

(b) *Plant pests regulated by this subpart.* For the purposes of this subpart, and except for an organism that has undergone genetic engineering as defined in § 340.3 of this chapter, APHIS will consider an organism to be a plant pest if the organism directly or indirectly injures, causes damage to, or causes disease in a plant or plant product, or if the organism is an unknown risk to plants or plant products, but is similar to an organism known to directly or indirectly injure, cause damage to, or cause disease in a plant or plant product. Plant pests that have undergone genetic engineering, as defined in § 340.3 of this chapter, are subject to the regulations of part 340 of this chapter.

* * * * *

(d) *Biological control organisms not regulated by this subpart.* Paragraph (c) of this section notwithstanding, biological control organisms that have undergone genetic engineering, as defined in § 340.3 of this chapter, as well as products that are currently under an EPA experimental use permit, a Federal Insecticide Fungicide and Rodenticide Act (FIFRA) section 18 emergency exemption, or products that are currently registered with EPA as a microbial pesticide product, are not regulated under this subpart. Additionally, biological control organisms that are pesticides that are not registered with EPA, but are being transferred, sold, or distributed in accordance with EPA's regulations in 40 CFR 152.30, are not regulated under this subpart for their interstate movement or importation. However, an importer desiring to import a shipment of biological control organisms subject to FIFRA must submit to the EPA Administrator a Notice of Arrival of Pesticides and Devices as required by CBP regulations at 19 CFR 12.112. The Administrator will provide notification to the importer indicating the disposition to be made of shipment upon its entry into the customs territory of the United States.

■ 3. Part 340 is revised to read as follows:

PART 340—MOVEMENT OF ORGANISMS MODIFIED OR PRODUCED THROUGH GENETIC ENGINEERING

Sec.

340.1 Applicability of this part.
340.2 Scope of this part.
340.3 Definitions.
340.4 Regulatory status review.
340.5 Permits.
340.6 Record retention, compliance, and enforcement.
340.7 Confidential business information.
340.8 Costs and charges.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

§ 340.1 Applicability of this part.

(a) The regulations in this part apply to those organisms described in § 340.2, but not to any organism that is exempt from this part under paragraph (b), (c), or (d) of this section.

(b) The regulations in this part do not apply to plants that have been modified such that they contain either a single modification of a type listed in paragraphs (b)(1) through (3) of this section, or additional modifications as determined by the Administrator, and described in paragraph (b)(4) of this section.

(1) The genetic modification is a change resulting from cellular repair of a targeted DNA break in the absence of an externally provided repair template; or

(2) The genetic modification is a targeted single base pair substitution; or

(3) The genetic modification introduces a gene known to occur in the plant's gene pool, or makes changes in a targeted sequence to correspond to a known allele of such a gene or to a

known structural variation present in the gene pool.

(4) The Administrator may propose to exempt plants with additional modifications, based on what could be achieved through conventional breeding. Such proposals may be Agency-initiated, and follow the process in paragraph (b)(4)(i) of this section, or in response to a request made in accordance with paragraph (b)(4)(ii) of this section.

(i) *APHIS-initiated proposals for exemptions.* APHIS will publish a notice in the **Federal Register** of the proposal by the Administrator to exempt plants with additional modifications. The notice will make available any supporting documentation, and will request public comment. After reviewing the comments, APHIS will publish a subsequent notice in the **Federal Register** announcing its final determination.

(ii) *Other parties' requests for exemptions.* Any person may request that the Administrator exempt plants developed with additional modifications that could be achieved through conventional breeding. To submit a request, the person must provide, in writing, information supporting the modification(s). Supporting information must include the following:

(A) A description of the modification(s);

(B) The factual grounds demonstrating that the proposed modification(s) could be achieved through conventional plant breeding;

(C) Copies of scientific literature, unpublished studies, or other data that support the request; and

(D) Any information known to the requestor that would be unfavorable to the request.

(iii) *Timeframe for Agency review of requests for additional exemptions.* After APHIS receives all information required under paragraph (b)(4)(ii) of this section, APHIS will complete its review of the request and render a determination within 12 months, except in circumstances that could not reasonably have been anticipated.

(iv) *Denial of requests.* If APHIS disagrees with the conclusions of the request or determines that there is insufficient evidence that the modification could be achieved through conventional breeding methods, APHIS will deny the request and notify the requestor in writing regarding this denial.

(v) *Agreement with requests.* If APHIS initially determines that the modification could be achieved through conventional breeding methods, APHIS will publish a notice in the **Federal Register** and request public comments in accordance with the process set forth in paragraph (b)(4)(i) of this section. After reviewing the comments, APHIS will publish a subsequent notice in the **Federal Register** announcing its final determination.

(vi) *website posting.* A list specifying the additional modifications will be posted on the APHIS website at *https://www.aphis.usda.gov/aphis/ourfocus/biotechnology.*

(c) The regulations in this part do not apply to a plant with:

(1) A plant-trait-mechanism of action combination that has previously undergone an analysis by APHIS in accordance with § 340.4 and has been determined by APHIS not to be regulated under this part, or

(2) A plant-trait-mechanism of action combination found in a plant that APHIS determined to be deregulated in response to a petition submitted prior to October 1, 2021, pursuant to § 340.6 as that section was set forth prior to August 17, 2020. All plants determined by APHIS to be deregulated pursuant to § 340.6 as that section was set forth prior to August 17, 2020 will retain their nonregulated status under these regulations.

(d) The regulations in this part do not apply to plants determined by APHIS not to require regulation under this part pursuant to the ''Am I Regulated'' process. All plants determined by APHIS not to require regulation under this part pursuant to the ''Am I Regulated'' process will retain their nonregulated status under these regulations.

(e) Developers may request confirmation from APHIS that a plant is not within the scope of this part. APHIS will provide a written response (confirmation letter) within 120 days of receiving a sufficiently detailed confirmation request, except in circumstances that could not reasonably have been anticipated.

(Approved by the Office of Management and Budget under control number 0579–0471)

§ 340.2 Scope of this part.

Except under a permit issued by the Administrator in accordance with § 340.5, no person shall move any GE organism that:

(a) Is a plant that has a plant-trait-mechanism of action combination that has not been evaluated by APHIS in accordance with § 340.4 or that, as a result of such evaluation, is subject to the regulations; or

(b) Meets the definition of a *plant pest* in § 340.3; or

(c) Is not a plant but has received deoxyribonucleic acid (DNA) from a plant pest, as defined in § 340.3, and the DNA from the donor organism either is capable of producing an infectious agent that causes plant disease or encodes a compound that is capable of causing plant disease; or

(d) Is a microorganism used to control plant pests, or an invertebrate predator or parasite (parasitoid) used to control invertebrate plant pests, and could pose a plant pest risk; or

(e) Is a plant that encodes a product intended for pharmaceutical or industrial use.

§ 340.3 Definitions.

Terms used in the singular form in this part shall be construed as the plural, and vice versa, as the case may demand. The following terms, when used in this part, shall be construed, respectively, to mean:

Access. The ability during regular business hours to enter, or pass to and from, a location, inspect, and/or obtain or make use or copies of any records, data, or samples necessary to evaluate compliance with this part and all conditions of a permit issued in accordance with § 340.5.

Administrator. The Administrator of the Animal and Plant Health Inspection Service (APHIS) or any other employee of APHIS to whom authority has been or may be delegated to act in the Administrator's stead.

Agent. A person who is designated by the responsible person to act in whole or in part on behalf of the permittee to maintain control over an organism under permit during its movement and to ensure compliance with all applicable permit conditions and the requirements in this part. Multiple agents may be associated with a single responsible person or permit. Agents may be, but are not limited to, brokers, farmers, researchers, or site cooperators. An agent must be at least 18 years of age and be a legal resident of the United States.

Animal and Plant Health Inspection Service (APHIS). An agency of the United States Department of Agriculture (USDA).

Article. Any material or tangible object that could harbor plant pests.

Contained facility. A structure for the storage and/or propagation of living organisms designed with physical barriers capable of preventing the escape of the organisms. Examples include but are not limited to laboratories, growth chambers,

fermenters, and containment greenhouses.

Donor organism. The organism from which genetic material is obtained for transfer to the recipient organism.

Environment. All the land, air, and water; and all living organisms in association with land, air, and water.

Gene pool. Germplasm within which sexual recombination is possible as a result of hybridization, including via methods such as embryo culture or bridging crosses.

Genetic engineering. Techniques that use recombinant, synthesized, or amplified nucleic acids to modify or create a genome.

Import (importation). To move into, or the act of movement into, the territorial limits of the United States.

Inspector. Any individual authorized by the Administrator or by the Commissioner of Customs and Border Protection, Department of Homeland Security, to enforce the regulations in this part.

Interstate. From one State into or through any other State or within the District of Columbia, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

Mechanism of action (MOA). The biochemical process(es) through which genetic material determines a trait.

Move (moving, movement). To carry, enter, import, mail, ship, or transport; aid, abet, cause, or induce the carrying, entering, importing, mailing, shipping, or transporting; to offer to carry, enter, import, mail, ship, or transport; to receive to carry, enter, import, mail, ship, or transport; to release into the environment; or to allow any of the above activities to occur.

Organism. Any active, infective, or dormant stage of life form of an entity characterized as living, including vertebrate and invertebrate animals, plants, bacteria, fungi, mycoplasmas, mycoplasma-like organisms, as well as entities such as viroids, viruses, or any entity characterized as living, related to the foregoing.

Permit. A written authorization, including by electronic methods, by the Administrator to move organisms regulated under this part and associated articles under conditions prescribed by the Administrator.

Person. Any individual, partnership, corporation, company, society, association, or other organized group.

Plant. Any plant (including any plant part) for or capable of propagation, including a tree, a tissue culture, a plantlet culture, pollen, a shrub, a vine, a cutting, a graft, a scion, a bud, a bulb, a root, or a seed.

Plant pest. Any living stage of a protozoan, nonhuman animal, parasitic plant, bacterium, fungus, virus or viroid, infectious agent or other pathogen, or any article similar to or allied with any of the foregoing, that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product.

Plant pest risk. The potential for direct or indirect injury to, damage to, or disease in any plant or plant product resulting from introducing or disseminating a plant pest, or the potential for exacerbating the impact of a plant pest.

Plant product. (1) Any flower, fruit, vegetable, root, bulb, seed, or other plant part that is not included in the definition of plant; or

(2) Any manufactured or processed plant or plant part.

Recipient organism. The organism whose nucleic acid sequence will be modified through the use of genetic engineering.

Release into the environment (environmental release). The use of an organism outside the physical constraints of a contained facility.

Responsible person. The individual responsible for maintaining control over a GE organism under permit during its movement and for ensuring compliance with all conditions contained in any applicable permit as well as with other requirements in this part and in the Plant Protection Act (7 U.S.C. 7701 *et seq.*). This individual must sign the permit application, and must be at least 18 years of age, and must be a legal resident of the United States.

Secure shipment. Shipment in a container or a means of conveyance of sufficient strength and integrity to withstand leakage of contents, shocks, pressure changes, and other conditions incident to ordinary handling in transportation.

State. Any of the several States of the United States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other territories or possessions of the United States.

State or Tribal regulatory official. State or Tribal official with responsibilities for plant health, or any other duly designated State or Tribal official, in the State or on the Tribal lands where the movement is to take place.

Trait. An observable (able to be seen or otherwise identified) characteristic of an organism.

Unauthorized release. The intentional or accidental movement of an organism under a permit issued pursuant to this part in a manner not authorized by the permit; or the intentional or accidental movement without a permit of an organism that is subject to the regulations in this part.

§ 340.4 Regulatory status review.

(a)(1) Any person may submit a request to APHIS for a regulatory status review, pursuant to paragraph (b)(3) of this section.

(2) Any person may request re-review of a GE plant previously found to be subject to this part after an initial review was conducted, provided that the request is supported by new, scientifically valid evidence bearing on the plant pest risk associated with movement of the plant.

(3) APHIS may also initiate a regulatory status review or re-review of a GE plant to identify whether it is subject to regulation under this part.

(4) Information submitted in support of a request for a regulatory status review or re-review must meet the requirements listed in paragraphs (a)(4)(i) through (iii) of this section.

(i) A description of the comparator plant(s), to include genus, species, and any relevant subspecies information;

(ii) The genotype of the modified plant, including a detailed description of the differences in genotype between the modified and unmodified plant; and

(iii) A detailed description of the new trait(s) of the modified plant.

(iv) Detailed information on how to meet the above-listed requirements can be found on the APHIS website at *https://www.aphis.usda.gov/aphis/ourfocus/biotechnology.* If APHIS proposes revisions to the detailed information on the APHIS website, APHIS will make the proposed revisions available for notice and public comment prior to implementation.

(b)(1) When APHIS receives a request for a regulatory status review of a GE plant, APHIS will conduct an initial review to determine whether there is a plausible pathway by which the GE plant, or any sexually compatible relatives that can acquire the engineered trait from the GE plant, would pose an increased plant pest risk relative to the plant pest risk posed by the respective non-GE or other appropriate comparator(s), based on the following factors:

(i) The biology of the comparator plant(s) and its sexually compatible relatives;

(ii) The trait and mechanism-of-action of the modification(s); and

(iii) The effect of the trait and mechanism-of-action on:

(A) The distribution, density, or development of the plant and its sexually compatible relatives;

(B) The production, creation, or enhancement of a plant pest or a reservoir for a plant pest;

(C) Harm to non-target organisms beneficial to agriculture; and

(D) The weedy impacts of the plant and its sexually compatible relatives.

(2) APHIS will complete the initial review within 180 days of receiving a request for a regulatory status review that meets the requirements specified in paragraph (a)(4) of this section, except in circumstances that could not reasonably have been anticipated. If APHIS does not identify a plausible pathway by which the GE plant or its sexually compatible relatives would pose an increased plant pest risk relative to the comparator(s) in the initial review, the GE plant is not subject to the regulations in this part. APHIS will post the plant, trait, and general description of the MOA on its website.

(b)(3)(i) If APHIS does identify a plausible pathway by which the GE plant or its sexually compatible relatives would pose an increased plant pest risk relative to the comparator(s) in the initial review, the requestor may apply for a permit and/or request that APHIS conduct an evaluation of the factor(s) of concern identified in the initial review to determine the likelihood and consequence of the plausible increased plant pest risk. APHIS may request additional information as needed to evaluate the factor(s) of concern.

(ii) For those GE plants for which such an evaluation is conducted, APHIS will publish the results of the evaluation in the **Federal Register** and will solicit and review comments from the public. Except in circumstances that could not reasonably have been anticipated, APHIS will complete these steps within 15 months of receiving a request for a regulatory status review that meets the requirements specified in paragraph (a)(4) of this section.

(iii) If APHIS finds that the GE plant and its sexually compatible relatives are unlikely to pose an increased plant pest risk relative to their comparator(s), the GE plant is not subject to this part. APHIS will publish its evaluation of the plant-trait-MOA combination in a subsequent **Federal Register** document and will also post it on the APHIS website. If APHIS does not make such a finding, the GE plant will remain regulated under this part, and its movement will be allowed only under permit in accordance with § 340.5.

(c) This section is applicable beginning April 5, 2021 for GE corn, soybean, cotton, potato, tomato, and alfalfa, and on October 1, 2021 for all GE plants.

(Approved by the Office of Management and Budget under control number 0579–0471)

§ 340.5 Permits.

(a) *Permit requirement.* A permit from APHIS is required for the movement of all GE organisms subject to the regulations under this part.

(b) *Permit application requirements.* All applications for permits must be submitted in accordance with the requirements of this section. The responsible person must apply for and obtain a permit through APHIS' website. The application must also include the following information:

(1) *General information requirements for all permit applications.* All permit applications must include the name, title, and contact information of the responsible person and agent (if any); the country (or countries) and locality (or localities) where the organism was collected, developed, manufactured, reared, cultivated, and cultured (as applicable); the organism's genus, species and any relevant subspecies and common name information; the intended activity (*i.e.,* importation, interstate movement, or release into the environment of the GE organism); and information on the intended trait and the genotype of the intended trait. All permit applications must be signed by the responsible person.

(2) *Information requirements for permit applications for interstate movement or importation.* Applications for permits for interstate movement or importation of GE organisms must include the following additional information:

(i) The origin and destination of the GE organism, including information on the addresses and contact details of the sender and recipient, if different from the responsible person;

(ii) The quantity of the GE organism, the method of shipment, and means of ensuring the security of the shipment against unauthorized release of the organism; and

(iii) The manner in which packaging material, shipping containers, and any other material accompanying the organism will be disposed of to prevent unauthorized release.

(3) *Information requirements for permit applications for release into the environment.* Applications for permits for release of GE organisms into the environment must include information on all proposed environmental release sites, including land area (size), Global Positioning System coordinates, addresses, and land use history of the site and adjacent areas; and the name and contact information of a person at each environmental release site, if different from the responsible person. In the event that additional release sites are requested after the issuance of a permit, APHIS will evaluate and amend permits as appropriate, in accordance with paragraph (l) of this section.

(c) *Exemption for GE Arabidopsis thaliana.* A permit for interstate movement is not required for GE *Arabidopsis thaliana,* provided that it is moved as a secure shipment, the modified genetic material is stably integrated into the plant genome, and the modified material does not include the complete infectious genome of a plant pest.

(d) *Exemption for GE disarmed Agrobacterium* species. A permit for importation or interstate movement is not required for any GE disarmed *Agrobacterium* species, provided that it is moved as a secure shipment, the modified genetic material is stably integrated into the genome, and the modified material does not include the complete infectious genome of a plant pest.

(e) *Exemption for Drosophila melanogaster.* A permit for importation or interstate movement is not required for GE *Drosophila melanogaster,* provided that it is moved as a secure shipment and that any introduced genetic material is not designed to propagate through a population by biasing the inheritance rate.

(f) *Exemption for certain microbial pesticides.* A permit is not required for the movement of any GE microorganism product that is currently registered with the Environmental Protection Agency (EPA) as a microbial pesticide, so long as the microorganism is not a plant pest as defined in § 340.3.

(g) *Exemption of certain plant-incorporated protectants.* A permit is not required for the movement of any GE plant modified solely to contain a plant-incorporated protectant that is currently registered with EPA as a pesticide product pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.,* FIFRA) or that is currently exempted from FIFRA pursuant to 40 CFR 174.21.

(h) *Administrative actions*—(1) *Review of permit applications.* APHIS will review the permit application to determine whether it is complete. APHIS will notify the applicant orally or in writing if the application is incomplete, and the applicant will be

provided the opportunity to revise the application. Once an application is complete, APHIS will review it to determine whether to approve or deny the application.

(2) *APHIS assignment of permit conditions.* If a permit application is approved, the Administrator will issue a permit with conditions as described in paragraph (i) of this section. Prior to issuance of a permit, the responsible person must agree in writing, in a manner prescribed by the Administrator, that the responsible person and all agents of the responsible person are aware of, understand, and will comply with the permit conditions. Failure to comply with this provision will be grounds for the denial of a permit.

(3) *Inspections.* All premises associated with the permit are subject to inspection before and after permit issuance, and all materials associated with the movement are subject to sampling after permit issuance. The responsible person and agents must provide inspectors access to premises, facilities, release locations, storage areas, waypoints, materials, equipment, means of conveyance, documents, and records related to the movement of organisms permitted under this part. Failure to provide access for inspection prior to the issuance of a permit will be grounds for the denial of a permit. Failure to provide access for inspection following permit issuance will be grounds for withdrawal of the permit.

(4) *State or Tribal review and comment.* The Administrator will submit for notification and review a copy of the permit application, without confidential business information (CBI), and any permit conditions to the appropriate State or Tribal regulatory official. Timely comments received from the State or Tribal regulatory official will be considered by the Administrator prior to permit issuance.

(5) *Approval or denial of a permit.* Except in circumstances that could not reasonably have been anticipated, APHIS will approve or deny the permit within:

(i) 45 days of receipt of a complete application for a permit for interstate movement or for importation; or

(ii) 120 days of receipt of a complete application for a permit for release into the environment.

(iii) The 120-day period may be extended if preparation of an environmental assessment or environmental impact statement is necessary.

(i) *Permit conditions.* The standard conditions listed in this paragraph (i) will be assigned to all permits issued under this section. The Administrator may assign supplemental permit conditions as deemed necessary to ensure confinement of the GE organism. Prior to issuance of a permit or an amended permit, the responsible person will be required to agree in writing or electronically that he or she and his or her agents will comply with the conditions of the permit, as described in this paragraph (i). If the responsible person does not agree to the conditions, the amendment will be denied.

(1) The organism under permit must be maintained and disposed of in a manner so as to prevent its unauthorized release, spread, dispersal, and/or persistence in the environment.

(2) The organism under permit must be kept separate from other organisms, except as specifically allowed in the permit.

(3) The organism under permit must be maintained only in areas and premises specified in the permit.

(4) The identity of the organism under permit must be maintained and verifiable at all times.

(5) Authorized activities may be engaged in only while the permit is valid; the duration for which the permit is valid will be listed on the permit itself.

(6) Records related to activities carried out under the permit must be maintained by the responsible person and must be of sufficient accuracy, quality, and completeness to demonstrate compliance with all permit conditions and requirements under this part. APHIS must be allowed access to all records, to include visual inspection and reproduction (*e.g.,* photocopying, digital reproduction). The responsible person must submit reports and notices to APHIS, containing the information specified within the permit, at the times specified in the permit. At a minimum:

(i) Following an environmental release, environmental release reports must be submitted for all authorized release locations where the release occurred. Environmental release reports must contain details of sufficient accuracy, quality, and completeness to identify the location, shape, and size of the release and the organism(s) released into the environment. In the event no release occurs at an authorized location, an environmental release report of no environmental release must be submitted for all authorized locations where an environmental release did not occur. Unauthorized releases must be reported in accordance with paragraph (i)(9) of this section.

(ii) When the environmental release is of a plant, reports of volunteer monitoring activities and findings must be submitted for all authorized release locations where an environmental release occurred. If no monitoring activities are conducted, a volunteer monitoring report of no monitoring must be submitted indicating why no volunteer monitoring was done.

(7) Inspectors must be allowed access, during regular business hours, to all locations related to the permitted activities.

(8) The organism under permit must undergo the application of measures determined by the Administrator to be necessary to prevent its unauthorized release, spread, dispersal, and/or persistence in the environment.

(9) In the event of a possible or actual unauthorized release, the responsible person must contact APHIS as described in the permit within 24 hours of discovery and must subsequently supply a statement of facts in writing no later than 5 business days after discovery.

(10) The responsible person for a permit remains the responsible person for the permit unless a transfer of responsibility is approved by APHIS. The responsible person must contact APHIS to initiate any transfer. The new responsible person assumes all responsibilities for ensuring compliance with the existing permit and permit conditions and for meeting the requirements of this part.

(j) *Denial or withdrawal of a permit.* Permit applications may be denied, or permits withdrawn, in accordance with this paragraph.

(1) *Denial of permits.* The Administrator may deny, either orally or in writing, any application for a permit. If the denial is oral, the Administrator will then communicate, as promptly as circumstances allow, the denial, and the reasons for it, in writing. The Administrator may deny a permit application if:

(i) The Administrator concludes that the proposed actions, *e.g.,* movements under permit, may not prevent the unauthorized release, spread, dispersal, and/or persistence in the environment of the organism; or

(ii) The Administrator determines that the responsible person or any agent of the responsible person has failed to comply with any material provision of this part, any other regulations issued pursuant to the Plant Protection Act (7 U.S.C. 7701 *et seq.*) or the Plant Protection Act itself;

(iii) In addition, no permit will be issued if the responsible person and his or her agents do not agree in writing, in accordance with paragraph (h)(2) of this section, to comply with the permit conditions or, in accordance with

paragraph (h)(3) of this section, to allow inspection by APHIS.

(2) *Withdrawal of permits.* The Administrator may withdraw, either orally or in writing, any permit that has been issued. If the withdrawal is oral, the Administrator will communicate, as promptly as circumstances allow, the withdrawal, and the reasons for it, in writing. The Administrator may withdraw a permit if:

(i) Following issuance of the permit, the Administrator receives information that would have provided grounds for APHIS to deny the original permit application;

(ii) The Administrator determines that actions taken under the permit have resulted in the unauthorized release, spread, dispersal, and/or persistence in the environment of the organism under permit; or

(iii) The Administrator determines that the responsible person or any agent of the responsible person has failed to comply at any time with any material provision of this part or with any other regulations issued pursuant to the Plant Protection Act (7 U.S.C. 7701 *et seq.*). This includes failure to comply with the conditions of any permit issued.

(k) *Appeal of denial or withdrawal of permit.* Any person whose permit application has been denied or whose permit has been withdrawn may appeal the decision in writing to the Administrator.[1] The applicant must submit in writing an acknowledgment of the denial or withdrawal, and a statement of intent to appeal, within 10 days after receiving written notification of the denial or withdrawal. The applicant may request additional time to prepare the appeal. The appeal must state all of the facts and reasons upon which the person relies to assert that the permit was wrongfully denied or withdrawn. The Administrator will grant or deny the appeal in writing, stating the reasons for the decision as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict.

(l) *Amendment of permits*—(1) *Amendment at responsible person's request.* If the responsible person determines that circumstances have changed since the permit was initially issued and wishes the permit to be amended accordingly, the responsible person must request the amendment by contacting APHIS directly. The responsible person will have to provide supporting information justifying the amendment. APHIS will review the amendment request, and will amend the permit if APHIS determines that relatively minor changes are necessary. Requests for more substantive changes will require a new permit application. Prior to issuance of an amended permit, the responsible person will be required to agree in writing or electronically that he or she and his or her agents will comply with the conditions of the amended permit. If the responsible person does not agree to the conditions, the amendment will be denied.

(2) *Amendment initiated by APHIS.* APHIS may amend any permit and its conditions at any time, upon determining that the amendment is needed to address plant pest risks presented by the organism or the activities allowed under the permit. APHIS will notify the responsible person of the amendment to the permit and, as soon as circumstances allow, the reason(s) for it. The responsible person may have to agree in writing or electronically that he or she and his or her agents will comply with the conditions of the amended permit before APHIS will issue it. If APHIS requests such an agreement, and the responsible person does not accept it, the existing permit will be withdrawn.

(m) *Shipping under a permit.* (1) All shipments of organisms under permit must be secure shipments. Organisms under permit must be shipped in accordance with the regulations in 49 CFR part 178.

(2) The container must be accompanied by a document that includes the names and contact details for the sender and recipient.

(3) For any organism to be imported into the United States, the outmost container must bear information regarding the nature and quantity of the contents; the country (or countries) and locality (localities) where collected, developed, manufactured, reared, cultivated, and cultured (as applicable); the name and address of the shipper, owner, or person shipping or forwarding the organism; the name, address, and telephone number of the consignee; the identifying shipper's mark and number; and the permit number authorizing the importation. For organisms imported under permits by mail, the container must also be addressed to a plant inspection station listed in the USDA Plants for Planting Manual, which can be accessed at: *https://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/plants_for_planting.pdf.* All imported containers of organisms under permits must be accompanied by an invoice or packing list indicating the contents of the shipment.

(4) Following the completion of the shipment, all packaging material, shipping containers, and any other material accompanying the organism will be devitalized consistent with supplemental permit conditions, or disposed of to prevent unauthorized release.

(n) *Applicability date:* This section is applicable beginning April 5, 2021.

(Approved by the Office of Management and Budget under control number 0579–0471)

§ 340.6 Record retention, compliance, and enforcement.

(a) *Recordkeeping.* Responsible persons and their agents are required to establish, keep, and make available to APHIS the following records:

(1) Records and reports required under § 340.5(i);

(2) Addresses and any other information (*e.g.,* GPS coordinates, maps) needed to identify all locations where the organism under permit was stored or used, including all contained facilities and environmental release locations;

(3) A copy of the APHIS permit authorizing the permitted activity; and

(4) Legible copies of contracts (including amendments to contracts) between the responsible person and agents that conduct activities subject to this part for the responsible person, and copies of documents relating to agreements made without a written contract.

(b) *Record retention.* Records indicating that an organism under permit that was imported or moved interstate reached its intended destination must be retained for at least 2 years. All other records related to a permit must be retained for 5 years following the expiration of the permit, unless a longer retention period is determined to be needed by the Administrator and is documented in the supplemental permit conditions.

(c) *Compliance and enforcement.* (1) Responsible persons and their agents must comply with all of the requirements of this part. Failure to comply with any of the requirements of this part may result in any or all of the following:

(i) Denial of a permit application or withdrawal of a permit in accordance with § 340.5(j);

(ii) Application of remedial measures in accordance with the Plant Protection Act (7 U.S.C. 7701 *et seq.*); and

[1] The Office of the Administrator, as established in § 371.2 of this chapter, will review appeals involving the denial or withdrawal of a permit. Appeals may be sent to Office of the Administrator, United States Department of Agriculture, Jamie L. Whitten Building, Room 312–E, 1400 Independence Ave. SW, Washington, DC 20250.

(iii) Criminal and/or civil penalties in accordance with the Plant Protection Act (7 U.S.C. 7701 *et seq.*).

(2) Prior to the issuance of a complaint seeking a civil penalty, the Administrator may enter into a stipulation, in accordance with § 380.10 of this chapter.

(d) *Liability for acts of an agent.* For purposes of enforcing this part, the act, omission, or failure of any agent for a responsible person may be deemed also to be the act, omission, or failure of the responsible person.

(Approved by the Office of Management and Budget under control number 0579–0471)

§ 340.7 Confidential business information.

Persons including confidential business information (CBI) in any document submitted to APHIS under this part should do so in the following manner. If there are portions of a document deemed to contain confidential business information, those portions must be identified, and each page containing such information must be marked ''CBI Copy.'' A second copy of the document must be submitted with all such CBI deleted, and each page where the CBI was deleted must be marked ''CBI Deleted.'' In addition, any person submitting CBI must justify how each piece of information requested to be treated as CBI is a trade secret or, if not a trade secret, is either commercial or financial information that is privileged or confidential.

§ 340.8 Costs and charges.

The services of the inspector related to carrying out this part and provided during regularly assigned hours of duty and at the usual places of duty will be furnished by APHIS without cost to the responsible person.[1] The U.S. Department of Agriculture will not be responsible for any costs or charges incidental to inspections or compliance with the provisions of this part, other than for the services of the inspector.

[1] The Department's provisions relating to overtime charges for an inspector's services are set forth in part 354 of this chapter.

PART 372—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

■ 4. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 4321 *et seq.;* 40 CFR parts 1500–1508; 7 CFR parts 1b, 2.22, 2.80, and 371.9.

§ 372.5 [Amended]

■ 5. Section 372.5 is amended as follows:

■ a. By removing paragraph (b)(7);

■ b. In paragraph (c)(3)(iii), by removing the words '', or acknowledgment of notifications for,'' and adding the word ''for'' in their place; and

■ c. By removing and reserving paragraph (c)(4).

Done in Washington, DC, this 13th day of May 2020.

Lorren Walker,

Acting Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2020–10638 Filed 5–15–20; 8:45 am]

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