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FEDERAL REGISTER

Vol. 85 Wednesday,
No. 131 July 8, 2020

Pages 40867–41168

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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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 66

[Document No. AMS–FTPP–19–0104]

National Bioengineered Food Disclosure Standard; Guidance on Validation of a Refining Process and Selecting a Testing Method

ACTION: Notification of guidance.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) posts final guidance to validate a refining process and selects a testing method as it pertains to the National Bioengineered Food Disclosure Standard (Standard).

DATES: The guidance documents are available and effective July 7, 2020.

ADDRESSES: The final guidance and accompanying question and answer documents can be found at *https://www.ams.usda.gov/rules-regulations/be.*

FOR FURTHER INFORMATION CONTACT: Trevor Findley, Deputy Director, Food Disclosure and Labeling Division, Fair Trade Practices Program, Agricultural Marketing Service, U.S. Department of Agriculture, telephone (202) 690–3460, email *trevor.findley@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

On July 29, 2016, Public Law 114–216 amended the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) (amended Act) to require USDA to establish a national, mandatory standard for disclosing any food that is or may be bioengineered. In accordance with the amended Act, USDA published final regulations to implement the Standard on December 21, 2018 (83 FR 65814). The regulations became effective on February 19, 2019, with a mandatory compliance date of January 1, 2022.

Foods that do not contain detectable modified genetic material are not bioengineered foods and do not require disclosure under the Standard. Under the definition of *bioengineered food* at 7 CFR 66.1, food does not contain modified genetic material if the genetic material is not detectable pursuant to § 66.9. The recordkeeping requirements for detectability at 7 CFR 66.9 specify, among other things, (1) the requirements to validate that a refining process renders modified genetic material in a food undetectable and (2) standards of performance for detectability testing.

A refining process is validated through analytical testing that meets the standards described in paragraph (c) of 7 CFR 66.9. Paragraph (c) requires that analytical testing meet the following standard: (1) Laboratory quality assurance must ensure the validity and reliability of test results; (2) analytical method selection, validation, and verification must ensure that the testing method used is appropriate (fit for purpose) and that the laboratory can successfully perform the testing; (3) the demonstration of testing validity must ensure consistent accurate analytical performance; and (4) method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of Part 66.

In the preamble to the final regulations, USDA indicated that it would provide instructions to the industry to explain how they can ensure (1) acceptable validation of refining processes in accordance with AMS standards and (2) acceptable testing methodology used to satisfy that a food does not contain detectable modified genetic material (83 FR 65843).

On December 17, 2019, AMS published a document in the **Federal Register** announcing the publication of a draft Instruction to Ensure Acceptable Validation of Refining Processes (84 FR 68816), with a comment period that closed on January 16, 2020. On January 23, 2020, in response to multiple requests for an extension of the comment period, AMS extended the comment period another 15 days (85 FR 3860). The new comment period closed on February 7, 2020.

On February 3, 2020, AMS published a document in the **Federal Register** announcing publication of Draft Instructions on Testing Methods (85 FR 5927), with a comment period that closed on March 4, 2020.

This document announces the publication of the final guidance to validate a refining process and to select an acceptable testing method. In addition to these two guidance documents, AMS is publishing two corresponding question and answer documents that respond to a number of questions and comments it received during the public comment periods. These four documents are available on the AMS bioengineered food disclosure website at *https://www.ams.usda.gov/rules-regulations/be.* These final instructions pertain to the requirements of the existing regulations, which can be found at *https://www.federalregister.gov/documents/2018/12/21/2018-27283/national-bioengineered-food-disclosure-standard.*

Authority: 7 U.S.C. 1639.

Bruce Summers,
Administrator, Agricultural Marketing Service.

[FR Doc. 2020–14643 Filed 7–7–20; 8:45 am]
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Doc. No. AMS–SC–19–0100; SC–20–930–1 FR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Cherry Industry Administrative Board (Board) to establish free and restricted percentages for the 2019–20 crop year pursuant to the marketing order for tart cherries grown in the states of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. This action establishes the proportion of tart cherries from the 2019–20 crop that may be handled in commercial outlets. This action should stabilize marketing conditions by adjusting supply to meet market demand and help improve grower returns. Also, a correction is made to section 930.151 to reflect the correct desirable carry-out inventory not

to exceed a maximum of 100 million pounds (81 FR 63676).

DATES: Effective August 7, 2020.

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

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

SUPPLEMENTARY INFORMATION: This final rule, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This final rule is issued under Marketing Agreement and Order No. 930, both as amended (7 CFR part 930), regulating the handling of tart cherries produced in the states of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin. Part 930 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Board locally administers the Order and is comprised of producers and handlers of tart cherries operating within the production area, and a public member.

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

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

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

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

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

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

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

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

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

The Board uses sales history, inventory, and production data to determine whether there is a surplus and, if so, how much volume should be restricted to maintain optimum supply. The optimum supply represents the desirable volume of tart cherries that should be available for sale in the coming crop year. Optimum supply is defined as the average free sales of the prior three years plus desirable carry-

out inventory. Desirable carry-out is the amount of fruit needed by the industry to be carried into the succeeding crop year to meet market demand until the new crop is available. In June 2015, after considering market circumstances and needs, the Board recommended a desirable carry-out inventory not to exceed a maximum of up to 100 million pounds beginning with the 2016 crop year. That action was subsequently approved by the Secretary (81 FR 63676). Therefore, a correction will be made to § 930.151 to reflect the correct desirable carry-out inventory not to exceed a maximum of 100 million pounds.

In addition, USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' (*https://www.ams.usda.gov/publications/content/1982-guidelines-fruit-vegetable-marketing-orders*) specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This requirement is codified in § 930.50(g), which specifies that in years when restricted percentages are established, the Board shall make available tonnage equivalent to an additional 10 percent of the average sales of the prior three years for market expansion (market growth factor).

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

The Board met on June 27, 2019, and computed an optimum supply of 313 million pounds for the 2019–20 crop year using the average of free sales for the three previous seasons and desirable carry-out. To determine the carry-out figure, the Board discussed and considered a range of alternatives. One member suggested a carry-out value of 20 million pounds, noting high carry-out puts downward pressure on grower prices. Another member agreed, noting the actual carry-out is often twice what the Board has estimated as desirable. Some members favored a carry-out of 50 million pounds. Other members were concerned that too low of a carry-out may push the restricted percentage too high for the industry to implement and suggested repeating the carry-out of 80 million pounds from the previous season. The Board's executive director noted average sales are about 21 million pounds a month. Using that average, it would take 84 million pounds to supply the industry for four months. After considering the alternatives, the Board determined a carry-out of 85 million pounds would be enough to supply the industry's needs at the beginning of the next season.

The Board subtracted the estimated carry-in of 174 million pounds from the optimum supply to calculate the production quantity needed from the 2019–20 crop to meet optimum supply. This number, 139 million pounds, was subtracted from the Board's estimated 2019–20 total production (from regulated and unregulated districts) of 248.2 million pounds to calculate a surplus of 109.2 million pounds of tart cherries. The Board also complied with the market growth factor requirement by removing 22.8 million pounds (average sales for prior three years of 228 million times 10 percent) from the surplus. The adjusted surplus of 86.4 million pounds was then divided by the expected production in the regulated districts (240 million pounds) to reach a preliminary restricted percentage of 36 percent for the 2019–20 crop year.

The Board then discussed whether this calculation would supply enough cherries to grow sales and fulfil orders that have not yet shipped. Some members reported that there had been excessive rainfall, especially in Michigan, during the growing season. This could lead to poor fruit quality and handlers would need additional available tonnage to meet sales needs. As a result, the Board recommended an additional economic adjustment of 20 million pounds, which is subtracted from the surplus. The Board also anticipated that orchard diversion would be about 50 million pounds, which is subtracted from the expected production. With these modifications, the preliminary restricted percentage was calculated at 35 percent.

The Board met again on September 12, 2019, to consider final volume regulation percentages for the 2019–20 season. The final percentages are based on the Board's reported production figures and the supply and demand information available in September.

The total production for the 2019–20 season was 257.2 million pounds, 9 million pounds above the Board's June estimate. In addition, growers diverted 18.3 million pounds in the orchard, about a third of what had been anticipated. As a result, 238.9 million pounds would be available to market, 230.2 million pounds of which are in the restricted districts. Using the actual production numbers, and accounting for the recommended desirable carry-out and economic adjustment, as well as the market growth factor, the restricted percentage was recalculated.

The Board subtracted the carry-in figure used in June of 174 million pounds, from the optimum supply of 313 million pounds to determine 139 million pounds of 2019–20 production would be necessary to reach optimum supply. The Board subtracted the 139 million pounds from the actual production of 257.2 million pounds, resulting in a surplus of 118.2 million pounds of tart cherries.

The recalculated surplus was reduced by subtracting the revised economic adjustment of 20 million pounds and the market growth factor of 22.8 million pounds, resulting in an adjusted surplus of 75.4 million pounds. The Board then divided this final surplus by the available production of 230.2 million pounds in the regulated districts (248.5 million pounds minus 18.3 million pounds of in-orchard diversion) to calculate a restricted percentage of 33 percent with a corresponding free percentage of 67 percent for the 2019–20 crop year, as outlined in the following table:

	Millions of pounds
Final Calculations:	
(1) Average sales of the prior three years	228
(2) Plus desirable carry-out	85
(3) Optimum supply calculated by the Board	313
(4) Carry-in as of July 1, 2019	174
(5) Adjusted optimum supply (item 3 minus item 4)	139
(6) Board reported production	257.2

	Millions of pounds
(7) Surplus (item 6 minus item 5)	118.2
(8) Total economic adjustments	20
(9) Market growth factor	22.8
(10) Adjusted Surplus (item 7 minus items 8 and 9)	75.4
(11) Production in regulated districts	248.5
(12) In-Orchard Diversion	18.3
(13) Production minus in orchard diversion	230.2
Final Percentages:	
Restricted (item 10 divided by item 13 × 100)	33%
Free (100 minus restricted percentage)	67%

The final restriction of 33 percent is lower than the preliminary restriction percentage of 35 percent. The change is due to the increase in production from the June estimate and lower in-orchard diversion volume. The desired carry-out remained the same at 85 million pounds. In discussing the calculation, members indicated the quality concerns that led to the adjustment were accurate. Members did not propose any changes to the adjustment following harvest.

During the preliminary and final discussions, attendees raised concerns about the age of free inventory and the impact of imported tart cherry products. The Board voted to form a committee to develop a proposal for collecting additional data regarding inventory. Regarding the impact of imports, the Board approved a research proposal to gather additional data. The Board anticipates these actions will help provide additional data for future volume regulation discussions.

Establishing free and restricted percentages is an attempt to bring supply and demand into balance. If the primary market is oversupplied with cherries, grower prices decline substantially. Restricted percentages have benefited grower returns and helped stabilize the market as compared to those seasons prior to the implementation of the Order. The Board, based on its discussion of this issue and the result of the above calculations, believes the available information indicates a restricted percentage should be established for the 2019–20 crop year to avoid oversupplying the market with tart cherries.

Consequently, the Board recommended final percentages of 67 percent free and 33 percent restricted by a vote of 15 in favor, and 3 opposed. The Board could meet and recommend the release of additional volume during the crop year if conditions so warranted. The Secretary finds, from the recommendation and supporting information supplied by the Board, that designating final percentages of 67 percent free and 33 percent restricted tends to effectuate the declared policy of the Act, and so designates these percentages.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 400 producers of tart cherries in the regulated area and approximately 40 handlers of tart cherries who are subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than $1,000,000, and small agricultural service firms have been defined as those whose annual receipts are less than $30,000,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS) and Board data, the average annual grower price for tart cherries utilized for processing during the 2018–19 season was approximately $0.196 per pound. With total utilization at 288.8 million pounds for the 2018–19 season, the total 2018–19 value of the crop utilized for processing is estimated at $56.6 million. Dividing the crop value by the estimated number of producers (400) yields an estimated average receipt per producer of $141,500. This is well below the SBA threshold for small producers.

A free on board (FOB) price of $0.80 per pound for frozen tart cherries was reported by the Food Institute during the 2018–19 season. Based on utilization, this price represents a good estimate of the price for processed cherries. Multiplying this FOB price by total utilization of 288.8 million pounds results in an estimated handler-level tart cherry value of $231 million. Dividing this figure by the number of handlers (40) yields estimated average annual handler receipts of $5.8 million, which is below the SBA threshold for small agricultural service firms. Assuming a normal distribution, the majority of producers and handlers of tart cherries may be classified as small entities.

The tart cherry industry in the United States is characterized by wide annual fluctuations in production. According to NASS, the pounds of utilized tart cherry production for the years 2014 through 2018 were 301 million, 251 million, 319 million, 254 million, and 289 million, respectively. Because of these fluctuations, supply and demand for tart cherries are rarely in balance.

Demand for tart cherries is inelastic, meaning changes in price have a minimal effect on total sales volume. However, prices are very sensitive to changes in supply, and grower prices vary widely in response to the large swings in annual supply. Grower prices per pound for processed utilization have ranged from a low of $0.073 in 1987 to a high of $0.588 per pound in 2012 when a weather event substantially reduced supply.

Because of this relationship between supply and price, oversupplying the market with tart cherries would have a sharp negative effect on prices, driving down grower returns. Aware of this economic relationship, the Board focuses on using the volume control authority in the Order to align supply with demand and stabilize industry returns. This authority allows the industry to set free and restricted

percentages as a way to bring supply and demand into balance. Free percentage cherries can be marketed by handlers to any outlet, while restricted percentage volume must be held by handlers in reserve, diverted, or used for exempted purposes.

This rule controls the supply of tart cherries by establishing percentages of 67 percent free and 33 percent restricted for the 2019–20 crop year. These percentages should stabilize marketing conditions by adjusting supply to meet market demand and help improve grower returns. This action regulates tart cherries handled in Michigan, Utah, Washington, and Wisconsin. The authority for this action is provided in §§ 930.50, 930.51(a), and 930.52. The Board recommended this action at a meeting on September 12, 2019.

This rule will result in some fruit being diverted from the primary domestic markets. However, as mentioned earlier, the USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' (*https://www.ams.usda.gov/publications/content/1982-guidelines-fruit-vegetable-marketing-orders*) specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. The available quantity under this regulation (337.5 million pounds) is 148 percent of the average sales for the last three years (228 million pounds).

In addition, there are secondary uses available for restricted fruit, including the development of new products, sales into new markets, the development of export markets, and being placed in reserve. While these alternatives may provide different levels of return than the sales to primary markets, they play an important role for the industry. The areas of new products, new markets, and the development of export markets utilize restricted fruit to develop and expand the markets for tart cherries. In 2018–19, these activities accounted for over 88 million pounds in sales, a 6-million-pound increase from the previous season.

Placing tart cherries into reserves is also a key part of balancing supply and demand. Although handlers bear the handling and storage costs for fruit in reserve, reserves stored in large crop years are used to supplement supplies in short crop years. The reserves help the industry to mitigate the impact of oversupply in large crop years, while allowing the industry to supply markets in years when production falls below demand. Further, storage and handling costs are more than offset by the increase in price when moving from a large crop to a short crop year.

The Board recommended a carry-out of 85 million pounds and made a demand adjustment of 20 million pounds in order to make the regulation less restrictive to account for fruit quality concerns. With 174 million pounds of carry-in, 8.7 million pounds of production in the unregulated districts, and 154.8 million pounds of free tonnage from the regulated districts, 337.5 million pounds of fruit will be available for the domestic market. This amount is comparable to the 336.9 million pounds made available in the previous season. Even with the recommended restriction, the domestic market will have an ample supply of tart cherries. Further, should marketing conditions change, and market demand exceed existing supplies, the Board could meet and recommend the release of an additional volume of cherries. Consequently, it is not anticipated that this rule will unduly burden growers or handlers.

While this action could result in some additional costs to the industry, these costs are outweighed by the benefits. The purpose of setting restricted percentages is to attempt to bring supply and demand into balance. If the primary market (domestic) is oversupplied with cherries, grower prices decline substantially. Without volume control, the primary market would likely be oversupplied, resulting in lower grower prices.

An econometric model has been developed to assess the impact volume control has on the price growers receive for their product. Based on the model, the use of volume control would have a positive impact on grower returns for this crop year. With volume control, grower prices are estimated to be approximately $0.04 per pound higher than without restrictions. In addition, in the absence of volume control, the industry could start to build large amounts of unwanted inventories. These inventories would have a depressing effect on grower prices.

Retail demand is assumed to be highly inelastic, which indicates that the changes in price do not result in significant changes in the quantity demanded. Consumer prices largely do not reflect fluctuations in cherry supplies. Therefore, this action should have little or no effect on consumer prices and should not result in a reduction in retail sales.

The free and restricted percentages established by this action will provide the market with optimum supply and will apply uniformly to all regulated handlers in the industry, regardless of size. As the restriction represents a percentage of a handler's volume, the costs, when applicable, are proportionate and should not place an extra burden on small entities as compared to large entities.

The stabilizing effects of this action benefit all handlers by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all growers and handlers by allowing them to better anticipate the revenues that their tart cherries would generate. Growers and handlers, regardless of size, benefit from the stabilizing effects of the volume restriction.

As noted earlier, the Board had extensive discussions on carry-out inventory alternatives. The alternatives ranged from 20 million pounds to 100 million pounds. Some expressed a concern that the relatively low reserves compared to high carry-in signaled that not enough fruit had been put in reserve in previous seasons. Some attendees indicated excess carry-in over the past few seasons has had a negative effect on returns and growers are seeking relief. The Board noted if the carry-out number was too large, it could have a negative impact on grower returns, but enough fruit was needed to supply processors before the new harvest. After consideration of the alternatives, the Board recommended a carry-out of 85 million pounds.

The Board also weighed alternatives when discussing the economic adjustment. Some members suggested making no adjustment to the formula. However, at its June meeting, the Board recommended a 20-million-pound adjustment to account for fruit quality concerns. When fruit is too large or too small, it does not move as efficiently through the pitting process. The Board was concerned excessive rainfall would result in large, soft, fruit that would not process as well as average-sized fruit. As a result, more fruit would be necessary to get the needed final product. Following harvest, Board members confirmed weather had indeed affected the size of fruit, and that the recommended adjustment was accurate and should not be changed.

In discussing the preliminary recommendation, the Board heard a report from a committee that examined import issues. During the discussion there was a suggestion that the Board might consider using the previous year's import numbers to estimate imported volume in the coming year. However, there was no motion to make an adjustment for imports. To better address these issues, the Board allocated funds to a research project to provide

additional information on the volume and impact of imported cherry products.

Given the concerns with regulation expressed by Board members and industry members in attendance, the Board also considered recommending no volume regulation. However, the data indicated a high carryover from previous seasons has created a substantial surplus. During this discussion, attendees questioned the age of the products in inventory. While all types of products can be stored for multiple years, their value does diminish over time. Reserve inventory must be under two years old, but there are no restrictions on free inventory. Industry members expressed concern that not all inventory is of equal value and suggested the Board should collect information on the age and quality of free inventory. A vote to recommend no volume regulation failed, but the Board did agree to form a committee to investigate potential reporting requirements to provide the industry better data regarding the available inventory. Thus, the alternatives were rejected.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0177, Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. No changes to those requirements are necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule will not impose any additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

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

The Board's meetings were widely publicized throughout the tart cherry industry, and all interested persons were invited to attend the meetings and participate in Board deliberations on all issues. Like all Board meetings, the June 27, 2019, and September 12, 2019, meetings were public meetings, and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on March 23, 2020 (85 FR 16273). Copies of the proposed rule were sent via email to all Board members and tart cherry handlers. The proposed rule was also made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period was provided to allow interested persons to respond to the proposal.

One comment was received in opposition to the proposal. This comment came from a tart cherry handler who expressed concern that the marketing order does not allow flexibility to serve changing markets. The comment also stated that the handler submitted a request to the Board to release reserves. Finally, the comment also attributed difficulties in meeting changing demands to current food safety regulations and food industry practices.

Regarding the flexibility of supplying different tart cherry products, it is correct that the marketing order does not distinguish between product segments. The marketing order authorizes the Secretary to designate free and restricted percentages that apply to all handlers, regardless of the type of tart cherry product. Thus, the regulation is spread proportionally among handlers. Under any regulation, handlers can move restricted tonnage through approved diversion channels including but not limited to, supplying new markets or making charitable donations.

Regarding a release of reserves, as mentioned earlier in this rule, the Board can meet and recommend a release of reserves at any time. The Board can make such a recommendation, regardless of whether a volume regulation is in place for the current fiscal year. This process is described in § 930.154. The Board may request this action, which releases apportioned volume to handlers based on their total volume handled in the three previous years. In its discussions regarding volume regulation the Board indicated 174 million pounds of carry-in were available; the unregulated districts accounted for 8.7 million pounds of production; and this volume restriction will place 154.8 million pounds of free tonnage from the regulated districts on the market for a total of 337.5 million pounds of fruit available for the domestic market. This is well above the average sales of 228 million pounds.

The Board met multiple times following the volume regulation recommendation, and neither Board members nor public participants offered any evidence that sales had increased to the point of needing a release of reserves. Further, at these meetings, no requests for a release were made, nor were any motions introduced regarding a release. The Board's most recent sales report indicates that as of February 29, 2020, some product category sales reported by handlers were up and others were down. In total, year over year sales were virtually unchanged; down one tenth of a percent, or 146,322 pounds. Given this information, there should be more than adequate fruit available to supply the market following this action.

The concerns expressed regarding the limitations of food safety practices are outside the authorities of the marketing order and therefore not relevant to this action.

Accordingly, based on the comment received, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *https://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board, and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, amend 7 CFR part 930 as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

■ 1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Revise § 930.151 to read as follows:

§ 930.151 Desirable Carry-out inventory.

Beginning with the crop year starting July 1, 2016, for the purposes of

determining an optimum supply volume, the Board may recommend a desirable carry-out inventory not to exceed 100 million pounds.

■ 3. Revise § 930.256 to read as follows:

§ 930.256 Free and restricted percentages for the 2019–20 crop year.

The percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2019, which shall be free and restricted, respectively, are designated as follows: Free percentage, 67 percent and restricted percentage, 33 percent.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–13125 Filed 7–7–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0638; Project Identifier MCAI–2020–00308–E; Amendment 39–21158; AD 2020–14–04]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG (Type Certificate Previously Held by Rolls-Royce plc) Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Rolls-Royce Deutschland Ltd. & Co KG (RRD) Trent 1000–A, Trent 1000–AE, Trent 1000–C, Trent 1000–CE, Trent 1000–D, Trent 1000–E, Trent 1000–G, and Trent 1000–H model turbofan engines. This AD requires removing and replacing one or both affected engines, depending on whether the engine pairing combinations are compliant or non-compliant, as described in the service information. This AD was prompted by occurrences of in-service engine surges on affected RRD Trent model turbofan engines with a high number of intermediate pressure compressor (IPC) module flight hours since new (HSN) or cycles since new (CSN). The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 23, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 23, 2020.

The FAA must receive comments on this AD by August 24, 2020.

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

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

For service information identified in this final rule, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, 15827 Blankenfelde-Mahlow, Germany; phone: +49 (0) 33 708 6 0; email: *https://www.rolls-royce.com/contact-us.aspx*. 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. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0638.

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–2020–0638; 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 mandatory continuing airworthiness information (MCAI), 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:

Discussion

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2020–0010R2, dated March 4, 2020 (referred to after this as ''the MCAI''), to address an unsafe condition for the specified products. The MCAI states:

> Occurrences have been reported of engine surges on certain Trent 1000 engines, particularly those that have accumulated a high number of flight hours (FH) and engine flight cycles (EFC). The investigation into the cause(s) of these events is on-going. This condition, if not corrected, could lead to a dual engine surge, possibly resulting in a dual engine in-flight shut-down and consequent reduced control of the aeroplane.
>
> To address this potential unsafe condition, Rolls-Royce published the NMSB to provide de-pairing instructions, reducing the risk of a dual surge event. Instructions for in-shop performance recovery are being developed. Prompted by some errors detected in Table 1 of the NMSB, Appendix 1 of this [EASA] AD must be used instead. Rolls-Royce will revise the NMSB to correct those errors.
>
> For the reasons described above, EASA issued AD 2020–0010 (later revised) to require de-pairing of the affected engines.
>
> Since EASA AD 2020–0010R1 was issued, Rolls-Royce issued NMSB TRENT 1000 72–K494, providing instructions for in-shop action to restore the surge margin. Embodiment of Part B of this NMSB allows relaxation of the de-pairing actions as required by this [EASA] AD. Rolls-Royce have revised NMSB TRENT 1000 72–AK468 accordingly, including a new Table 1, defining de-pairing upper and lower thresholds (pre- and post-NMSB 72–K494 embodied) and Table 2 (which was Table 1 in the NMSB 72–AK468 at original issue) for de-pairing when one engine has embodied Part B of NMSB TRENT 1000 72–K494, and when both engines have embodied Part B of NMSB TRENT 1000 72–K494.
>
> Consequently, this [EASA] AD is revised to include references to NMSB TRENT 1000 72–K494 and to NMSB TRENT 1000 72–AK468 Revision 1, and Table 2 thereof.

You may obtain further information by examining the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0638.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Rolls-Royce plc (RR) Alert Non-Modification Service Bulletin (NMSB) Trent 1000 72–AK468, Revision 1, dated March 3, 2020. The Alert NMSB describes compliant and non-compliant engine pairing combinations based on IPC module flight HSN or CSN. 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.

Related Service Information

The FAA reviewed RR NMSB Trent 1000 72–K494, Initial Issue, dated March 3, 2020. The NMSB describes procedures for the inspection, repair, and replacement of specified IPC module components to restore surge margin and recover IPC performance.

FAA's Determination

This product has been approved by EASA and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI. The FAA is issuing this AD because it evaluated all the relevant information provided by EASA and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires removing and replacing one or both affected engines, depending on whether the engine pairing combinations are compliant or non-compliant, as described in the Accomplishment Instructions of RR Alert NMSB Trent 1000 72–AK468, Revision 1, dated March 3, 2020.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C.) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking. Similarly, Section 553(d) of the APA authorizes agencies to make rules effective in less than 30 days, upon a finding of good cause.

The FAA has found the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because no domestic operators use this product. It is unlikely that the FAA will receive any adverse comments or useful information about this AD from U.S. operators. Therefore, the FAA finds good cause that notice and opportunity for prior public comment are unnecessary. In addition, for this same reason, the FAA finds that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, the FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2020–0638 and Project Identifier MCAI–2020–00308–E at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (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 final rule.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this final rule 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 final rule, 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 final rule. 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.

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 0 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Remove and replace engine	48 work-hours × $85 per hour = $4,080	$0	$4,080	$0

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all costs in our estimate.

Authority for This Rulemaking

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

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

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

Regulatory Findings

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 this AD:

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–14–04 Rolls-Royce Deutschland Ltd & Co KG (Type Certificate previously held by Rolls-Royce plc): Amendment 39–21158; Docket No. FAA–2020–0638; Project Identifier MCAI–2020–00308–E.

(a) Effective Date

This AD is effective July 23, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Rolls-Royce Deutschland Ltd. & Co KG (RRD) (Type Certificate previously held by Rolls-Royce plc) Trent 1000–A, Trent 1000–AE, Trent 1000–C, Trent 1000–CE, Trent 1000–D, Trent 1000–E, Trent 1000–G, and Trent 1000–H model turbofan engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.

(e) Unsafe Condition

This AD was prompted by occurrences of in-service engine surges on affected RRD Trent model turbofan engines with a high number of intermediate pressure compressor (IPC) module flight hours since new or cycles since new. Investigation by the manufacturer shows reduced surge margin caused by IPC deterioration has led to in-service engine surges. The FAA is issuing this AD to reduce the risk of a dual-engine surge event. The unsafe condition, if not addressed, could result in failure of one or more engines, loss of thrust control, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

Within 30 days after the effective date of this AD, remove and replace one or both affected engines identified as ''Not Acceptable De-pair required'' in paragraph 3, Accomplishment Instructions, Table 2, ''Examples of compliant and non-compliant engine pairing combinations,'' of Rolls-Royce plc (RR) Alert Non-Modification Service Bulletin (NMSB) Trent 1000 72–AK468, Revision 1, dated March 3, 2020.

(h) Installation Prohibition

After the effective date of this AD, do not install on any aircraft, an engine pairing combination identified as ''Not Acceptable De-pair required'' in paragraph 3, Accomplishment Instructions, Table 2, ''Examples of compliant and non-compliant engine pairing combinations,'' of RR Alert NMSB Trent 1000 72–AK468, Revision 1, dated March 3, 2020.

(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) Refer to European Union Aviation Safety Agency (EASA) AD 2020–0010R2, dated March 4, 2020, for more information. You may examine the EASA AD in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating it in Docket No. FAA–2020–0638.

(k) Material Incorporated by Reference

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

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

(i) Rolls-Royce plc (RR) Alert Non-Modification Service Bulletin Trent 1000 72–AK468, Revision 1, dated March 3, 2020.

(ii) [Reserved]

(3) For RR service information identified in this AD, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, 15827 Blankenfelde-Mahlow, Germany; phone: +49 (0) 33 708 6 0; email: *https://www.rolls-royce.com/contact-us.aspx.*

(4) You may view this service information at 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.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on July 1, 2020.

Gaetano A. Sciortino,

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

[FR Doc. 2020–14601 Filed 7–7–20; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1224

[Docket No. CPSC–2011–0019]

Revisions to Safety Standard for Portable Bed Rails; Corrections

AGENCY: Consumer Product Safety Commission.

ACTION: Correcting amendments.

SUMMARY: On February 25, 2020, the Consumer Product Safety Commission (Commission or CPSC) issued a direct final rule revising CPSC's mandatory standard for portable bed rails to incorporate by reference the most recent version of the applicable ASTM standard. That document contained typographical errors. In this document, we correct those errors, provide an additional option for viewing the standard, and add new contact information, which will provide the public several ways to contact CPSC, even during the COVID–19 pandemic.

DATES: Effective July 8, 2020.

FOR FURTHER INFORMATION CONTACT: Alberta E. Mills, Division of the Secretariat, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: 301–504–7479; email: *cpsc-os@cpsc.gov.*

SUPPLEMENTARY INFORMATION: The Commission is correcting typographical errors and adding new contact information in the direct final rule, *Revisions to Safety Standard for Portable Bed Rails,* 16 CFR part 1224, which published in the **Federal Register** on February 25, 2020. 85 FR 10565. This document corrects typographical errors in § 1224.2, to reference the correct ASTM standard, ASTM F2085–19, and updates the CPSC telephone number to: 301–504–7479. In addition, the document provides another way to view a read-only copy of the standard on the ASTM website at: *https://www.astm.org/READINGLIBRARY/,* and adds an email address to provide an additional contact option to reach the agency's Secretary: *cpsc-os@cpsc.gov.* This document does not make any substantive changes to the final rule. We are making these corrections to avoid possible confusion and to provide the public several ways to contact CPSC, even during the COVID–19 pandemic.

List of Subjects in 16 CFR Part 1224

Consumer protection, Imports, Infants and children, Law enforcement, and Toys.

Accordingly, 16 CFR part 1224 is corrected by making the following correcting amendments:

PART 1224—SAFETY STANDARD FOR PORTABLE BED RAILS

■ 1. The authority citation for part 1224 continues to read as follows:

Authority: Sec. 104, Pub. L. 110–314, 122 Stat. 3016 (15 U.S.C. 2056a); Sec 3, Pub. L. 112–28, 125 Stat. 273.

■ 2. Amend § 1224.2 by:

■ a. Removing the words ''ASTM F2805–19'' and adding, in its place, the words, ''ASTM F2085–19'';

■ b. Adding a sentence after the third sentence: and

■ c. Removing the telephone number ''301–504–7923,'' and adding ''301–504–7479, email: *cpsc-os@cpsc.gov,*'' in its place.

The addition reads as follows:

§ 1224.2 Requirements for portable bed rails.

* * * A read-only copy of the standard is available for viewing on the ASTM website at *https://www.astm.org/READINGLIBRARY/.* * * *

Alberta E. Mills,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2020–13348 Filed 7–7–20; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2012–0068]

16 CFR Part 1225

Safety Standard for Hand-Held Infant Carriers; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Correcting amendment.

SUMMARY: On May 20, 2020, the Consumer Product Safety Commission (Commission or CPSC) issued a direct final rule revising CPSC's mandatory standard for hand-held infant carriers to incorporate by reference the most recent version of the applicable ASTM standard. This document adds an email address, which will provide the public several ways to contact CPSC, even during the COVID–19 pandemic.

DATES: Effective on July 8, 2020.

FOR FURTHER INFORMATION CONTACT: Alberta E. Mills, Division of the Secretariat, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: 301–504–7479; email: *cpsc-os@cpsc.gov.*

SUPPLEMENTARY INFORMATION: The Commission is adding new contact information in the direct final rule, *Safety Standard for Hand-Held Infant Carriers,* 16 CFR part 1225, published in the **Federal Register** on May 20, 2020. 85 FR 30605. This document adds an email address in § 1225.2 to provide an additional contact option to reach the agency's Secretary: *cpsc-os@cpsc.gov.* This document does not make any substantive changes to the final rule. We are making this change to provide the public several ways to contact CPSC, even during the COVID–19 pandemic.

List of Subjects in 16 CFR Part 1225

Consumer protection, Imports, Infants and children, Law enforcement, and Toys.

Accordingly, 16 CFR part 1225 is amended by making the following correcting amendment:

PART 1225—SAFETY STANDARD FOR HAND-HELD INFANT CARRIERS

■ 1. The authority citation for part 1225 continues to read as follows:

Authority: 15 U.S.C. 2056a(b)(4)(B).

§ 1225.2 [Amended]

■ 2. Amend § 1225.2 by adding ''email: *cpsc-os@cpsc.gov,*'' in the fifth sentence after the telephone number ''301–504–7479''.

Alberta E. Mills,

Secretary U.S. Consumer Product Safety Commission.

[FR Doc. 2020–13351 Filed 7–7–20; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1228

[Docket No. CPSC–2014–0018]

Revisions to Safety Standard for Sling Carriers; Corrections

AGENCY: Consumer Product Safety Commission.

ACTION: Correcting amendments.

SUMMARY: On April 20, 2020, the Consumer Product Safety Commission (Commission or CPSC) issued a direct final rule revising CPSC's mandatory standard for sling carriers to incorporate by reference the most recent version of the applicable ASTM standard. That document omitted an ASTM contact phone number. This document adds an ASTM contact telephone number. Additionally, that document contained a CPSC telephone number that is now inactive. To ensure that the public will be able to contact CPSC, in this document, we provide a correct telephone number and add an email contact, which will provide the public several ways to contact CPSC, even during the COVID–19 pandemic.

DATES: Effective on July 8, 2020.

FOR FURTHER INFORMATION CONTACT: Alberta E. Mills, Division of the Secretariat, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: 301–504–7479; email: *cpsc-os@cpsc.gov.*

SUPPLEMENTARY INFORMATION: The Commission is correcting errors in the direct final rule, *Revisions to Safety Standard for Sling Carriers,* 16 CFR part 1228, which published in the **Federal Register** on April 20, 2020. 85 FR 21766. In § 1228.2(a), this document adds an ASTM contact telephone number: 610–832–9585, and corrects the CPSC

telephone number to 301–504–7479. This document also adds an email address to provide an additional contact option to reach the agency's Secretary: *cpsc-os@cpsc.gov.* This document does not make any substantive changes to the final rule. We are making these corrections to avoid possible confusion and to provide the public several ways to contact CPSC, even during the COVID–19 pandemic.

List of Subjects in 16 CFR Part 1228

Consumer protection, Imports, Infants and children, Law enforcement, and Toys.

Accordingly, 16 CFR part 1228 is corrected by making the following correcting amendments:

PART 1228—SAFETY STANDARD FOR SLING CARRIERS

■ 1. The authority citation for part 1228 continues to read as follows:

Authority: Sec. 104, Pub. L. 110–314, 122 Stat. 3016 (15 U.S.C. 2056a).

§ 1228.2 [Amended]

■ 2. Amend § 1228.2(a) by:

■ a. Removing ''; *www.astm.org.*'' at the end of the third sentence, and adding ''USA; phone: 610–832–9585; *www.astm.org.*'' in its place; and

■ b. Removing the telephone number ''301–504–7923,'' in the fifth sentence, and adding ''301–504–7479, email: *cpsc-os@cpsc.gov,*'' in its place.

Alberta E. Mills,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2020–13350 Filed 7–7–20; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1232

[Docket No. CPSC–2015–0029]

Revisions to Safety Standard for Children's Folding Chair and Stools; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Correcting amendment.

SUMMARY: On April 1, 2020, the Consumer Product Safety Commission (Commission or CPSC) issued a direct final rule revising CPSC's mandatory standard for children's folding chairs and stools to incorporate by reference the most recent version of the applicable ASTM standard. That document contained a CPSC telephone number that is now inactive. To ensure that the public will be able to contact CPSC, in this document, we provide a correct telephone number and add an email address, which will provide the public several ways to contact CPSC, even during the COVID–19 pandemic.

DATES: Effective on July 8, 2020.

FOR FURTHER INFORMATION CONTACT: Alberta E. Mills, Division of the Secretariat, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: 301–504–7479; email: *cpsc-os@cpsc.gov.*

SUPPLEMENTARY INFORMATION: The Commission is correcting an error in the direct final rule, *Revisions to Safety Standard for Children's Chairs and Stools,* 16 CFR part 1232, which published in the **Federal Register** on April 1, 2020. 85 FR 18111. In § 1232.2, this document corrects the CPSC telephone number to 301–504–7479 and adds an email address to provide another contact option to reach the agency's Secretary: *cpsc-os@cpsc.gov.* This document does not make any substantive changes to the final rule. We are making these corrections to avoid possible confusion and to provide the public several ways to contact CPSC, even during the COVID–19 pandemic.

List of Subjects in 16 CFR Part 1232

Consumer protection, Imports, Infants and children, Law enforcement, and Toys.

Accordingly, 16 CFR part 1232 is corrected by making the following correcting amendment:

PART 1232—SAFETY STANDARD FOR CHILDREN'S FOLDING CHAIRS AND STOOLS

■ 1. The authority citation for part 1232 continues to read as follows:

Authority: Sec. 104, Pub. L. 110–314, 122 Stat. 3016 (15 U.S.C. 2056a); Sec 3, Pub. L. 112–28, 125 Stat. 273.

§ 1232.2 [Amended]

■ 2. Amend § 1232.2 by removing the telephone number ''301–504–7923,'' in the fifth sentence, and adding telephone number ''301–504–7479, email: *cpsc-os@cpsc.gov,*'' in its place.

Alberta E. Mills,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2020–13349 Filed 7–7–20; 8:45 am]

BILLING CODE 6355–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

RIN 3038–AE76

Registration and Compliance Requirements for Commodity Pool Operators and Commodity Trading Advisors: Prohibiting Exemptions on Behalf of Persons Subject to Certain Statutory Disqualifications

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (CFTC or Commission) is adopting as final (Final Rule) an amendment to Regulation 4.13, which contains the regulations applicable to commodity pool operators (CPOs) and commodity trading advisors. The Final Rule generally prohibits persons who have, or whose principals have, in their backgrounds any of the statutory disqualifications listed in section 8a(2) of the Commodity Exchange Act (CEA or the Act) from claiming a CPO registration exemption under Regulation 4.13. Specifically, the Final Rule will require any person filing a notice claiming such exemption to represent that, subject to limited exceptions, neither the claimant nor any of its principals has in their backgrounds a CEA section 8a(2) disqualification that would require disclosure, if the claimant sought registration with the Commission.

DATES:

Effective Date: The effective date for this Final Rule is September 8, 2020.

Compliance Date: Compliance with the Final Rule will generally be required through the existing notice filing under Regulation 4.13(b)(1), 17 CFR 4.13(b)(1). Therefore, persons who, as of the Final Rule's effective date, have filed that notice and are currently relying on an exemption from CPO registration under Regulation 4.13 will be required to comply with the Final Rule when those persons next file a notice of exemption for the 2021 filing cycle, *i.e.,* on March 1, 2021. Persons claiming a Regulation 4.13 exemption for the first time on or after the Final Rule's effective date will be required to comply with the Final Rule when the person first files a notice of exemption.

FOR FURTHER INFORMATION CONTACT: Joshua Sterling, Director, at 202–418–6056 or *jsterling@cftc.gov;* Amanda Lesher Olear, Deputy Director, at 202–418–5283 or *aolear@cftc.gov;* Elizabeth Groover, Special Counsel, at 202–418–

5985 or *egroover@cftc.gov,* Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street NW, Washington, DC 20581.

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I. Background

a. Statutory and Regulatory Background

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) [1] established a statutory framework for the regulation of the swaps market to reduce risk, increase transparency, and promote market integrity within the financial system. As amended by the Dodd-Frank Act, section 1a(11) of the CEA defines the term ''commodity pool operator,'' as any person [2] engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, with respect to that commodity pool, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodity interests.[3] CEA section 4m(1) generally requires each person who satisfies the CPO definition to register as such with the Commission.[4] Additionally, CEA section 8a generally authorizes the Commission to register intermediaries and their associated persons, including CPOs, and also to refuse, condition, or revoke such registration.[5]

CEA section 8a(2) lists the offenses for which the Commission may upon notice, but without a hearing and pursuant to such rules, regulations or orders as the Commission may adopt, refuse to register, to register conditionally, or to suspend or place restrictions upon the registration of, any person, and for which the Commission may revoke the registration of any person with such a hearing as may be appropriate.[6] Commission regulations require all persons applying for registration with the Commission to complete Form 7–R.[7] Each natural person principal of an applicant is also required to complete Form 8–R, to submit fingerprints, and to undergo a criminal background check.[8] One of the purposes of Forms 7–R and 8–R, as well as the fingerprinting requirement, is to determine whether any applicant for registration or any of its principals has in its background one of the enumerated statutory disqualifications in the CEA.[9] If a statutory disqualification enumerated in CEA section 8a(2) is disclosed or otherwise revealed through that process, such applicant is generally refused registration on that basis, and such statutorily disqualified principals will generally not be listed with the Commission. The Commission also has the authority under CEA section 8a(5) to make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate the provisions or to accomplish any of the purposes of the CEA.[10] Finally, CEA section 4(c) provides that the Commission, to promote responsible economic or financial innovation and fair competition, by rule, regulation, or order, after notice and opportunity for hearing, may exempt, among other things, any person or class of persons offering, entering into, rendering advice or rendering other services with respect to commodity interests, from any provision of the CEA.[11] CEA section 4(c) provides a statutory basis for the Commission's promulgation of the various regulatory exemptions available to CPOs.

Part 4 of the Commission's regulations governs, among other things, the operations and activities of CPOs.[12] Those regulations implement the statutory authority provided to the Commission by the CEA and establish multiple registration exemptions and definitional exclusions for CPOs, as discussed above.[13] Part 4 also contains regulations that establish the ongoing compliance obligations applicable to CPOs, whether registered or exempt, as well as to those persons operating in the commodity interest markets pursuant to an exclusion from that definition. These requirements pertain to the commodity pools that CPOs operate and advise, and among other things, dictate matters of customer protection, disclosure, and reporting to a CPO's commodity pool participants.

The Commission has previously promulgated, pursuant to these statutory authorities, the various exemptions from registration as a CPO that are

[1] Public Law 111–203, 124 Stat. 1376 (2010), *available at https://www.govinfo.gov/content/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf* (last retrieved Apr. 20, 2020).

[2] Regulation 1.3 defines ''person'' as including individuals, associations, partnerships, corporations, and trusts. 17 CFR 1.3. The Commission's regulations are found at 17 CFR Ch. I (2020).

[3] 7 U.S.C. 1a(11). The CEA is found at 7 U.S.C. 1, *et seq.* (2018). Both the Act and the Commission's regulations are accessible through the Commission's website, *https://www.cftc.gov.*

[4] 7 U.S.C. 6m(1).

[5] 7 U.S.C. 12a.

[6] 7 U.S.C. 12a(2). Such decisions to refuse, condition, revoke, or place restrictions on registration are subject to appeal by the affected person or registration in the manner provided in section 6(c) of the CEA. *Id.*

[7] *See* 17 CFR 3.10(a)(1)(i).

[8] 17 CFR 3.10(a)(2).

[9] *See* Adoption of Revised Registration Form 8–R, 82 FR 19665, 19665 (Apr. 28, 2017) (describing Form 8–R as designed to ''assess the applicant's fitness to engage in business as a derivatives professional''). *See also* Firm Application (Form 7–R), pp. 12–16 (making various inquiries as to the criminal and disciplinary background of the firm and its principals), and p. 22 (requiring the applicant to certify that it would not be statutorily disqualified from registration under section 8a(2) or section 8a(3) of the Act), *available at https://www.nfa.futures.org/registration-membership/templates-and-forms/Form7-R-entire.pdf* (last retrieved June 1, 2020).

[10] 7 U.S.C. 12a(5).

[11] 7 U.S.C. 4(c)(1).

[12] *See* 17 CFR pt. 4, generally.

[13] *See, e.g.,* 17 CFR 4.13 (providing multiple registration exemptions to qualifying persons meeting the CPO definition).

enumerated in Regulation 4.13,[14] and the Commission is today utilizing them to revise the basic eligibility criteria and amend the notice filing required to claim certain exemptions set forth in that regulation.[15] As discussed above, persons seeking registration with the Commission, and their principals, are generally refused registration with the Commission on the basis that they have disclosed or are found to have in their backgrounds one of the statutory disqualifications enumerated in CEA section 8a(2). Conversely, prior to this Final Rule, persons claiming an exemption from CPO registration under Regulation 4.13 were not required to disclose any previous matters that might impact their eligibility or fitness for registration, or to otherwise meet any basic conduct standards beyond the substantive conditions of their claimed exemption. The Final Rule amendment seeks to close that regulatory gap by effectively prohibiting any person who has, or whose principals have, in their backgrounds a statutory disqualification listed in CEA section 8a(2) (Covered Statutory Disqualification, or CSD) from claiming a CPO exemption under Regulation 4.13. As a result of the Final Rule, persons who have a CSD in their background will generally be foreclosed from acting as a CPO, whether in a registered or exempt capacity, subject to limited exceptions discussed further below.

b. The Commission's October 2018 Proposal, Request for Public Comment, and Recent Final Rules

In response to information received from members of the public, as well as CFTC staff's own internal review of its regulatory regime, the Commission published for public comment in the **Federal Register** on October 18, 2018, a Notice of Proposed Rulemaking (NPRM, or the Proposal), proposing to adopt several regulatory amendments applicable to CPOs and commodity trading advisors.[16] Commission staff had previously become aware of a number of statutorily disqualified CPOs operating commodity pools pursuant to the registration exemption formerly available in Regulation 4.13(a)(4), which the Commission rescinded in 2012.[17] Since the passage of the Dodd-Frank Act, the Commission has proposed and adopted amendments to Regulation 4.13, which have, in general, been designed to identify, accurately and in a timely manner, the exempt CPOs operating in its markets, to incorporate additional registration exemptions where appropriate, and to facilitate customer protection by requiring annual notice filings. The Commission is adopting this Final Rule because it believes that requiring persons to attest to both their and their principals' lack of Covered Statutory Disqualifications through an additional representation in the notice filing required by Regulation 4.13(b)(1) will further enhance the customer protection of exempt pool participants, and more generally, promote the public interest.

In the NPRM, the Commission included a proposed amendment to Regulation 4.13 that would have required any person claiming an exemption from CPO registration under Regulations 4.13(a)(1)–(a)(5) to represent that neither the person nor any of its principals is subject to any statutory disqualification under section 8a(2) or 8a(3) of the Act, unless such disqualification arises from a matter which was previously disclosed in connection with a previous application, if such registration was granted, or which was disclosed more than thirty days prior to the claim of this exemption (Proposed Regulation 4.13(a)(6)).[18] The Commission noted its belief then that ''it poses an undue risk from a customer protection standpoint for its regulations in their current form to permit statutorily disqualified persons or entities to legally operate exempt commodity pools, especially when those same persons would not be permitted to register with the Commission.'' [19] Additionally, the Commission solicited comment on that particular proposed amendment, raising several specific questions for the public's consideration.[20] In December 2019, the Commission published final amendments (2019 Final Rules) adopting several aspects of the Proposal with the general intent of simplifying the regulatory landscape for CPOs without reducing the customer protection and other benefits provided by those regulations.[21] In describing the scope of the 2019 Final Rules, the Commission stated that certain aspects of the Proposal, including Proposed Regulation 4.13(a)(6), elicited a significant number of responsive and detailed public comments, and as a result, the Commission found that those proposed amendments required further consideration before they could be finalized.[22]

After additional consideration of Proposed Regulation 4.13(a)(6), as well as the ideas, questions, and suggestions received in public comments, the Commission has determined it appropriate to adopt, with specific modifications from the Proposal, the amendment, such that, subject to limited exceptions, persons subject to the Covered Statutory Disqualifications (*i.e.,* those listed in CEA section 8a(2)) will generally no longer be able to claim CPO exemptions under Regulation 4.13, absent a separate determination by the Commission (or its staff, pursuant to delegated authority) under CEA section 8a(2) or Regulation 4.12(a), as more fully described below. The following sections describe the amendment as presented in the Proposal, respond to the substantive comments received, and finally, explain the amendment in its final form and how the Commission intends it to apply in the future.

II. Final Rules

a. Proposed Regulation 4.13(a)(6): A Proposal To Prohibit Statutory Disqualifications in CPOs Claiming Exemption Under Regulation 4.13

In the Proposal, the Commission, for the first time, proposed that CPOs exempt under Regulation 4.13, and principals of the foregoing, who have statutory disqualifications in their backgrounds be subject to conduct

[14] *See* 17 CFR pt. 4 (citing as statutory authority, 7 U.S.C. 1a, 2, 6(c), 6b, 6c, 6*l,* 6m, 6n, 6*o,* 12a, and 23).

[15] The Commission notes that the title of the Final Rule, ''Amendments to Compliance Requirements for Commodity Pool Operators and Commodity Trading Advisors,'' is consistent with the related notice of proposed rulemaking published in 2018, notwithstanding that the amendment adopted by the Final Rule does not have any effect on commodity trading advisors.

[16] Several of the proposed amendments were consistent with, or expansions of, relief that had been previously available through a staff advisory or through no-action and exemptive letters issued over the years by staff of the Commission's Division of Swap Dealer and Intermediary Oversight (DSIO) and its predecessors. *See* Registration and Compliance Requirements for Commodity Pool Operators and Commodity Trading Advisors, 83 FR 52902 (Oct. 18, 2018) (Proposal).

[17] After the rescission, such CPOs would have been required to modify their operations to comply with a different exemption under Regulation 4.13, cease their operations, or receive relief from the Commission permitting them to register and continue operating.

[18] Proposal, 83 FR at 52906–07; *see also* Proposal, 83 FR at 52927 (proposing to adopt the prohibition at paragraph (a)(6) of Regulation 4.13).

[19] Proposal, 83 FR at 52906.

[20] Proposal, 83 FR at 52916 (raising questions regarding the scope of the proposed prohibition and its potential impact on currently exempt CPOs, among several other issues).

[21] Registration and Compliance Requirements for Commodity Pool Operators and Commodity Trading Advisors: Registered Investment Companies, Business Development Companies, and Definition of Reporting Person, 84 FR 67343 (Dec. 10, 2019); *and* Registration and Compliance Requirements for Commodity Pool Operators (CPOs) and Commodity Trading Advisors: Family Offices and Exempt CPOs, 84 FR 67355 (Dec. 10, 2019) (2019 Final Rules).

[22] 2019 Final Rules, 84 FR at 67357.

standards similar to those of their registered counterparts. The Commission has now determined to exercise its statutory authority to amend the Commission's CPO exemption regime, such that both registered and exempt CPOs will be required to represent that they and their respective principals are not subject to the Covered Statutory Disqualifications listed in the CEA. The Commission continues to believe that ''preserving the prohibition on statutory disqualifications . . . and applying it to exemptions under § 4.13 would provide a substantial customer protection benefit by prohibiting statutorily disqualified persons from operating and soliciting participants for investment in exempt commodity pools.'' [23]

Proposed Regulation 4.13(a)(6) would have required any person who desires to claim an exemption under paragraphs (a)(1), (a)(2), (a)(3), (a)(4), or (a)(5) of the section to represent that neither the person nor any of its principals is subject to any statutory disqualification under section 8a(2) or 8a(3) of the Act, unless such disqualification arises from a matter which was previously disclosed in connection with a previous application, if such registration was granted, or which was disclosed more than thirty days prior to the claim of this exemption.[24] The Commission did not propose to require that representation from CPOs of Family Offices, which it concurrently proposed to exempt from CPO registration, because ''such CPOs would be prohibited from soliciting non-family members/clients to participate in their pool(s), necessarily limiting their contact with prospective participants drawn from the general public, and as a result, reducing the Commission's customer protection concerns in that context.'' [25] The Commission stated its preliminary belief that this proposed approach ''addresses customer protection concerns regarding statutory disqualifications, while preserving flexibility in Commission regulations applicable to CPOs.'' [26]

The Commission further explained that Proposed Regulation 4.13(a)(6) would ''provide additional customer protection because statutorily disqualified, unregisterable persons would no longer be able to claim the CPO exemptions under § [§] 4.13 (a)(1) through (a)(5).'' [27] With respect to its future application, the Commission stated its intent that CPOs currently claiming an exemption under Regulation 4.13 would comply, ''as they renew their claims on an annual basis—*i.e.,* existing claimants would be required to represent that neither they nor their principals are subject to statutory disqualifications under CEA sections 8a(2) or 8a(3), when they annually affirm their continued reliance on a § 4.13 exemption next year.'' [28] In contrast, ''CPOs filing new claims of a § 4.13 exemption, however, would be required to comply with this prohibition upon filing, if and when the amendments are adopted as proposed, and become effective.'' [29]

The Commission requested comment generally on all aspects of the Proposal, and also solicited comment through targeted questions about each of the proposed amendments, including Proposed Regulation 4.13(a)(6).[30] In particular, the Commission requested comment on ''the impact of adopting this provision on industry participants and currently exempt CPOs, and also, on what, if any, other statutory disqualifications should be permissible for exempt CPOs and their principals.'' [31] The Commission also asked the following questions:

(1) What are the concerns and benefits associated with the expansion of the prohibition on statutory disqualifications to the CPO registration exemptions set forth in § [§] 4.13(a)(1), (a)(2), (a)(3), and (a)(5), or proposed to be set forth in § 4.13(a)(4)?

(2) Do the limited exceptions that would permit certain statutory disqualifications successfully address any unintended consequences of adding the prohibition to § 4.13, while still providing a base level of customer protection by preventing statutorily disqualified individuals from legally operating exempt commodity pools?

(3) Generally, how should the Commission handle the implementation of the statutory disqualification prohibition?

(4) Specifically, how should the prohibition apply to current claimants under § 4.13? How much time should the Commission allow for filing updated exemption claims subject to the prohibition?

(5) How much time should the Commission allow for an exempt CPO to replace statutorily disqualified principals, in order to maintain eligibility for a § 4.13 exemption? [32]

The discussion below outlines the public comments received in response to the Proposal, focusing on the substantive comments received regarding Proposed Regulation 4.13(a)(6). The Commission will also explain how it has taken those comments into consideration, via specific adjustments to the Commission's approach in adopting the new statutory disqualification representation as a condition of receiving exemptive relief under Regulation 4.13.

b. General Comments

The Commission received 28 individual comment letters responsive to the NPRM: Six from legal and market professional groups; 13 from law firms; seven from individual family offices; one from a government-sponsored enterprise (GSE) actively involved in the housing industry; and one from the National Futures Association (NFA), a registered futures association,[33] who through delegation by the Commission, assists Commission staff in administering its CPO regulatory program.[34] Additionally, Commission

[23] Proposal, 83 FR at 52916.

[24] Proposal, 83 FR at 52927. This language is nearly identical to the representation required by paragraph C.4. of Staff Advisory 18–96. *See* Offshore Commodity Pools Relief for Certain Registered CPOs From Rules 4.21, 4.22, and 4.23(a)(10) and (a)(11) and From the Location of Books and Records Requirement of Rule 4.23, *available at https://www.cftc.gov/sites/default/files/tm/advisory18-96.htm* (last visited Apr. 22, 2020).

[25] Proposal, 83 FR at 52906. The Commission formally adopted a CPO exemption for qualifying Family Offices in the 2019 Final Rules. *See* 2019 Final Rules, 84 FR at 67358, 67368.

[26] Proposal, 83 FR at 52906.

[27] Proposal, 83 FR at 52914.

[28] Proposal, 83 FR at 52907.

[29] *Proposal, 83 FR at 52907.*

[30] Proposal, 83 FR at 52916.

[31] Proposal, 83 FR at 52916.

[32] Proposal, 83 FR at 52916.

[33] *See* 7 U.S.C. 21.

[34] Comments were submitted by the following entities: Alscott, Inc.* (Dec. 7, 2018); Alternative Investment Management Association (AIMA) (Letter 1: Dec. 17, 2018, and Letter 2: Oct. 7, 2019); Buchanan, Ingersoll, and Rooney, PC * (Dec. 12, 2018); Commodore Management Company * (Dec. 12, 2018); Dechert, LLP (Dechert) (Dec. 17, 2018); Freddie Mac (Dec. 17, 2018); Fried, Frank, Harris, Shriver, & Jacobson, LLP (Fried Frank) (Dec. 17, 2018); Investment Adviser Association (IAA) (Dec. 17, 2018); Kramer, Levin, Naftalis, & Frankel, LLP * (Dec. 17, 2018); LBCW Investments * (Dec. 5, 2018); Managed Funds Association (MFA) (Dec. 14, 2018); Marshall Street Capital * (Dec. 13, 2018); McDermott, Will, & Emery, LLP * (Dec. 17, 2018); McLaughlin & Stern, LLP * (Dec. 5, 2018); Moreland Management Company * (Dec. 13, 2018); Morgan, Lewis, & Bockius, LLP * (Dec. 18, 2018); NFA (Dec. 17, 2018); New York City Bar Association, the Committee on Futures and Derivatives (NYC Bar Derivatives Committee) (Jan. 4, 2019); Norton, Rose, Fulbright US, LLP * (Dec. 17, 2018); Perkins Coie, LLP :* (Dec. 17, 2018); the Private Investor Coalition, Inc. (PIC) (Nov. 28, 2018); Ridama Capital * (Dec. 13, 2018); Schiff Hardin, LLP (two offices) * (Dec. 13 and 17, 2018); the Securities Industry and Financial Management Association Asset Management Group (SIFMA AMG) (Letter 1: Dec. 17, 2018, and Letter 2: Sept. 13, 2019); Vorpal, LLC * (Dec. 17, 2018); Willkie, Farr, and Gallagher, LLP (Willkie) (Dec. 11, 2018); and Wilmer Hale, LLP (Wilmer Hale) (Dec. 7, 2018). Those entities marked with an '' *'' submitted substantively

staff participated in multiple *ex parte* meetings concerning the Proposal.[35] Seven of the comment letters provided comment specifically on Proposed Regulation 4.13(a)(6).

Commenters generally understood the customer protection goals of the Commission, and many supported the amendment; other commenters opposed it and raised several questions regarding its implementation. Dechert, for instance, opposed Proposed Regulation 4.13(a)(6), stating that the Commission should not extend to exempt CPOs a prohibition generally applicable only to registered CPOs.[36] Dechert further commented that the proposed amendment would impose one of the most costly aspects of registration, that of principal classification and screening, on CPOs that are intended to be exempt from registration.[37] SIFMA AMG additionally opposed Proposed Regulation 4.13(a)(6) and expressed the need for the Commission's consumer protection goals to be balanced appropriately with compliance burdens and costs.[38]

Commenters also compared the process surrounding Proposed Regulation 4.13(a)(6) to the Commission's registration processes currently outlined in part 3 of its regulations. Dechert and other commenters requested more detail on how the proposed amendment would operate and how exceptions would be considered or accepted.[39] Although the majority of comments indicated that their submitters understood the Commission's intention in proposing the prohibition on statutory disqualifications, Dechert expressed confusion as to whether Proposed Regulation 4.13(a)(6) was intended to require disclosure of such disqualifications, or whether it was actually designed to bar disqualified CPOs from relying on an exemption entirely.[40]

Some commenters cited a lack of clarity on process and other significant uncertainties associated with the proposed amendment, and a couple of commenters requested that the Commission reconsider and/or re-propose it.[41] Alternatively, Dechert requested that the Commission develop processes regarding: (a) The identification and screening of principals; (b) disputing a determination by CFTC or NFA to bar a person from claiming exemption under Regulation 4.13; (c) the ''disclosure exception;'' and (d) the winding down of operations for affected CPOs in a manner that minimizes market disruption and any disadvantages to pool participants.[42] MFA shared this concern, requesting clarity on the timing of disclosure for CPOs already exempt under a Regulation 4.13 exemption and pointing out the lack of procedure specified in the Proposal.[43] MFA further suggested that the Commission consider adopting regulations that would establish a clear process for currently exempt CPOs to update their disclosures of statutory disqualifications to the Commission or NFA, including the disclosure of violations of requirements of other regulators.[44]

Several commenters were concerned about the scope of Proposed Regulation 4.13(a)(6), including that offenses enumerated in CEA section 8a(3) would be considered statutory disqualifications.[45] AIMA, for instance, explained that the disqualifications listed under that statutory paragraph, in particular, provide the Commission grounds only for potentially disallowing registration, rather than an automatic bar to registration.[46] Consequently, AIMA requested that any required representation include only offenses under CEA section 8a(2), or that the Commission exclude from consideration offenses listed in CEA section 8a(3)(B) and generally limit the incorporation of offenses in CEA section 8a(3) to those that are no more than ten years old.[47] MFA similarly pointed out that even recordkeeping violations would need to be disclosed pursuant to CEA section 8a(3)(A); MFA also questioned the breadth and meaning of CEA section 8a(3)(M) disqualifications, known only in the statute as ''other good cause.''[48]

Like AIMA, IAA and SIFMA AMG similarly requested that the representation cover only offenses listed under CEA section 8a(2).[49] SIFMA AMG additionally requested clarification from the Commission that a person would not be ''statutorily disqualified'' pursuant to a violation under CEA section 8a(3), unless and until the person receives a hearing and the Commission has made the filing with respect to the conduct at issue required by that statutory provision.[50] Dechert requested that the Commission further limit the scope of Proposed Regulation 4.13(a)(6), such that the provision would only effectively prohibit statutory disqualifications involving instances of fraud and similar offenses involving commodities, securities, and other financial instruments, like CEA section 8a(2)(D).[51] Additionally, Dechert requested that the Commission also consider: (a) Applying Proposed Regulation 4.13(a)(6) to only the person itself claiming the CPO exemption, rather than both the claimant and principals, and (b) grandfathering exempt CPOs currently in existence, in conjunction with the proposed amendment's adoption.[52]

IAA also requested that the Commission not require compliance with the proposed amendment from registered investment advisers (RIAs) because those entities are already subject to the statutory disqualification regime under the Investment Advisers Act of 1940 (IA Act), which, the IAA argued, Proposed Regulation 4.13(a)(6) would duplicate.[53] SIFMA AMG also supported a carve-out for RIAs, explaining that RIAs are subject to a robust statutory disqualification regime under the IA Act, are required to disclose disciplinary events on their

identical, brief comments, specifically supporting the detailed comments and suggested edits submitted to the Commission by PIC.

[35] *See* ''Comments for Proposed Rule 83 FR 52902,'' *available at https://comments.cftc.gov/PublicComments/CommentList.aspx?id=2925* (last retrieved May 4, 2020).

[36] Dechert, at 7 (arguing that the Commission has generally determined it does not need to apply as close regulatory oversight to exempt CPOs as it does for registered CPOs, and that it is inconsistent with that conclusion for the Commission to apply this prohibition to exempt CPOs).

[37] Dechert, at 7–8. Dechert emphasized the difficulty in determining who is and is not a principal of a CPO, pointing out that some types of principal do not involve a ''bright line test,'' but rather a ''facts-and-circumstances analysis.'' *Id.*

[38] SIFMA AMG, at 17. SIFMA AMG also requested that the Commission consider performing a study to determine if the prohibition against statutory disqualifications was actually needed in the population of exempt CPOs. *Id.*

[39] Dechert, at 11–12; *see also* IAA, at 11, and AIMA, at 9–10.

[40] Dechert, at 9.

[41] Dechert, at 12; SIFMA AMG, at 17.

[42] Dechert, at 11. IAA also requested that the Commission develop a hearing process for denying persons the CPO exemptions, based on a statutory prohibition. IAA, at 11. *See also* AIMA, at 9.

[43] MFA, at 4.

[44] MFA, at 4.

[45] *See, e.g.,* Dechert, at 8 (stating that the statutory disqualifications impacting a person's eligibility for exemption are very broad).

[46] AIMA, at 10.

[47] AIMA, at 10.

[48] MFA, at 4. *See also* SIFMA AMG, at 19 (arguing that offenses under CEA section 8a(3) are much less serious, more remote in time, or may be difficult to verify at the time a claim for exemption is filed); AIMA, at 10 (stating that including CEA section 8a(3) would be too broad, as it lists as disqualifying: Misdemeanor offenses regardless of age, regulatory offenses routinely cleared by NFA in administering the Commission's registration process for CPOs, and the ''amorphous 'other good cause'''').

[49] IAA, at 11; SIFMA AMG, at 19.

[50] SIFMA AMG, at 20.

[51] Dechert, at 11 (stating that, as the prohibition was proposed, any violations of the CEA ''could require disclosure of a Statutory Disqualification'' and may prohibit a person from claiming a CPO exemption in Regulation 4.13).

[52] Dechert, at 11.

[53] IAA, at 10.

Forms ADV, and are also subject to fiduciary duties to their clients.[54]

NFA generally supported Proposed Regulation 4.13(a)(6) and agreed with the Commission's underlying rationale.[55] NFA provided comments specifically regarding the two exceptions the Commission proposed: (a) If the statutory disqualification was previously disclosed in relation to a registration application, which was later granted, or (b) if the statutory disqualification was disclosed within the previous 30 days.[56] NFA stated that the exception for disqualifications disclosed within 30 days would not be practical, and was further inappropriate to apply to CPOs exempt from registration under Regulation 4.13, because such persons, in contrast to registered CPOs, generally have no ongoing obligation to update Commission registration forms if they should become inaccurate.[57] Thus, NFA stated, there is no mechanism requiring this population of exempt CPOs to update the Commission or NFA as to new or recent statutory disqualifications to which they or their principals may be subject.[58] As a result, NFA suggested that the Commission either abandon this exception entirely, or limit its application to persons that are already registered with the Commission and extend the amount of time.[59] SIFMA AMG likewise raised questions about how currently exempt CPOs that are not registered with the Commission would update the Commission or NFA as to new statutory disqualifications, suggesting that the Commission accept updates by RIAs to their Forms ADV as substituted compliance for such disclosures.[60]

Still other commenters expressed concern over the timing of compliance with Proposed Regulation 4.13(a)(6). AIMA requested that the Commission allow at least 12 months for persons with such statutory disqualifications to come into compliance, so that the issue of whether those disqualifications should be a bar to claiming a CPO registration exemption could be determined.[61] Similarly, Willkie requested that the Commission provide sufficient time for industry to absorb a significant rule change like this one, suggested that the effectiveness of the provision coincide with the annual update filings typically due in the first quarter of each year, and requested further that the Commission generally clarify the process around the proposed prohibition.[62] IAA also requested that the Commission delay compliance with the proposed prohibition to allow CPOs to adjust their operations, in case of disqualified principals in their entities.[63]

c. The Final Rule: New Regulation 4.13(b)(1)(iii) and Responses to Specific Comments

After carefully considering Proposed Regulation 4.13(a)(6) as well as all of the public comments received, the Commission has determined it to be an appropriate exercise of its authorities under the CEA to finalize and adopt the proposed amendment with substantive adjustments responsive to those comments. The Commission will additionally provide guidance herein regarding the Final Rule's implementation. The Commission believes that, in conjunction with the substantive and procedural clarifications and the compliance schedule discussed below, the Final Rule will facilitate compliance by exempt CPOs with new Regulation 4.13(b)(1)(iii), while also minimizing costs associated with implementing the amendment.[64]

i. Prohibition v. Disclosure: Clarifying the Consequences of New Regulation 4.13(b)(1)(iii)

The Final Rule's amendment to Regulation 4.13 prohibits a person who has, or whose principals have, in their backgrounds a Covered Statutory Disqualification from claiming a CPO exemption thereunder, as opposed to requiring the disclosure of such disqualifications. As the Commission has previously stated, there is an undue risk posed to potential customers in the commodity interest markets, when a person can act as a CPO, including soliciting participants and accepting capital contributions in the name of its operated pool, without meeting the basic conduct standards set forth in the CEA. To address that risk, the Commission wishes to eliminate this inconsistent treatment between exempt and registered CPOs (and the principals thereof), in which certain persons may, by claiming an exemption from CPO registration, avoid the CEA's basic conduct requirements established for all persons registering as intermediaries with the Commission. The Commission understands that several commenters were generally opposed to prohibiting statutorily disqualified persons from claiming an exemption from CPO registration under Regulation 4.13.[65] After further consideration of the Proposal, the comments, and regulatory policy goals, the Commission believes that, for the purpose of ensuring its customer protection goals are met, it is important that all persons falling within the CPO definition not be subject to the most serious statutory disqualifications, prior to operating or soliciting participants for participation in their pools. The Commission finds this regulatory outcome of the Final Rule appropriate because, as discussed further below, persons claiming an exemption under Regulation 4.13 are exempt from the various regulatory obligations resulting from operating in a registered capacity.

Dechert commented that with respect to exempt CPOs, ''the CFTC has generally determined it does not need to apply as close regulatory oversight . . . as it does for registered CPOs.'' [66] The Commission does not consider the Final Rule to be inconsistent with that statement. The Commission notes that, notwithstanding the Final Rule's amendment to Regulation 4.13, exempt CPOs will continue to be exempt from registration, and as a result, from the compliance obligations applicable to CPOs registered or required to be registered, which are primarily set forth in part 4 of the Commission's regulations. Each determination to exempt certain persons from CPO registration is inextricably linked to the eligibility criteria of the regulatory exemption being claimed. The Commission has previously concluded

[54] SIFMA AMG, at 18. SIFMA AMG stated that accepting the SEC's statutory disqualification and disclosure regime for RIAs as substituted compliance for purposes of relying on the CPO exemptions under Regulation 4.13 would eliminate unnecessary costs without sacrificing the Commission's customer protection goals, and would also count as harmonization of SEC and CFTC regulations. *Id.*

[55] NFA, at 2.

[56] NFA, at 2 (stating that the source of the second exception stems from the ongoing obligation of registered CPOs claiming Staff Advisory 18–96 and/or exemptive relief under Regulation 4.7 to update their registration forms whenever something occurs to make them inaccurate, like the recent commission of a statutory disqualification by the registrant or one of its principals).

[57] NFA, at 2.

[58] NFA, at 2.

[59] NFA, at 3 (explaining that 30 days is simply not enough time to evaluate new statutory disqualifications and/or determine if a registration action or ineligibility determination for exemption is necessary as a result, but failing to specify an alternative amount of time that would be sufficient).

[60] SIFMA AMG, at 19–20.

[61] AIMA, at 10.

[62] Willkie, at 8.

[63] IAA, at 12.

[64] Further, the Commission has determined that moving forward with the Final Rule, rather than re-proposing this amendment as requested by a few commenters, is an appropriate and acceptable course of action, consistent with the Commission's regulatory policies and goals, particularly given the substantive adjustments made in direct response to public comments and the provision of additional compliance time and guidance.

[65] *See, e.g.,* Dechert, at 7; SIFMA AMG, at 17.

[66] Dechert, at 7.

that such eligible persons generally implicate fewer of the Commission's regulatory and oversight interests, which supports the provision of a regulatory exemption from registration under those circumstances.[67] The Commission therefore believes it appropriate to recognize the unique regulatory status of exempt CPOs, but also to ensure that the Final Rule's amendment applies as intended and in a logical fashion.

Dechert further noted that, as an alternative to Proposed Regulation 4.13(a)(6) and to CPO registration generally, the Commission has multiple authorities it might employ and rely upon with respect to CPOs exempt under Regulation 4.13, citing the anti-fraud authority in CEA section 4*o,* as well as the recordkeeping and special call authorities in Regulation 4.13(c)(1).[68] Although the Commission agrees that exempt CPOs are subject to these authorities, which the Commission may employ on an as-needed basis, none of them is equivalent to or establishes a basic conduct standard applicable to CPOs exempt under Regulation 4.13. Moreover, each of the cited provisions is most useful to the Commission where a discrete issue has been identified that requires the Commission to act; in contrast, the Commission intends new Regulation 4.13(b)(1)(iii) to apply prophylactically, providing a foundational level of customer protection to exempt pool participants. Therefore, the Commission believes that this approach to remedying the fundamental customer protection risk discussed above is appropriate, notwithstanding the logistical and regulatory concerns asserted by commenters regarding the implementation of new Regulation 4.13(b)(1)(iii).[69]

ii. Scope of the Final Rule: Which statutory disqualifications will be grounds for prohibiting a claim to a CPO exemption?

After consideration of the comments received regarding the statutory disqualifications that would be grounds for prohibiting a person from seeking to claim a CPO exemption, the Commission has determined not to include those violations enumerated in CEA section 8a(3) in the Covered Statutory Disqualifications. The Commission finds persuasive commenters' arguments that the offenses listed in CEA section 8a(3), in the context of Regulation 4.13, warrant different treatment than those offenses listed in CEA section 8a(2).[70] The Commission notes that due to their characteristics, CEA section 8a(3) offenses (unlike those enumerated in CEA section 8a(2)) serve as a bar to registration with the Commission, only after a hearing is conducted to formally find both that the disqualification has occurred, and that the disqualification should prevent a person from registering with the Commission.[71] The Commission further believes that limiting the Covered Statutory Disqualifications that would result in a person being unable to rely upon Regulation 4.13 is consistent with the Commission's longstanding view that persons claiming an exemption from CPO registration generally implicate fewer of its regulatory concerns than those persons registered or required to be registered as CPOs.

The Commission notes further that Regulation 4.13 was designed to provide registration relief to CPOs with relatively limited activities in the commodity interest markets. Specifically, exempt CPOs are subject to substantive limitations impacting their exempt pools' commodity interest footprint or trading strategy, the types of pool participants they may solicit for investment in those exempt pools, as well as the exempt pools' overall size and marketing activities. The terms of the regulatory exemptions consequently cause the operations and activities of these exempt CPOs to be more narrowly circumscribed than those of registered CPOs. The Commission believes, as a result, that new Regulation 4.13(b)(1)(iii) should be tailored to the most serious offenses, which can trigger a statutory disqualification without a prior hearing, *i.e.,* those listed in CEA section 8a(2).

Commenters also expressed confusion regarding the procedural implications of including the statutory disqualifications in CEA section 8a(3), particularly the hearing requirement, and how they might be incorporated into a new prohibition process under Regulation 4.13. IAA specifically requested that the Commission adopt a ''reasonable person standard,'' with respect to a person's knowledge of statutory disqualifications, similar to Rule 506(d) of Regulation D, as adopted by the Securities and Exchange Commission (SEC).[72] The Commission believes, however, that limiting the representation in new Regulation 4.13(b)(1)(iii) to those offenses listed in CEA section 8a(2) will generally allow for effective implementation and will adequately address the Commission's customer protection concerns.

By focusing only on the offenses listed in CEA section 8a(2), the Commission is removing from the representation's purview those disqualifications that do not necessarily serve as a general bar to registration because they require a formal procedural hearing before they can impact a person's registration status with the Commission. By narrowing the scope of Covered Statutory Disqualifications in this manner, the Commission is also recognizing its historical position that the commodity interest activities of exempt CPOs generally implicate fewer of the Commission's regulatory concerns. As a result, the Commission believes that new Regulation 4.13(b)(1)(iii) will appropriately bar persons subject to the CSDs from claiming exemption under Regulation 4.13, without the adoption of additional procedural requirements and without the adoption of a ''reasonable person'' standard, which may be difficult to apply in this circumstance. As such, the Commission believes that the Final Rule will still ensure that persons with the most egregious and recent offenses are unable to solicit and accept funds for participations in commodity pools, even if they are

[67] *See, e.g.,* 17 CFR 4.13(a)(3)(ii) (requiring CPOs claiming this exemption to comply with one of two *de minimis* thresholds for commodity interest trading in their exempt pool(s)).

[68] Dechert, at 7.

[69] As discussed in further detail below, the Final Rule will address those concerns by removing the proposed reference to the disqualifications in CEA section 8a(3) in the required representation and also by providing a meaningful period of time for compliance by currently exempt CPOs.

[70] See CEA section 8a(3), 7 U.S.C. 12a(3) (enumerating various disqualifications including: Any violations of CEA or Commission regulations; any violations of the Securities Act of 1933, the Securities Exchange Act of 1934, the IA Act, the Investment Company Act of 1940, among other federal statutes, as well as any similar state statutes and any related regulations; any failure to supervise that results in persons subject to such supervision violating the CEA or Commission regulations; willfully making materially false statements or omissions of fact in Commission reports, applications, disqualification proceedings, and other Commission proceedings; being subject to a denial, suspension, or expulsion order from a registered entity, registered futures association, or other self-regulatory organization; having a principal who has been or could be refused registration; and where there is other good cause).

[71] This process should be contrasted with that of CEA section 8a(2), the offenses of which may serve as the Commission's justification, upon notice, but without a hearing to refuse to register, to register conditionally, or to suspend or place restrictions upon the registration, of any person. 7 U.S.C. 12a(2). For persons already registered with the Commission, offenses under CEA section 8a(2) may also be cited by the Commission during such a hearing as may be appropriate to revoke the registration of any person. *Id.*

[72] IAA, at 11 (requesting for disqualifications not to apply ''if the entity did not know, and, in the exercise of reasonable care, could not have known that a disqualification exists,'' and citing 17 CFR 230.506(d)(2)(ii)–(iv) as example).

exempt, thereby strengthening overall confidence in pooled investment vehicles engaged in limited commodity interest trading.

iii. The Representation Requirement Under New Regulation 4.13(b)(1)(iii) and Retaining One of the Proposed Exceptions

The Final Rule will amend the notice requirement in Regulation 4.13 to require a representation that neither the person nor any of its principals has in their backgrounds a Covered Statutory Disqualification, subject to one limited exception discussed below.[73] The Commission intends for this representation to be a threshold requirement for any persons claiming an exemption subject to the notice requirement in Regulation 4.13. If a person cannot truthfully make the required representation regarding the person and its principals, then that person will not qualify for an exemption from CPO registration. As discussed in detail above, the representation in its final form has been narrowed in scope to the CSDs, *i.e.,* those offenses listed in CEA section 8a(2). Additionally, consistent with the Proposal, Family Offices relying on the new exemption in Regulation 4.13(a)(6), which are not subject to the notice filing requirement, will therefore also not be required to make the new representation. The Commission concludes that this is an appropriate regulatory outcome because Family Offices, by definition and by the substantive requirements of that exemption, only serve ''family clients,'' and thus, generally pose little customer protection risk to the investing public.

Proposed Regulation 4.13(a)(6) contained two exceptions: Unless such disqualification arises from a matter which was previously disclosed in connection with a previous application, if such registration was granted, or which was disclosed more than thirty days prior to the claim of this exemption.[74] As mentioned above, NFA commented that the second exception ''appears premised on the idea that the person claiming the exemption would be under an obligation, and have a method, to report an existing statutory disqualification to the Commission or NFA,'' and therefore, if the Commission or NFA did not act on it within thirty days, then the statutory disqualification would have no effect on the person.[75] NFA further pointed out that ''unlike entities claiming relief under Advisory 18–96 and Regulation 4.7, which are registered and under an affirmative obligation to notify the Commission and NFA by updating their [registration forms] if they become subject to a statutory disqualification after they become registered, the vast majority of persons seeking an exemption under Regulation 4.13 are not [so] registered.'' [76]

The Commission agrees with NFA's description of how the second proposed exception was intended to apply, and also with NFA's assertion that many persons claiming a Regulation 4.13 exemption are not registered with the Commission in another capacity, meaning they have neither filed, nor have they any ongoing obligation to update, registration forms with the Commission or NFA. After considering these comments, the Commission is therefore not adopting the second proposed exception. As a result, the remaining exception in new Regulation 4.13(b)(1)(iii) adopted by this Final Rule will apply to the Covered Statutory Disqualifications that have been previously disclosed by the person or its principal in prior registration applications that were granted. The Commission believes that this result maintains the strength of the amendment, while permitting flexibility for circumstances where the Commission has affirmatively determined that a CSD in a person's background should not impede that person's ability to register.

iv. Principal Classification and Treatment of RIAs

The Commission also received other substantive and procedural questions in response to Proposed Regulation 4.13(a)(6). Several commenters, for instance, claimed that it would be very burdensome for persons claiming exemption under Regulation 4.13 to identify, classify, and examine the principals within their business entities, and that requiring them to do so was effectively subjecting exempt CPOs to the most significant costs of intermediary registration with the Commission.[77] Regulation 3.1(a) defines the term ''principal,'' by providing examples of who would be considered principals in a variety of legal entity structures, *e.g.,* sole proprietorship, limited liability company, limited partnership, or corporation.[78] Consistently though, the ''principal'' definition is, generally speaking, limited to those individuals and entities within the CPO who have either management authority and responsibilities, or significant power derived from stock ownership or capital contributions. Principals usually include, therefore, managing members, company presidents, corporate executives, chief compliance officers, and any legal person who is a ten percent or more shareholder of the person.[79] Dechert explained that ''certain aspects of the [Commission's principal] definition . . . do not create a bright-line test, but rather require a facts-and-circumstances analysis.'' [80] Dechert further asserted that ''the principal classification and screening process creates the majority of the work necessary to register CPOs and CTAs, and is costly,'' requested that the Commission provide guidance ''as to how an exempt CPO could conduct such processes,'' and also asked that the Commission ''establish[ ] a process for disagreement by the CFTC or NFA with an exempt CPO's determination.'' [81]

The Commission believes that preventing persons who have one or more statutorily disqualified principals from operating as exempt CPOs will generally increase the customer protection provided to participants in exempt pools, particularly because of the decision-making authority such principals may exercise regarding the operations of an exempt CPO and its exempt pool(s). The Commission also notes that several hundred CPOs currently maintain registration simultaneously with one or more CPO

[73] *See infra* new Regulation 4.13(b)(1)(iii).

[74] Proposal, 83 FR at 52927. As discussed above, this language is derived from other relief containing similar prohibitions. *See supra* pt. II.A.

[75] NFA, at 2.

[76] NFA, at 2 (suggesting therefore that the Commission ''either eliminate this exception or limit it to persons that are currently registered'').

[77] *See, e.g.,* Dechert, at 7–8.

[78] 17 CFR 3.1(a). Additionally, Regulation 4.10(e)(1) also uses that ''principal'' definition for purposes of the Commission's part 4 regulations. 17 CFR 4.10(e)(1). NFA Registration Rule 101(t) is similar in design, and defines principal, in pertinent part, as ''a proprietor of a sole proprietorship; a general partner of a partnership; a director, president, chief executive officer, chief financial officer or a person in charge of a business unit, division or function subject to regulation by the Commission of a corporation, limited liability company, or limited liability partnership; a manager, managing member, or member vested with management authority for a limited liability company or limited liability partnership; or a chief compliance officer.'' NFA Registration Rule 101(t), *available at https://www.nfa.futures.org/rulebook/rules.aspx?RuleID=RULE%20101&Section=8* (last retrieved Apr. 7, 2020).

[79] 17 CFR 3.1(a)(1)–(a)(3). Regulation 3.1(a)(4) additionally defines as a principal any person who employs a trust, proxy, contract, or other device to avoid becoming a ten percent or more shareholder for the purpose of evading being deemed a principal of the entity. 17 CFR 3.1(a)(4).

[80] Dechert, at 8 (citing ''the head of business unit, division or function subject to CFTC regulation'' as an example). Regulation 3.1(a)(1) includes in the ''principal'' definition, regardless of the entity's legal structure, any person in charge of a principal business unit, division or function subject to regulation by the Commission. 17 CFR 3.1(a)(1).

[81] Dechert, at 8 and 11.

exemptions, due to the nature of the various commodity pools they operate. The Commission believes that such exempt CPOs may be slightly advantaged because they will likely spend less time identifying and classifying principals than persons or entities who have no prior contact with commodity interest markets or the Commission, or who only operate pools pursuant to one or more exemptions from registration. Registered CPOs, who may be also claiming a CPO exemption, will have already gone through those processes for purposes of applying for registration with respect to their non-exempt commodity pools. Further, such CPOs would also be much less likely to have to remove and replace principals with Covered Statutory Disqualifications. In the event such an otherwise registered CPO or a principal thereof did have a CSD, it would likely fall under the exception discussed above for CSDs identified by the person and/or principal in a prior approved application for registration, in light of their existing status as a registrant and the obligation to disclose such offenses as they occur.

With respect to persons claiming a CPO exemption under Regulation 4.13 for the first time, and persons who are exempt CPOs and not also registered with the Commission, the Commission understands that such persons will possibly be required to devote time and resources to determining who in their organization is a principal and whether any of them has a Covered Statutory Disqualification in their background. Some classes of principals under the Commission's regulations may involve a factual analysis to determine status. The Commission continues to believe, however, that most persons will be able to determine their principals relatively easily, due to the standard forms of business organization typically used by exempt CPOs and the detailed definitions provided by the Commission in its regulations.[82] In particular, Regulation 3.1 details the roles, titles, ownership, and responsibilities that can give rise to a person being a ''principal'' of a registrant, which the Commission believes reduces the challenges associated with identifying principals within an organization such as an exempt CPO. As discussed above, the Commission also believes that some persons claiming Regulation 4.13 exemptions may have already been required to identify their principals as part of their registration with the Commission as a CPO with respect to the operation of one or more other pools. The Commission believes that the substantive changes made in this Final Rule address the Commission's concerns about providing some customer protection to participants in pools operated by an exempt CPO, while permitting flexibility and facilitating compliance with Regulation 4.13 through additional compliance time. Therefore, the Commission is adopting new Regulation 4.13(b)(1)(iii), such that the required representation covers both persons claiming the exemption and their principal(s).

The Commission also received several requests for the Commission to exclude RIAs from the proposed amendment, on the basis that such RIAs are already subject to robust conduct requirements in the IA Act, which, commenters argue, the new representation would only serve to duplicate.[83] Though the Commission agrees with commenters that RIAs are subject to conduct requirements under the IA Act, the Commission is declining to exclude RIAs from the scope of new Regulation 4.13(b)(1)(iii). IA Act section 203(e) covers censures, denials, or suspensions of registration for investment advisers and provides the SEC the authority to censure, limit, suspend, or revoke the registration of any investment adviser, if, after notice and opportunity for a hearing, certain statutory disqualifications of the adviser or persons associated with it are proven and such adverse action is in the public interest.[84] The Commission finds that the statutory disqualification regime of the IA Act differs materially from the corresponding provisions in the CEA. Of particular relevance to the Final Rule, the IA Act does not specify any statutory disqualifications that bar investment advisers from registration in a manner similar to the mechanism in CEA section 8a(2), *i.e.,* without a procedural hearing or order.

The Commission notes that preserving its independent authority to determine which persons should be permitted to operate commodity pools in its markets subject to an exemption is consistent with the Commission's independent assessment of RIAs seeking registration with the Commission regarding their commodity interest activities. Under those circumstances, notwithstanding the RIA's registration with the SEC, the Commission assesses the registration application of the RIA under the terms of the CEA and the Commission's regulations promulgated thereunder, which reflect the unique regulatory concerns associated with intermediaries in the commodity interest markets. Although the Commission recognizes that most RIAs would not present any cause for reservation in permitting them to operate in the commodity interest markets, the Commission believes that retaining the ability to engage in an independent assessment regarding an RIA's fitness to act as an exempt CPO best serves its customer protection interests. Therefore, the Commission is not adopting the suggestion to exclude RIAs from the scope of new Regulation 4.13(b)(1)(iii).[85]

v. Persons With Covered Statutory Disqualifications May Seek Individual Exemptive Letter Relief or Apply for CPO Registration

As explained herein, the Commission believes that the adoption of this representation regarding the Covered Statutory Disqualifications for persons, and their principals, claiming exemption under Regulation 4.13 is generally necessary to protect the participants in exempt commodity pools; however, the Commission recognizes that there may be facts and circumstances, pursuant to which permitting such disqualified CPOs and principals to operate exempt commodity pools may not be inconsistent with the Commission's customer protection concerns. The Commission notes its authority under Regulation 4.12(a) to ''exempt any person or any class or classes of persons from any provision of this part 4, if it finds that the exemption is not contrary to the public interest and the purposes of the provisions from which exemption is sought.'' [86] The Commission has, by rule, delegated that authority to the Director of DSIO.[87] Pursuant to that delegated authority and Regulation 140.99, those persons who have a Covered Statutory Disqualification, but nonetheless believe that it should not negatively affect their ability to claim a CPO exemption, may seek, on an individual or firm-by-firm basis, exemptive letter relief from the

[82] 17 CFR 3.1(a).

[83] *See, e.g.,* IAA, at 10; SIFMA AMG, at 18.

[84] IA Act section 203(e), 15 U.S.C. 80b–3(e).

[85] The Commission notes, however, that the majority of RIAs, based on their registration status with the SEC, should be able to easily comply with the representation regarding Covered Statutory Disqualifications required by amended Regulation 4.13.

[86] 17 CFR 4.12(a).

[87] 17 CFR 140.93 (delegating the authority in Regulation 4.12(a) to the DSIO Director, further facilitating the issuance of exemptive letter relief with respect to provisions in 17 CFR part 4). As with all Commission delegations to staff generally: (1) The relevant Division Director (in this case, DSIO) may submit such a request regarding the delegated matter to the Commission for its consideration; and (2) the Commission may, at its election, exercise the delegated authority to consider such a request for relief. *See* 17 CFR 140.93(b)–(c).

representation adopted by this Final Rule by presenting the facts and legal rationale demonstrating that such exemptive letter relief would be consistent with the public interest and not contrary to the specific purposes of Regulation 4.13(b)(1), *i.e.,* providing some customer protection to exempt pool participants.[88] The Commission notes that it expects the granting of such requests to be infrequent and supported by a strong factual and legal basis, so as to avoid undermining the purposes of the Final Rule.

The Commission further advises that, at any time, even if a CPO is unsuccessful in its request for such exemptive letter relief, persons with CSDs may submit an application for CPO registration, in which any and all statutory disqualifications would be disclosed as required by Forms 7–R and 8–R, and reviewed through the existing registration process.[89] Utilizing this existing process allows for the detailed analysis of each disqualification, and all of the facts related thereto, specifically with respect to the propriety of the Commission permitting such person to register as a CPO, and/or to list a principal with any such disqualifications in its background. This assessment further includes determining whether any conditions or restrictions might sufficiently mitigate the customer protection risks posed by the statutorily disqualified person or principals.[90] Should the determination be made to permit the registration, such persons would be subject to the Commission's ongoing oversight regarding their commodity pool operations, and subject to all statutory and regulatory obligations applicable to registered CPOs and their principals. The Commission believes that these existing procedures for seeking individualized exemptive letter relief under part 4 of the Commission's regulations, as well as the registration process, present appropriate methods for considering alternative outcomes, where appropriate, from the prohibition of Covered Statutory Disqualifications in exempt CPOs adopted herein.

vi. Timeframe for Exempt CPO Compliance With New Regulation 4.13(b)(1)(iii)

The Commission also received and considered multiple comments regarding the exact timing of the effective and compliance dates regarding Proposed Regulation 4.13(a)(6). As stated above, the Commission anticipates that the changes in approach employed in this Final Rule should reduce the analysis required in order to comply. Nonetheless, the Commission believes it appropriate to facilitate persons claiming an exemption under Regulation 4.13 in transitioning and adjusting to the application of new Regulation 4.13(b)(1)(iii). Although the Final Rule will be effective within 60 days of publication, the Commission has determined not to mandate compliance with the additional representation required by new Regulation 4.13(b)(1)(iii) for CPOs currently relying on an exemption in Regulation 4.13, as of that effective date. The Commission is establishing for these particular CPOs a compliance date of March 1, 2021, which coincides with the deadline for persons filing annual reaffirmation notices under Regulation 4.13(b)(1) in the upcoming 2021 filing cycle.

Although the Commission is declining to ''grandfather'' existing exempt CPOs with respect to the Final Rule, because it believes doing so may dilute any positive effect on customer protection the amendment would have, persons currently claiming an exemption from CPO registration may continue to do so, while identifying, classifying, and checking the backgrounds of the claiming person and its principals. The additional compliance period will allow currently exempt CPOs to continue operating their exempt pools, while they conduct the necessary inquiries regarding the claimant and principals (if they have not already been required to do so due to being otherwise registered).

On the other hand, persons claiming a Regulation 4.13 exemption for the first time on or after the Final Rule's effective date will not be provided additional compliance time. Publication of the Final Rule serves as notice to such persons that, to successfully claim an exemption from CPO registration, they will be thereafter required to identify their principals, conduct background checks, and represent that neither the person nor its principals are subject to the Covered Statutory Disqualifications, unless such offenses were disclosed in a registration application already approved by the Commission or NFA. The Commission believes this distinction between existing and new claimants under Regulation 4.13 is reasonable because persons establishing a new exempt CPO generally would have the opportunity to identify and check principals as part of the start-up process for the CPO and pool business, and prior to operating an exempt pool for the first time.

III. Related Matters

a. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that Federal agencies, in promulgating regulations, consider whether the regulations 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.[91] Each Federal agency is required to conduct an initial and final regulatory flexibility analysis for each rule of general applicability for which the agency issues a general notice of proposed rulemaking. The regulatory amendments adopted herein affect only persons registered or required to be registered as CPOs and persons claiming exemptions from registration as such. The Commission previously has determined that a CPO is a small entity for purposes of the RFA, if it meets the criteria for an exemption from registration under Regulation 4.13(a)(2).[92] Such CPOs will generally continue to qualify for the exemption from registration, though the Commission believes that such exempt CPOs claiming Regulation 4.13(a)(2) may incur some costs as a result of the Final Rule. Like most other exempt CPOs, they will also be required to identify their principals and affirm that neither they nor the claiming entity

[88] 17 CFR 140.99(a)(1) (defining an exemptive letter as ''a written grant of relief issued by the staff of a Division of the Commission from the applicability of a specific provision of the Act or of a rule, regulation or order issued thereunder by the Commission''). Such exemptive letters are typically issued subject to conditions determined by Commission staff to be necessary or appropriate, and further, these letters are subject to Commission review prior to issuance.

[89] *See, e.g.,* 17 CFR 3.10.

[90] 7 U.S.C. 12a(2) (providing that the Commission has the authority to condition, restrict, or suspend the registration of any person under the Act). *See* also 17 CFR 3.60 (establishing the Commission's regulatory procedure to deny, condition, suspend, revoke, or place restrictions upon registration pursuant to sections 8a(2), 8a(3), and 8a(4) of the Act). The Commission has delegated the implementation of its registration authority to NFA. Performance of Registration Functions by National Futures Association, 49 FR 39593 (Oct. 9, 1984) (delegating by Commission Order the registration function to NFA with respect to futures commission merchants, CPOs, commodity trading advisors, and the associated persons thereof).

[91] 5 U.S.C. 601, *et seq.*

[92] Policy Statement and Establishment of Definitions of ''Small Entities'' for Purposes of the Regulatory Flexibility Act, 47 FR 18618, 18619–20 (Apr. 30, 1982). Regulation 4.13(a)(2) exempts a person from registration as a CPO when: (1) None of the pools operated by that person has more than 15 participants at any time, and (2) when excluding certain sources of funding, the total gross capital contributions the person receives for units of participation in all of the pools it operates or intends to operate do not, in the aggregate, exceed $400,000. *See* 17 CFR 4.13(a)(2). As of April 20, 2020, there are approximately 313 entities claiming this exemption.

have in their backgrounds a Covered Statutory Disqualification. The Commission notes that this requirement will apply equally to all persons filing a notice of exemption under Regulation 4.13, after the effective date of the Final Rule, and that all CPOs currently claiming an exemption, including those that are small entities for RFA purposes, are subject to the guidance herein, requiring them to comply with new Regulation 4.13(b)(1)(iii) by March 1, 2021. The Commission did not receive any comments on its analysis of the application of the RFA to the Proposal or Proposed Regulation 4.13(a)(6).

The costs of new Regulation 4.13(b)(1)(iii), which are expected to vary depending on the size and complexity of the CPO in question, will generally be incurred once by exempt CPOs: Either at the compliance date required by the Final Rule, or at the formation of a new exempt CPO after the Final Rule is effective. The Commission believes further that, as small entities which are typically less complex organizationally, CPOs exempt under Regulation 4.13(a)(2) may potentially have an easier time identifying, classifying, and verifying the backgrounds of their principals. As such, the Commission believes that such small CPOs will incur, in general, lower costs, especially when compared to other types of exempt CPOs that are more likely to employ complex business structures or have more principals to identify and review.[93] If an exempt CPO or its principal has a Covered Statutory Disqualification in its background, the Commission recognizes that such person could be significantly impacted, as the person would therefore likely be required to replace the disqualified principal to continue operating, or under some circumstances, may be required to even wind up and cease operating their pool(s) as an exempt CPO.

Throughout this Final Rule, the Commission has evaluated and taken into consideration the amendment's impact on small exempt CPOs. Though the Commission lacks sufficient data to predict exactly how many exempt CPOs may ultimately be required to cease pool operations by virtue of the Final Rule, the Commission expects very few CPOs exempt under Regulation 4.13(a)(2) will be required to cease operations as a result. The current number of exempt CPOs that are also small entities is relatively low (approximately 313), and the costs of new Regulation 4.13(b)(1)(iii) are generally limited in occurrence, as discussed above. Finally, the Commission is also providing guidance in the Final Rule that provides additional time for certain affected persons to comply and incur costs resulting from this amendment, as an effort to mitigate disruption to these businesses. Therefore, the Commission concludes that the Final Rule does not create a significant economic impact on a substantial number of small entities.

Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the regulation adopted by the Commission in 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 (PRA) imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA.[94] Under the PRA, 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 control number from the Office of Management and Budget (OMB). The Commission believes that as adopted, the Final Rule results in a collection of information within the meaning of the PRA, as discussed below. As such, the publication of a PRA notice soliciting comment regarding the Commission's estimated burden calculation for new Regulation 4.13(b)(1)(iii) will be required.

As discussed in the Proposal, the Commission's proposed regulations would have impacted or amended two collections of information for which the Commission has previously received control numbers from OMB: Collections 3038–0005 and 3038–0023.[95] In the 2019 Final Rules, the Commission adopted amendments to 17 CFR part 4, submitted those final amendments for OMB approval, and amended those information collections to reflect the regulatory changes adopted by that final rulemaking.[96] Significantly, because Proposed Regulation 4.13(a)(6) was initially proposed as a substantive requirement to be applicable to any person who desires to claim an exemption under paragraphs (a)(1), (a)(2), (a)(3), (a)(4), or (a)(5) in this section, the Commission never considered the proposed amendment in the context of the PRA or those collections of information. In the Proposal, the Commission invited the public and other Federal agencies to comment on any aspect of the information collection requirements discussed therein.[97] The Commission did not receive any such comments.

As discussed above, the Final Rule adopts new Regulation 4.13(b)(1)(iii), which requires a person filing a notice of exemption under Regulation 4.13(b)(1) to represent that neither the claimant nor any of its principals has in their backgrounds a Covered Statutory Disqualification that would require disclosure, if the claimant sought registration with the Commission. Because Proposed Regulation 4.13(a)(6) did not require any additional information to be provided as part of the notice filed to claim an exemption under Regulation 4.13, the Commission did not account in the Proposal for any PRA burden associated with an additional representation in the notice filing required under Regulation 4.13(b)(1). Therefore, concurrent with the Final Rule, the Commission is updating the estimated burden associated with Regulation 4.13(b)(1), as amended by this Final Rule, and seeking public comment on those estimates in a PRA notice, separately published in this **Federal Register**.

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.[98] 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 CEA section 15(a) considerations.

i. General Costs and Benefits

The baseline for the Commission's consideration of the costs and benefits of the Final Rule is the regulatory status quo, as determined by the CEA and the Commission's existing regulations. The Commission has endeavored to assess the costs and benefits of the Final Rule

[93] Persons claiming an exemption under Regulation 4.13(a)(3), for example, include persons operating complex pooled investment vehicle structures that typically have at least several principals operating the CPO and pools.

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

[95] Proposal, 83 FR at 52918.

[96] *See* 2019 Final Rules, 84 FR at 67348; 84 FR at 67353.

[97] Proposal, 83 FR at 52920.

[98] 7 U.S.C. 19(a).

in quantitative terms wherever possible. Where estimation or quantification is not feasible, however, the Commission has provided its assessment in qualitative terms.

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 U.S. firms taking place across international boundaries; with some Commission registrants being organized outside of the United States; with leading industry members commonly following substantially similar business practices wherever located. Therefore, the below discussion of costs and benefits refers to the effects of the Final Rule on all activity covered by the amended regulations. Consequently, the Commission notes that some entities affected by the Final Rule are located outside of the United States.

ii. Brief Overview of the Final Rule

The Final Rule adds new paragraph (b)(1)(iii) to the annual notice filing requirement in Regulation 4.13(b)(1), which will, once effective, require all persons filing a notice of exemption under Regulation 4.13 to represent that neither they nor their principals have in their backgrounds a Covered Statutory Disqualification, unless such disqualification arises from a matter which was disclosed in connection with a previous application for registration, if such registration was granted. The Commission intends for CPOs claiming a notice of exemption as of the Final Rule's effective date to first make this representation in the 2021 reaffirmation of the exemption, *i.e.,* March 1, 2021. The Commission believes that the adjustments to the Final Rule, discussed in detail above, as well as its guidance establishing an extended compliance period for currently exempt CPOs, address the majority of public comments received in response to Proposed Regulation 4.13(a)(6). The Commission concludes therefore that these efforts appropriately balance the Commission's regulatory interests with the costs of compliance to affected persons. New Regulation 4.13(b)(1)(iii) will effectively prohibit Covered Statutory Disqualifications, *i.e.,* those listed in CEA section 8a(2), in persons filing a notice of exemption under Regulation 4.13, as well as in their principals, in a more tailored manner than the proposed amendment. As a result, the Commission believes the Final Rule addresses the Commission's customer protection concerns with respect to the exempt CPO population, while still reducing the regulatory burdens for exempt CPOs and their commodity pools.

ii. Benefits and Costs of the Final Rule

The Commission believes that prohibiting persons who are statutorily disqualified under CEA section 8a(2), or who employ principals so disqualified, from claiming exemptions under Regulation 4.13 will result in several benefits. As discussed in further detail above and in the Proposal, the Commission has concerns that ''pool participants may be exposed to risk posed by regulations permitting the operation of an offered [exempt] pool by a person who, generally, would not otherwise be permitted to register with the Commission.'' [99] The Commission has noted that, ''even if the activities of a CPO do not rise to a level warranting Commission oversight through registration, a prospective participant should be able to be confident that a collective investment vehicle using commodity interests is not operated by a person,'' who, for example, has previously been the subject of an injunction relating to fraud or embezzlement.[100]

Prior to the Final Rule, persons claiming an exemption from CPO registration under Regulation 4.13 generally were not required to meet any basic conduct standards, in contrast to persons registered or required to register as CPOs with the Commission.[101] The Final Rule remedies that regulatory gap by requiring that a person filing a notice of exemption from CPO registration under Regulation 4.13 meets substantively similar basic conduct standards as a person registered or required to be registered as a CPO. The Commission expects that correcting this regulatory inconsistency will increase overall investor confidence by setting a standard applicable to the vast majority of exempt CPOs operating pooled investment vehicles in the commodity interest markets. The result of the Final Rule will be that persons and/or principals who have a Covered Statutory Disqualification not previously disclosed in a prior approved application for registration will generally be prohibited from operating or soliciting the public for investment in exempt pools, or from serving as a principal of an exempt CPO.

Because the Final Rule will require such CPOs to assess themselves and their principals for any CEA section 8a(2) disqualifications, the Commission believes that once it is fully implemented, new Regulation 4.13(b)(1)(iii) may provide reasonable assurance that persons subject to the Covered Statutory Disqualifications are not soliciting exempt pool participants and/or managing their capital via exempt pools. Moreover, the Commission expects that both prospective and actual participants in pools operated by exempt CPOs will experience enhanced customer protection by removing statutorily disqualified CPOs and/or principals thereof from the commodity interest markets. The Commission believes further that those participants will likely, as a result, also experience improved overall confidence in the exempt commodity pool space.

The Commission understands that the Final Rule could also result in potentially substantial costs to persons filing a notice of exemption under Regulation 4.13(b)(1). In the Proposal, the Commission further identified and described ''costs associated with either divesting from commodity interests held within a collective investment vehicle, or in completely winding up a commodity pool's operations,'' that could result from Proposed Regulation 4.13(a)(6).[102] In addition to these ''wind-up'' costs, the Commission understands that principal identification and classification processes will likely result in costs to each affected exempt CPO, and that those costs will vary based on the overall structure of the CPO, the number of principals it employs, and other circumstances unique to its pool operations. Although these potential costs were a point of significant concern for several commenters, and the Commission specifically solicited comment in the Proposal on the ''impact of adopting [Proposed Regulation 4.13(a)(6)] on industry participants and currently exempt CPOs,'' commenters did not provide specific data or estimates quantifying the actual costs of compliance resulting from the proposed amendment.[103]

Despite the lack of information from commenters regarding potential or actual costs to affected persons, the Commission nonetheless considered those public comments, and strove to balance those costs with its regulatory and policy goals in a way that benefits market participants, customers, and the

[99] *See* Proposal, 83 FR at 52921.

[100] Proposal, 83 FR at 52921–22 (citing 7 U.S.C. 12a(2)(C)(ii) as an example of a disqualification proposed to be prohibited by this amendment).

[101] See *supra* pt. II.c.i for additional historical and legal discussion.

[102] Proposal, 83 FR at 52923 (though the Commission noted that it ''lacks sufficient data to determine how many CPOs might be required to cease operating commodity pools pursuant to the exemptions . . . due to the presence of statutorily disqualified [persons or] principals'').

[103] Proposal, 83 FR at 52916.

general public interest. By narrowing the scope of the Covered Statutory Disqualifications in new Regulation 4.13(b)(1)(iii) to those listed in CEA section 8a(2), the Commission believes that the Final Rule strikes an appropriate regulatory balance between customer protection concerns and increased regulatory requirements. This adjustment means the required representation will target the most serious offenses warranting the statutory disqualifications listed in the CEA within the general population of exempt CPOs, including their principals. Moreover, the Final Rule further reduces procedural confusion by limiting the CSDs to those disqualifications that would serve as a bar to registration with the Commission, absent an additional hearing or proceeding. Finally, by providing guidance herein that extends the compliance period for persons currently relying upon a claim of exemption under Regulation 4.13(b)(1), the Commission wishes to facilitate compliance with the Final Rule. Specifically, the Commission intends this guidance to mitigate the risk of business interruption by providing affected persons with additional time to assess themselves and their principals, and to identify and address any CSDs that are found. The Commission is employing this tailored and gradual approach for the Final Rule and its implementation to, among other things, generally moderate costs to affected persons caused by new Regulation 4.13(b)(1)(iii).

iii. Section 15(a) Considerations

1. Protection of Market Participants and the Public

The Commission considered whether the Final Rule will have any detrimental effect on the customer protections of the Commission's regulatory regime and has concluded that the Final Rule will generally have a positive effect on the protection of market participants and the public. Through new Regulation 4.13(b)(1)(iii), the Commission is remedying an inconsistency, in which a person who may be prohibited by the CEA from conducting activities requiring registration could nonetheless engage in those activities by claiming a CPO registration exemption instead. The Final Rule will ensure that persons filing a notice of exemption under Regulation 4.13(b)(1), as amended, and persons registered or required to be registered as CPOs with the Commission will be treated similarly—in either instance, all such persons must be able to represent that they and their principals are, at a minimum, not disqualified under CEA section 8a(2), prior to soliciting the public for investment in, or otherwise operating a commodity pool. The Commission believes that basic conduct standards applicable to CPOs, regardless of registration status, will improve customer protection within the Commission's CPO regulatory program.

2. Efficiency, Competitiveness, and Financial Integrity of Markets

Section 15(a)(2)(B) of the CEA requires the Commission to evaluate the costs and benefits of a regulation in light of efficiency, competitiveness, and financial integrity considerations. The Commission believes that the Final Rule may positively impact the efficiency, competitiveness, and financial integrity of the commodity interest markets. The Final Rule will require all persons filing a notice under amended Regulation 4.13(b)(1) to represent that neither they nor their principals have in their backgrounds a Covered Statutory Disqualification. To the extent that disqualified persons are prevented from being an exempt CPO or from serving as a principal of an exempt CPO, as a result of new Regulation 4.13(b)(1)(iii), the Commission expects such disqualified persons (and principals) would either exit the commodity interest markets, or at least, discontinue operating in the exempt commodity pool space. Therefore, because it will ultimately cause the removal of entities, persons, and principals disqualified under CEA section 8a(2) from the exempt commodity pool space, the Commission believes that the Final Rule could have a positive impact on the efficiency, competitiveness, and financial integrity of the commodity interest markets overall.

3. Price Discovery

Section 15(a)(2)(C) of the CEA requires the Commission to evaluate the costs and benefits of a regulation in light of price discovery considerations. For the reasons noted above, the Commission believes that the Final Rule generally results in limited, discrete changes to regulatory processes and filings that will not have a significant impact on price discovery.

4. Sound Risk Management

Section 15(a)(2)(D) of the CEA requires the Commission to evaluate a regulation in light of sound risk management practices. The Commission believes that the Final Rule will not have a significant impact on the practice of sound risk management because the manner in which various CPOs, pooled investment vehicles, and their respective principals organize, register, or claim an exemption from such registration has only a small influence on how such market participants manage their risks overall.

5. Other Public Interest Considerations

Section 15(a)(2)(E) of the CEA requires the Commission to evaluate the costs and benefits of a regulation in light of other public interest considerations. The Commission did not identify any additional public interest considerations not already discussed above.

d. Anti-Trust Considerations

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of the CEA, in issuing any order or adopting any Commission rule or regulation (including any exemption under CEA 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.[104] The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission requested comment on whether the Proposal implicated any other specific public interest to be protected by the antitrust laws and received no comments addressing this issue.

The Commission has considered the Final Rule to determine whether it is anticompetitive and has identified no anticompetitive effects. Because the Commission has determined the Final Rule is not anticompetitive and has no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the CEA.

List of Subjects in 17 CFR Part 4

Advertising, Brokers, Commodity futures, Commodity pool operators, Commodity trading advisors, Consumer protection, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 4 as follows:

[104] 7 U.S.C. 19(b).

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6(c), 6b, 6c, 6*l,* 6m, 6n, 6*o,* 12a, and 23.

■ 2. Amend § 4.13 by:

■ a. Revising paragraph (b)(1)(ii); and

■ b. Redesignating paragraph (b)(1)(iii) as (b)(1)(iv), and adding new paragraph (b)(1)(iii).

The addition and revision read as follows:

§ 4.13 Exemption from registration as a commodity pool operator.

* * * * *

(b)(1) * * *

(ii) Specify the paragraph number pursuant to which the person is filing the notice (*i.e.,* § 4.13(a)(1), (2), (3), or (5)) and represent that the pool will be operated in accordance with the criteria of that paragraph;

(iii) Represent that neither the person nor any of its principals has in its background a statutory disqualification that would require disclosure under section 8a(2) of the Act if such person sought registration, unless such disqualification arises from a matter which was disclosed in connection with a previous application for registration, where such registration was granted; and

* * * * *

Issued in Washington, DC, on June 5, 2020, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

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

Appendices to Registration and Compliance Requirements for Commodity Pool Operators and Commodity Trading Advisors: Prohibiting Exemptions Under Regulation 4.13 on Behalf of Persons Subject to Certain Statutory Disqualifications—Commission Voting Summary, Chairman's Statement, and Commissioners' Statements

Appendix 1—Commission Voting Summary

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

Appendix 2—Supporting Statement of Chairman Heath P. Tarbert

As Robert Louis Stevenson aptly put it, ''Everybody, sooner or later, sits down to a banquet of consequences.'' [1]

Today we are focused on the consequences of bad acts that result in ''statutory disqualification'' under the Commodity Exchange Act (''CEA''). These acts include the most serious types of financial crimes, such as embezzlement, theft, extortion, fraud, misappropriation, and bribery. Once an individual is statutorily disqualified, the CFTC may deny or revoke his or her registration. The same is true for corporate entities.

It stands to reason that someone who has been statutorily disqualified—and thus has no right to register with the CFTC—would be precluded from managing other people's money and positions in the derivatives markets the CFTC regulates. But currently, this is not exactly the case. As it turns out, a statutorily disqualified person who wishes to operate a fund that trades derivatives may simply claim one of the exemptions from registration as a commodity pool operator (''CPO'') under CFTC Rule 4.13. Although each of these exemptions has a number of conditions, the absence of statutory disqualification is not currently among them.

Today's final rule closes this loophole for bad actors. Under our rule as amended, a CPO claiming a registration exemption would be required to certify that neither the CPO nor any of its principals has in its background conduct that would result in automatic statutory disqualification under the CEA. I believe this rule will enhance customer protections and public confidence in the integrity of the derivatives markets by ensuring that bad actors cannot gain access to the funds of innocent, third-party investors simply by filing an exemption claim.[2]

In so doing, we also strike a balance between bad acts that warrant automatic disqualification and other behavior that requires the opportunity for a hearing before the subject is disqualified. Because the CEA itself makes this kind of distinction in the context of registration, the Commission believes that lesser offenses [3] warrant different treatment than recent and more serious offenses in the context of registration exemptions. Thus, today's prohibition on statutory disqualification does not include offenses for which the CEA itself requires a hearing prior to disqualification.

I am comfortable with this exclusion, both because it is consistent with legislative intent and because CPOs relying on a Rule 4.13 registration exemption generally do not manage the money and derivatives positions of the retail public at large. Rather, these CPOs are limited by the terms of their exemption to small pools of select participants, pools limited to sophisticated investors, pools with de minimis derivatives positions, and the like.[4]

In addition to protecting customers from bad actors and enhancing the integrity of the derivatives profession, this rule also furthers the CFTC's strategic goal of ''being tough on those who break the rules.'' [5] No longer will financial wrongdoers be able to use registration exemptions as a loophole to avoid the full consequences of their actions. For these reasons, I am pleased we are acting to finalize this rule.

Finally, it is worth remembering that sound regulation of the U.S. derivatives markets stems from a robust federal framework that the CFTC primarily administers, complemented and strengthened by an equally robust regime of self-regulation. A central pillar of that regime is the National Futures Association (''NFA''), the main self-regulatory organization for CPOs. NFA's strong support for this rule is just one of countless actions that demonstrate their steadfast commitment to the integrity of the derivatives community.[6]

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[1] While this is the popular rendering of Stevenson's quote, it appears to be apocryphal. Stevenson apparently used the phrase ''game of consequences.'' See Spurious Quotations, The Robert Louis Stevenson Archive, *http://www.robert-louis-stevenson.org/richard-dury-archive/nonquotes.htm.* Regardless whether Stevenson referred to a banquet or a game, his point was the same: Everyone must face the consequences of his or her actions. That is true for life generally, and for the derivatives markets specifically.

[2] The Commission has adopted a registration exemption for CPOs that meet the definition of ''family office'' under the Securities and Exchange Commission's regulations governing investment advisers. 84 FR 67,368 (Dec. 10, 2019). Section 409 of the Dodd-Frank Act excluded family offices from the definition of ''investment adviser'' subject to the Investment Advisers Act. Given the clear legislative intent to remove family offices from regulation, it would be inappropriate for the CFTC to exert its own oversight over such offices. As Congress recognized in the Dodd-Frank Act, regulatory oversight over family offices would be a wasteful use of taxpayer funds, as such offices are owned and controlled by a single wealthy family. Given their affluence and familial ties, these investors generally neither desire nor need investor protections designed for the retail public at large. Consistent with this approach, today's prohibition on statutory disqualification does not apply to CPOs that are family offices. That said, we cannot allow bad actors to operate a family office in a way that adversely affects the market as a whole—for example, by engaging in manipulative or deceptive transactions through the family office. To that end, I have asked the Division of Swap Dealer and Intermediary Oversight to conduct a special call to determine how many family office managers would be prohibited from claiming the exemption if they were covered by this rule.

[3] This includes offenses that are less recent (*e.g.,* felony convictions that are more than ten years old) or are less relevant to a person's fitness to handle customer funds (*e.g.,* convictions for felonies that do not involve financial wrongdoing). See, *e.g.,* CEA Section 8a(3)(D).

[4] The rule also excludes statutory disqualifications that were previously disclosed to the Commission in a registration application, if the Commission chose to permit registration notwithstanding the disqualification. This exclusion is relevant because a CPO may be registered with the CFTC with respect to certain pools that it manages and claim a registration exemption with respect to other pools.

[5] See Draft CFTC 2020–2024 Strategic Plan, 85 FR 29,935 (May 19, 2020), *https://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10676.pdf.*

[6] See NFA Comment Letter on Registration and Compliance Requirements for Commodity Pool Operators and Commodity Trading Advisors (Dec. 17, 2018).

Appendix 3—Supporting Statement of Commissioner Brian Quintenz

I am pleased to support today's final rule amending the procedures for certain commodity pool operators (CPOs) to claim an exemption from registration.[1] It is sound policy to prevent a firm from claiming a registration exemption if the entity or its principals are ''statutorily disqualified'' under section 8a(2) of the Commodity Exchange Act, when the same disqualification would prevent them from registering with the Commission. The disqualification applicable under today's amendment covers some of the most serious offenses under the Act, including fraud. While an exempt CPO is more limited in its activities than a registered CPO, for example, no pool has more than 15 participants[2] or the CPO's commodity interest activity must remain below certain initial margin and notional amount thresholds,[3] an exempt CPO still manages money for the public. I therefore agree with today's amendment that the firm should be held to one of the most fundamental customer protection standards under the Commodity Exchange Act.

I thank the Commission's staff for their work on this rulemaking, in particular for their thoughtful responses to issues that had been raised by commenters.

Appendix 4—Concurring Statement of Commissioner Rostin Behnam

I support today's adoption of a final rule (the ''Final Rule'') requiring any person that files with the CFTC a notice claiming an exemption from registration as a commodity pool operator (''CPO'') under Regulation 4.13 of the Commodity Exchange Act (''CEA'' or the ''Act'') to affirmatively represent that neither the claimant nor any of the CPO's principals has in its background any statutory disqualifications listed in section 8a(2) of the CEA, which are required to be disclosed as a part of a CPO registration application with the Commission. Beyond closing a regulatory gap that allows certain persons that would generally fail to meet the CEA's basic conduct requirements to nevertheless claim an exemption from CPO registration, the Final Rule invigorates the Commission's stance as an active regulator with respect to the most diverse registration category within our jurisdiction. As I have said before, CPOs (and commodity trading advisors or ''CTAs'') are often identifiable by variable organizational structures, investment focus, participation, and solicitation, as well as complexity in how they are regulated within our authority.[1] These factors demand that when we act, we do so with a laser focus on customer protections. I am pleased that this Final Rule aggressively advances customer protection in a tangible way.

I believe it is fully within our statutory duty to provide, at the very least, a foundational level of security on which customers, regardless of their experience and aptitude, can rely when parsing and considering what can seem like an endless amount of important information and fine print. Today's Final Rule provides that footing for exempt commodity pool participants by generally prohibiting persons who have, or whose principals have, in their backgrounds any of the statutory disqualifications listed in CEA section 8a(2)—which are generally egregious, recent in time, and based upon a previous finding or order by the Commission, a court, or another governmental body—from soliciting and accepting funds for participation in commodity pools, even if they are exempt.

I am pleased that the Final Rule and its preamble address the significant number of responsive public comments, especially those seeking clarity on process and procedure. Last fall, when the Commission finalized several amendments to Part 4 of the regulations addressing various registration and compliance requirements for CPOs and CTAs, I commended, among other things, its decision to not move forward at that time on the part of the proposal that led to today's Final Rule.[2] That decision has led to a more thoughtful consideration of the comments received, the practicalities of the proposal, and the Commission's need to fulfill its regulatory goals while remaining true to the Act. To that end, I appreciate that the Final Rule preserves the Commission's direct and delegated authorities under CEA section 8a(2) and Regulation 4.12(a) to ultimately evaluate fitness for registration—or exemption, as the facts may dictate.

Appendix 5—Statement of Commissioner Dan M. Berkovitz

I support today's final rule to prohibit commodity pool operators (''CPOs'') or their principals who are subject to statutory disqualification under Section 8a(2) from claiming an exemption from registration. This rule narrows a loophole in our CPO registration framework and strengthens the Commission's regulations to protect customers and market integrity.

Section 8a(2) of the Commodity Exchange Act (''CEA'') lists the offenses for which the Commission may refuse, suspend, or condition registration without a prior hearing. These offenses include major violations of a number of laws and regulations governing financial markets, including felony convictions for embezzlement, theft, extortion, and fraud.[1] Today's rule will ensure that persons who are restricted under Section 8a(2) from operating in registered activities cannot escape such restrictions by engaging in activities that are exempt from registration.

Although to a large degree this rule closes an existing loophole in our regulations, it perpetuates a glaring deficiency by failing to hold CPOs of family offices or their principals to the same standards of conduct as other exempt CPOs. The risks to market integrity presented by this omission are compounded by another recent rulemaking exempting CPOs of family offices from a requirement to notify the Commission if they claim an exemption from registration.[2] Thus, under this set of new rules completed today, CPOs of family offices are exempt from registration, exempt from providing notice that they are using an exemption, and exempt from the statutory disqualifications that generally apply to all other CPOs. This triad of exemptions for CPOs of family offices leaves the Commission uniquely unaware of the activities and integrity of these entities.

As I noted in my dissent on the final rule that exempted CPOs of family offices from notifying the Commission that they are claiming an exemption, family offices today are not ''mom and pop'' operations that invest small sums in commodities, but rather large and sophisticated asset management enterprises established by and for mega-millionaires and billionaires.[3] The Commission justified these exemptions on the grounds that related family members in these ''sophisticated'' entities do not need the customer protections that the CFTC otherwise applies to CPO activities. However, regardless of whether this assessment is accurate, customer protection is just one of several objectives of the Commission's CPO regulations. The regulation of CPOs facilitates the Commission's oversight of the derivative markets, management of systemic risks, and mandate to ensure safe trading practices.[4] There is no basis to conclude that the activities of large family office CPOs pose less of a concern in these areas than the activities of other exempt or non-exempt CPOs.

The regulatory principle here is straightforward. We are not only responsible for monitoring market participants that pose risk to customers, but also those who pose risk to the integrity of our markets. Individuals who commit felonies or other serious violations affecting the integrity of financial markets should not be permitted to trade in CFTC markets, particularly without at least some supervision and oversight. If a

[1] Amended Commission regulation 4.13(b)(1)(iii) (17 CFR 4.13(b)(1)(iii)).

[2] Commission regulation 4.13(a)(2).

[3] Commission regulation 4.13(a)(3).

[1] Rostin Behnam, Statement of Concurrence by CFTC Commissioner Rostin Behnam: Amendments to Registration and Compliance Requirements for Commodity Pool Operators and Commodity Trading Advisors, Nov. 25, 2019, *https://www.cftc.gov/PressRoom/SpeechesTestimony/behnamstatement112519.*

[2] *Id.*

[1] CEA Section 8a(2)(D)(iii).

[2] Final Rule, Registration and Compliance Requirements for Commodity Pool Operators (CPOs) and Commodity Trading Advisors: Family Offices and Exempt CPOs, 84 FR 67355 (Dec. 10, 2019).

[3] Dissenting Statement of Commissioner Dan M. Berkovitz: Rulemaking to Provide Exemptive Relief for Family Office CPOs: Customer Protection Should be More Important than Relief for Billionaires, *available at https://www.cftc.gov/PressRoom/SpeechesTestimony/berkovitzstatement112519.*

[4] *See, e.g.,* Commodity Pool Operators and Commodity Trading Advisors: Compliance Obligations, 77 FR 11252, 11253, 11275 (Feb. 24, 2012); upheld in *Investment Company Institute* v. *CFTC,* 720 F.3d 370 (D.C. Cir. 2013). In Section 4l of the CEA, Congress declared, ''the activities of commodity trading advisors and commodity pool operators are affected with a national interest in that, among other things . . . their operations are directed toward and cause the purchase and sale of commodities for future delivery . . . and the foregoing transactions occur in such volume as to affect substantially transactions in contract markets.'' 7 U.S.C. 6l.

CPO of a family office or one of its principals has engaged in conduct serious enough to be subject to the disqualification provisions of Section 8a(2), such as fraud or misappropriation, then it should seek registration with the Commission and be subject to our oversight.

However, I am pleased that at my request, the CFTC staff will be making a special call to CPOs of family offices to determine how many, if any, are subject to statutory disqualification under Section 8a(2). The Commission currently has no information in this regard. I have consistently supported basing our regulatory decisions on the best available data. The data we will obtain from this special call will inform our judgment about whether further action is necessary to protect customers and the market.

I also am pleased that the Commission has declined to exclude registered investment advisers from the scope of this rule. The Securities and Exchange Commission has a different statutory disqualification regime. Registrants should abide by CFTC rules when they operate in our markets.

Going forward, the Commission should propose similar restrictions on the claiming of exemptions by statutorily disqualified commodity trading advisors. While this rule narrows one of the gaps in our Part 4 regulatory framework, this additional significant gap remains and should be closed.

I would like to thank the staff of the Division of Swap Dealer and Intermediary Oversight for working with my office to incorporate some of our comments and proposed revisions to this rule. As a matter of course, a collaborative rulemaking process that takes into account the input from all five Commissioners will produce better regulations.

[FR Doc. 2020–12607 Filed 7–7–20; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9900]

RIN 1545–BP84

Carryback of Consolidated Net Operating Losses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations under section 1502 of the Internal Revenue Code (Code) that affect corporations filing consolidated returns. These regulations permit consolidated groups that acquire new members that were members of another consolidated group to elect in a year subsequent to the year of acquisition to waive all or part of the pre-acquisition portion of an extended carryback period under section 172 of the Code for certain losses attributable to the acquired members where there is a retroactive statutory extension of the NOL carryback period under section 172. These regulations respond to the enactment of section 2303 of the CARES Act, which retroactively extends the carryback period under section 172 for taxable years beginning after 2017 and before 2021.

DATES:

Effective date: These temporary regulations are effective on July 2, 2020.

Applicability date: For the date of applicability, see § 1.1502–21T(h)(9).

FOR FURTHER INFORMATION CONTACT: Jonathan R. Neuville, at (202) 317–5363 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The text of these temporary regulations also serves as the text of part of the proposed regulations set forth in the related notice of proposed rulemaking on this subject (REG–125716–18) in the Proposed Rules section in this issue of the **Federal Register**.

Background

This Treasury decision amends the Income Tax Regulations (26 CFR part 1) under section 1502 of the Code. Section 1502 authorizes the Secretary of the Treasury or his delegate (Secretary) to prescribe regulations for an affiliated group of corporations that join in filing (or that are required to join in filing) a consolidated return (consolidated group) to reflect clearly the Federal income tax liability of the consolidated group and to prevent avoidance of such tax liability. See § 1.1502–1(h) (defining the term ''consolidated group''). For purposes of carrying out those objectives, section 1502 also permits the Secretary to prescribe rules that may be different from the provisions of chapter 1 of the Code that would apply if the corporations composing the consolidated group filed separate returns. Terms used in the consolidated return regulations generally are defined in § 1.1502–1.

The Department of the Treasury (Treasury Department) and the IRS are issuing these temporary regulations to provide guidance to consolidated groups regarding the application of the net operating loss (NOL) carryback rules under section 172(b) of the Code, as amended by (i) section 2303(b) of the Coronavirus Aid, Relief, and Economic Security Act, Public Law 116–136, 134 Stat. 281 (March 27, 2020) (CARES Act), and (ii) any future statutory amendments to section 172. Specifically, if there is a retroactive statutory extension of the NOL carryback period, these temporary regulations permit consolidated groups that acquired new members that were members of another consolidated group prior to the statutory change to elect to waive, in a taxable year subsequent to the taxable year of the acquisition, all or part of the pre-acquisition portion of an extended carryback period (as defined in part I of the Explanation of Provisions) under section 172 for consolidated net operating losses (CNOLs) attributable to the acquired members.

I. NOL Carrybacks and Carryovers Under Section 172

For purposes of section 172, an NOL equals the excess of a taxpayer's deductions allowed by chapter 1 of the Code over the taxpayer's gross income, computed with the modifications specified in section 172(d). Section 172(c). For a taxable year beginning before January 1, 2021, section 172(a)(1) allows as a deduction an amount equal to the aggregate of the NOL carryovers and carrybacks to such year. As amended by section 2303(b)(2) of the CARES Act, section 172(b)(1)(A)(i) of the Code provides that an NOL for any taxable year must be an NOL carryback to the extent provided in section 172(b)(1)(B), 172(b)(1)(C)(i), and 172(b)(1)(D).

A. Tax Cuts and Jobs Act Amendments to Section 172

Prior to enactment of the CARES Act, section 172 was most recently amended by Public Law 115–97, 131 Stat. 2054 (December 22, 2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA). In relevant part, section 13302(b) of the TCJA amended section 172(b) to generally prohibit the carryback of NOLs arising in taxable years beginning after December 31, 2017 (post–2017 NOLs). The TCJA also provided limited exceptions to the general carryback prohibition by amending sections 172(b)(1)(B) and 172(b)(1)(C)(i) to provide that farming losses (within the meaning of section 172(b)(1)(B)(ii)) and losses incurred by insurance companies (as defined in section 816(a) of the Code) other than life insurance companies (non-life insurance companies), respectively, must be carried back to each of the two taxable years preceding the taxable year of the loss. Therefore, prior to enactment of the CARES Act, taxpayers generally could not carry back post-2017 NOLs to prior taxable years.

B. CARES Act Amendments to Section 172

Section 2303(b) of the CARES Act added section 172(b)(1)(D) to the Code. This provision contains an additional exception to the general prohibition of NOL carrybacks. Specifically, section 172(b)(1)(D) provides that an NOL arising in a taxable year beginning after December 31, 2017, and before January 1, 2021, must be carried back to each of the five taxable years preceding the taxable year in which that NOL arises (five-year carryback period). Section 172(b)(2) requires taxpayers to carry the entire amount of such NOL back to the earliest taxable year of that five-year carryback period. Section 172(b)(2) also provides that the portion of the NOL that must be carried to each successive taxable year in the five-year carryback period equals the amount, if any, that was not used in the preceding taxable years to which the NOL was carried.

Section 172(b)(1)(D)(i)(II), as added by section 2303(b)(1) of the CARES Act, further provides that the exceptions to the prohibition of NOL carrybacks regarding farming losses and non-life insurance companies do not apply to NOLs that are subject to the five-year carryback period. See sections 172(b)(1)(B)(i) (regarding farming losses) and 172(b)(1)(C)(i) (regarding non-life insurance companies). Therefore, farming losses and losses incurred by non-life insurance companies arising in a taxable year beginning after December 31, 2017, and before January 1, 2021, are carried back five years instead of two years. Section 172(b)(1)(D)(i)(II).

C. Election To Waive Carryback Under Section 172(b)(3)

Section 172(b)(3) permits a taxpayer entitled to a carryback period under section 172(b)(1) to make, with respect to an NOL for any taxable year, an irrevocable election to relinquish the carryback period. A taxpayer generally must make this election (i) in such manner as may be prescribed by the Secretary, and (ii) by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the NOL for which the election is to be in effect. However, solely with regard to NOLs arising in a taxable year beginning in 2018 or 2019, section 172(b)(1)(D)(v)(II), as added by section 2303(b)(1) of the CARES Act, provides a special rule that requires elections to waive the carryback period for such NOLs under section 172(b)(3) to be made no later than the due date (including extensions of time) for filing the taxpayer's Federal income tax return for the first taxable year ending after March 27, 2020. See also Rev. Proc. 2020–24, 2020–18 I.R.B. 750, §§ 4.01(1), 4.03 (providing procedures regarding the time and manner of filing elections for consolidated groups to waive the carryback under section 172(b)(3) for NOLs arising in taxable years beginning in 2018 or 2019).

II. Consolidated Return Regulations

Section 1.1502–21(a) defines the consolidated net operating loss (that is, a CNOL) deduction for any consolidated return year as ''the aggregate of the net operating loss carryovers and carrybacks to the year,'' which consist of (i) CNOLs of the consolidated group, and (ii) any NOLs of the group's members arising in separate return years. A ''CNOL'' is, for a consolidated return year, the excess of a consolidated group's deductions over the group's gross income, as determined under § 1.1502–11(a) (without regard to any CNOL deduction). See § 1.1502–21(e).

A. General Rules Regarding NOL Carryovers and Carrybacks

The NOL carryovers and carrybacks to a taxable year are determined under the principles of section 172 and § 1.1502–21. Section 1.1502–21(b)(1). Thus, losses permitted to be absorbed in a consolidated return year generally are absorbed in the order of the taxable years in which they arose, and losses carried from taxable years ending on the same date, and which are available to offset consolidated taxable income for the year, generally are absorbed on a pro rata basis. Id. If any percentage of the CNOL that is attributable to a member (determined pursuant to § 1.1502–21(b)(2)(iv)(B)) may be carried to a separate return year of the member, the amount of the CNOL that is attributable to the member is apportioned to the member and carried to the separate return year. Section 1.1502–21(b)(2)(i). If carried back to a separate return year, the apportioned loss may not be carried back to an equivalent, or earlier, consolidated return year of the group. Id.

B. General Waiver Election To Relinquish Entire Carryback

Section 1.1502–21(b)(3)(i) permits a consolidated group to make an irrevocable election under section 172(b)(3) to relinquish the entire carryback period with respect to a CNOL for any consolidated return year (general waiver election). When making this general waiver election for a consolidated return year, a consolidated group cannot make this election separately for a particular member (whether or not it remains a member). Section 1.1502–21(b)(3)(i). Rather, the consolidated return regulations provide only a narrowly scoped ''split-waiver election'' (as described in detail in part II.C of this Background) that a consolidated group can make solely with respect to one or more members that previously were members of another group. Id. A general waiver election must be made in a separate statement filed with the group's Federal income tax return for the consolidated return year in which the NOL arises. Id.

C. Special Election for Acquisitions of Members That Were Members of Another Consolidated Group

A consolidated group (acquiring group) that acquires a new member (acquired member) that was a member of another consolidated group (former group) may make an irrevocable election to relinquish, with respect to all CNOLs of the acquiring group that are attributable to the acquired member, the portion of the carryback period for which the acquired member was a member of a former group (split-waiver election). See § 1.1502–21(b)(3)(ii)(B). If an acquiring group makes a split-waiver election for a consolidated return year, the portion of the acquiring group's CNOL attributable to the acquired member for which the election is made will not be carried back to a former group. Id. Unlike a general waiver election, a split-waiver election is not a yearly election, but rather applies to all CNOLs attributable to an acquired member that otherwise would be subject to a carryback to a taxable year of a former group under section 172. Id.

Eligibility for a split-waiver election is subject to certain conditions and procedures. Importantly, a split-waiver election must be made in a separate statement filed with the acquiring group's original Federal income tax return for the year the corporation became a member. Id. In other words, if a split-waiver election is not made with this particular Federal income tax return, the election cannot later be made by amending this return in a subsequent consolidated return year or by attaching the above-described statement to a Federal income tax return for a later consolidated return year. If any other corporation joining the acquiring group was affiliated with the acquired member immediately before the acquired member joined the acquiring group, that other corporation also must be included in the split-waiver election. Id.

Explanation of Provisions

I. In General

On prior occasions, enacted legislation has amended section 172 to extend the carryback period for NOLs. See Worker, Homeownership, and Business Assistance Act of 2009, Public Law 111–92, 123 Stat. 2984 (November 6, 2009); Job Creation and Worker Assistance Act of 2002, Public Law 107–147, 116 Stat. 21 (March 9, 2002). Most recently, section 2303(b) of the CARES Act added section 172(b)(1)(D) to the Code. As described in part I of the Background, section 172(b)(1)(D) requires (in the absence of a waiver under section 172(b)(3)) a five-year carryback period for an NOL that arises in a taxable year beginning after December 31, 2017, and before January 1, 2021.

Such statutory changes to NOL carryback periods uniquely impact consolidated groups that acquire one or more corporations prior to the statutory extension of the carryback period. During the past two decades, the Treasury Department and the IRS have provided consolidated groups with certain additional elections for waiving carrybacks of losses into other, former groups. See 75 FR 35643 (June 23, 2010) (2010 split-waiver regulations); 67 FR 38000 (May 31, 2002) (2002 split-waiver regulations). These additional elections, while responsive to particular statutory amendments, have reflected common policy objectives of providing affected groups with the ability to waive all or a portion of the statutorily extended NOL carryback period.

The Treasury Department and the IRS have determined that it is appropriate to provide similar rules with regard to amendments to the NOL carryback rules under section 2303(b) of the CARES Act, as well as any similar statutory changes in the future. (For purposes of these regulations, the amended NOL carryback rules implemented by the CARES Act in particular or by future legislation more generally are referred to as the ''amended carryback rules.'') Therefore, these temporary regulations provide principle-based rules applicable to CNOLs arising in taxable years to which amended carryback rules become applicable after the acquisition of a member. Under these rules, which are consistent with the 2002 and 2010 split-waiver regulations (although these rules are not limited to a one-time statutory change of the NOL carryback rules), acquiring groups would possess the opportunity to waive, on a taxable-year-by-taxable-year basis, all or a portion of the carryback period with regard to CNOLs attributable to acquired members for pre-acquisition years during which the acquired members were members of a former group.

Therefore, these temporary regulations provide two additional types of split-waiver elections for consolidated groups that (i) include one or more acquired members, and (ii) have CNOLs that, under amended carryback rules, become eligible to be carried back for a greater number of years than under statutory law in effect at the time of the acquisition (default carryback period). See the discussion in parts II through IV of this Explanation of Provisions. A default carryback period may consist of zero years in the case of a complete prohibition on carrybacks. The additional years added under amended carryback rules constitute the ''extended carryback period.'' The two additional types of split-waiver elections set forth in these temporary regulations provide relief, and are subject to conditions and procedures, consistent with the applicable split-waiver elections set forth in the 2002 and 2010 split-waiver regulations.

II. Amended Statute Split-Waiver Election

These temporary regulations permit an acquiring group to make a special split-waiver election with regard to a CNOL for a consolidated return year in which an acquired member was included in the acquiring group and to which amended carryback rules apply (amended statute split-waiver election). Through this election, an acquiring group can relinquish that part of the extended carryback period during which an acquired member was a member of a former group (for the portion of a CNOL attributable to the acquired member), notwithstanding that the group did not file a split-waiver election for the year in which the acquired member became a member of the acquiring group (as required by § 1.1502–21(b)(3)(ii)(B)). Accordingly, an amended statute split-waiver election applies only to the portion of a CNOL that is attributable to an acquired member for the portion of the carryback period (including the default carryback period and the extended carryback period) during which the acquired member was a member of a former group.

An acquiring group makes an amended statute split-waiver election on a year-by-year basis, consistent with the 2002 and 2010 split-waiver regulations. Consequently, an acquiring group may make this election for the portion of a CNOL attributable to an acquired member that arises in any particular taxable year to which an amended carryback rule applies (amended carryback CNOL), regardless of whether the acquiring group makes such an election for CNOLs arising in other consolidated return years. However, also consistent with the 2002 and 2010 split-waiver regulations, an acquiring group can make an amended statute split-waiver election with respect to an amended carryback CNOL only if any carryback to a taxable year included in the extended carryback period is not claimed on a return or other filing by a former group that is filed on or before the date this election is filed by the acquiring group. Also consistent with the 2002 and 2010 split-waiver regulations, an acquiring group can make an amended statute split-waiver election with respect to an acquired member only if the acquiring group did not file (i) a valid split-waiver election with respect to that acquired member on or before the effective date of the relevant amended carryback rules, or (ii) a general waiver election with respect to a CNOL of the acquiring group from which the amended carryback CNOL is attributed to the acquired member.

The amended statute split-waiver election generally must be made by attaching a statement to the acquiring group's timely filed tax return (including extensions) with regard to the consolidated return year during which the amended carryback CNOL was incurred. In certain circumstances, the statement may be attached to an amended return, but that return must be filed no later than 150 days after the effective date of the relevant amended carryback rules. These regulations also include rules specific to the amendments to section 172 made by section 2303(b) of the CARES Act, which provide an additional option under which the statement may be attached to an amended return filed no later than November 30, 2020 (a date that is 150 days after the date of filing of these temporary regulations). These filing requirements incorporate the principles of the filing requirements set forth in the 2002 and 2010 split-waiver regulations, which were tailored to specific enacted legislation.

III. Extended Split-Waiver Election

To provide acquiring groups with additional flexibility for making split-waiver elections, these temporary regulations provide a second, alternative split-waiver election (extended split-waiver election) that applies solely to the extended carryback period (that is, the additional carryback years provided under amended carryback rules). Through an extended split-waiver

election, an acquiring group can ensure that amended carryback CNOLs are carried back to taxable years of former groups only to the extent those losses would have been carried back under prior law (that is, the default carryback period). In other words, this election affects only the extended carryback period for an acquired member's attributed loss.

The extended split-waiver election and the amended statute split-waiver election are subject to the same conditions and procedures, and provide the same relief, except that the extended split-waiver election waives only the extended carryback period. Therefore, any CNOL carryback to default carryback years would be unaffected by an extended split-waiver election. For example, if the default carryback period were two years and a change in law extended the carryback period to five years, an acquiring group could make an extended split-waiver election to waive the carryback to a former group of only the three additional carryback years with respect to the amended carryback CNOL. Accordingly, the extended split-waiver election is available if losses attributable to the acquired member have been carried back solely to taxable years of a former group in the default carryback period, but not in the extended carryback period.

IV. Applicability Date

These temporary regulations apply to any CNOLs arising in a taxable year ending after July 2, 2020. However, consistent with the applicability date for the amendments to section 172(b) pursuant to section 2303(b) of the CARES Act, and pursuant to section 7805(b)(2), taxpayers may apply these temporary regulations to any CNOLs arising in a taxable year beginning after December 31, 2017. The applicability of these temporary regulations will expire on July 3, 2023.

V. Good Cause

The Treasury Department and the IRS are issuing these temporary regulations without prior notice and the opportunity for public comment pursuant to section 553(b)(B) of the Administrative Procedure Act (APA), which provides that advance notice and the opportunity for public comment are not required with respect to a rulemaking when an agency ''for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' Under the ''public interest'' prong of 5 U.S.C. 553(b)(B), the good cause exception appropriately applies where notice and comment would harm, defeat, or frustrate the public interest, rather than serving it.

These temporary regulations, which solely provide certain acquiring groups with elective relief, are necessary to permit certain acquiring groups to elect to waive all or a portion of the carryback period for certain losses attributable to acquired members for pre-acquisition years during which the acquired members were members of a former group. The amended carryback rules enacted by section 2303(b) of the CARES Act apply for NOLs arising in a taxable year beginning after December 31, 2017, and before January 1, 2021. Consequently, good cause arises from the fact that these temporary regulations will affect taxable years of certain acquiring groups for which tax returns already are due or may become due during a period of comment and delayed effectiveness. Deferring the effectiveness of the temporary regulations until after such a period could prevent taxpayers from immediately electing to obtain the intended benefits of section 2303(b) of the CARES Act and increase taxpayer compliance costs and uncertainty because of delay of the time before which relevant acquiring groups could make the elections permitted by the regulations with certainty.

Special Analyses

I. Regulatory Planning and Review

Executive Orders 13771, 13563, and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

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

II. Paperwork Reduction Act

The collections of information in these temporary regulations are in § 1.1502–21T(b)(3)(ii)(C)(*5*)(*i*) and § 1.1502–21T(b)(3)(ii)(C)(*5*)(*ii*). The information is required to inform the IRS on whether, and to what extent, an acquiring group makes either of the elections described in these temporary regulations.

The collection of information provided by these temporary regulations has been approved by the Office of Management and Budget (OMB) under control number 1545–0123. For purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (PRA), the reporting burden associated with the collection of information in Form 1120 (U.S. Corporation Income Tax Return) will be reflected in the PRA Submission associated with OMB control number 1545–0123.

In general, if the acquiring group makes an election under § 1.1502–21T(b)(3)(ii)(C), the acquiring group is required to attach a separate statement to its Form 1120 as provided in § 1.1502–21T(b)(3)(ii)(C)(*5*)(*i*) and § 1.1502–21T(b)(3)(ii)(C)(*5*)(*ii*), respectively. This statement must be filed as provided in § 1.1502–21T(b)(3)(ii)(C)(*6*).

The following table displays the number of respondents estimated to be required to report on Form 1120 with respect to the collections of information required by these temporary regulations. Due to the absence of historical tax data, direct estimates of the number of respondents required to attach a statement to other types of tax returns, as applicable, are not available.

	Number of respondents (estimated)
Amended Statute Split-Waiver Election & Extended Split-Waiver Election	
Form 1120	17,500

Source: RAAS:CDW.

The numbers of respondents in the table were estimated by the Research, Applied Analytics and Statistics Division (RAAS) of the IRS from the Compliance Data Warehouse (CDW). Data for Form 1120 represents estimates of the total number of taxpayers that may attach an election statement to their Form 1120 to make the elections in § 1.1502–21T(b)(3)(ii)(C)(*5*)(*i*) and § 1.1502–21T(b)(3)(ii)(C)(*5*)(*ii*).

It is estimated that 17,500 consolidated entities will be required to attach a statement under these temporary regulations. The burden associated with the information collections in these temporary regulations are included in aggregated burden estimates for the OMB control number 1545–0123. The burden estimates provided in the OMB control

numbers in the following table are aggregate amounts that relate to the entire package of forms associated with the OMB control number, and will in the future include, but not isolate, the estimated burden of those information collections associated with these temporary regulations. To guard against over-counting the burden that consolidated tax provisions imposed prior to § 1.1502–21T, the Treasury Department and the IRS urge readers to recognize that these burden estimates have also been cited by regulations that rely on the applicable OMB control numbers in order to collect information from the applicable types of filers.

Form	Type of filer	OMB No.	Status
Form 1120	Corporation	1545–0123	Published in the **Federal Register** on 9/30/19. Public Comment period closed on 11/29/19. Approved by OIRA through 1/31/2021.
	Link: *https://www.federalregister.gov/documents/2018/10/09/2018-21846/proposed-collection-comment-request-for-forms-1065-1065-b-1066-1120-1120-1120-f-1120-h-1120-nd.*		

Source: RAAS:CDW.

III. Regulatory Flexibility Act

These temporary regulations do not impose a collection of information on small entities. Further, pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these temporary regulations would not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these temporary regulations apply only to corporations that file consolidated Federal income tax returns, and that such corporations tend to be larger businesses. Therefore, these temporary regulations would not create additional obligations for, or impose an economic impact on, small entities.

Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2020, that threshold is approximately $156 million. This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. These temporary regulations do not have federalism implications, do not impose substantial direct compliance costs on state and local governments, and do not preempt state law within the meaning of the Executive Order.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, and Notices cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *http://www.irs.gov.*

Drafting Information

The principal author of these regulations is Jonathan R. Neuville of the Office of Associate Chief Counsel (Corporate). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAX

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.1502–21T is revised to read as follows:

§ 1.1502–21T Net operating losses (temporary).

(a) For further guidance, see § 1.1502–21(a).

(b) For further guidance, see § 1.1502–21(b) introductory text through (b)(2).

(1) and (2) [Reserved]

(3) For further guidance, see § 1.1502–21(b)(3) introductory text through (b)(3)(ii)(B).

(i) [Reserved]

(ii)(A) [Reserved]

(B) [Reserved]

(C) *Waiver of carryback period for losses in taxable years to which statutorily amended carryback rules apply*—(*1*) *In general.* An acquiring group may make either (but not both) an amended statute split-waiver election or an extended split-waiver election with respect to a particular amended carryback CNOL. (See paragraph (b)(3)(ii)(C)(*2*) of this section for definitions of terms used in paragraph this (b)(3)(ii)(C) and paragraph (b)(3)(ii)(D) of this section.) These elections are available only if the statutory amendment to the carryback period referred to in paragraph (b)(3)(ii)(C)(*2*)(*iv*) of this section occurs after the date of acquisition of an acquired member. A separate election is available for each taxable year to which amended carryback rules apply. An acquiring group may make an amended statute split-waiver election or an extended split-waiver election only if the acquiring group, with regard to that election—

(*i*) Satisfies the requirements in paragraph (b)(3)(ii)(C)(*3*) of this section; and

(*ii*) Follows the procedures in paragraphs (b)(3)(ii)(C)(*5*) and (*6*) of this section, as relevant to that election.

(*2*) *Definitions.* The definitions provided in this paragraph (b)(3)(ii)(C)(*2*) apply for purposes of this paragraph (b)(3)(ii)(C) and paragraph (b)(3)(ii)(D) of this section.

(*i*) *Acquired member.* The term *acquired member* means a member of a consolidated group that joins another consolidated group.

(*ii*) *Acquiring group.* The term *acquiring group* means a consolidated group that has acquired a former member of another consolidated group (that is, an acquired member).

(*iii*) *Amended carryback CNOL.* The term *amended carryback CNOL* means the portion of a CNOL attributable to an acquired member (determined pursuant to § 1.1502–21(b)(2)(iv)(B)) arising in a taxable year to which amended carryback rules apply.

(*iv*) *Amended carryback rules.* The term *amended carryback rules* means the rules of section 172 of the Code after amendment by statute to extend the carryback period for NOLs attributable to an acquired member (determined pursuant to § 1.1502–21(b)(2)(iv)(B)).

(*v*) *Amended statute split-waiver election.* The term *amended statute split-waiver election* means, with respect to any amended carryback CNOL, an irrevocable election made by an acquiring group to relinquish the portion of the carryback period (including the default carryback period and the extended carryback period) for that loss during which an acquired member was a member of any former group.

(*vi*) *Amended statute split-waiver election statement.* The term *amended statute split-waiver election statement* has the meaning provided in paragraph (b)(3)(ii)(C)(*5*)(*i*) of this section.

(*vii*) *Default carryback period.* The term *default carryback period* means the NOL carryback period existing at the time the acquiring group acquired the acquired member, before the applicability of amended carryback rules.

(*viii*) *Extended carryback period.* The term *extended carryback period* means the additional taxable years added to a default carryback period by any amended carryback rules.

(*ix*) *Extended split-waiver election.* The term *extended split-waiver election* means, with respect to any amended carryback CNOL, an irrevocable election made by an acquiring group to relinquish solely the portion of the extended carryback period (and no part of the default carryback period) for that loss during which an acquired member was a member of any former group.

(*x*) *Extended split-waiver election statement.* The term *extended split-waiver election statement* has the meaning provided in paragraph (b)(3)(ii)(C)(*5*)(*ii*) of this section.

(*xi*) *Former group.* The term *former group* means a consolidated group of which an acquired member previously was a member.

(*3*) *Conditions for making an amended statute split-waiver election or an extended split-waiver election.* An acquiring group may make an amended statute split-waiver election or an extended split-waiver election (but not both) with respect to an amended carryback CNOL only if—

(*i*) The acquiring group has not filed a valid election described in § 1.1502–21(b)(3)(ii)(B) with respect to the acquired member on or before the effective date of amended carryback rules;

(*ii*) The acquiring group has not filed a valid election described in section 172(b)(3) and § 1.1502–21(b)(3)(i) with respect to a CNOL of the acquiring group from which the amended carryback CNOL is attributed to the acquired member;

(*iii*) Any other corporation joining the acquiring group that was affiliated with the acquired member immediately before the acquired member joined the acquiring group is included in the waiver; and

(*iv*) A former group does not claim any carryback (as provided in paragraph (b)(3)(ii)(C)(*4*) of this section) to any taxable year in the carryback period (in the case of an amended statute split-waiver election) or in the extended carryback period (in the case of an extended split-waiver election) with respect to the amended carryback CNOL on a return or other filing filed on or before the date the acquiring group files the election.

(*4*) *Claim for a carryback.* For purposes of paragraph (b)(3)(ii)(C)(*3*)(*iv*) of this section, a carryback is claimed with respect to an amended carryback CNOL if there is a claim for refund, an amended return, an application for a tentative carryback adjustment, or any other filing that claims the benefit of the NOL in a taxable year prior to the taxable year of the loss, whether or not subsequently revoked in favor of a claim based on the period provided for in the amended carryback rules.

(*5*) *Procedures for making an amended statute split-waiver election or an extended split-waiver election*—(*i*) *Amended statute split-waiver election.* An amended statute split-waiver election must be made in a separate statement entitled ''THIS IS AN ELECTION UNDER SECTION 1.1502–21T(b)(3)(ii)(C)(*2*)(*v*) TO WAIVE THE PRE-[insert first day of the first taxable year for which the acquired member was a member of the acquiring group] CARRYBACK PERIOD FOR THE CNOLS ATTRIBUTABLE TO THE [insert taxable year of losses] TAXABLE YEAR(S) OF [insert names and employer identification numbers of members]'' (amended statute split-waiver election statement). This statement must be filed as provided in paragraph (b)(3)(ii)(C)(*6*) of this section.

(*ii*) *Extended split-waiver election.* An extended split-waiver election must be made in a separate statement entitled ''THIS IS AN ELECTION UNDER SECTION 1.1502–21T(b)(3)(ii)(C)(*2*)(*ix*) TO WAIVE THE PRE-[insert first day of the first taxable year for which the acquired member was a member of the acquiring group] EXTENDED CARRYBACK PERIOD FOR THE CNOLS ATTRIBUTABLE TO THE [insert taxable year of losses] TAXABLE YEAR(S) OF [insert names and employer identification numbers of members]'' (extended split-waiver election statement). This statement must be filed as provided in paragraph (b)(3)(ii)(C)(*6*) of this section.

(*6*) *Time and manner for filing statement*—(*i*) *In general.* Except as otherwise provided in paragraph (b)(3)(ii)(C)(*6*)(*ii*) or (*iii*) of this section, an amended statute split-waiver election statement or extended split-waiver election statement must be filed with the acquiring group's timely filed consolidated return (including extensions) for the year during which the amended carryback CNOL is incurred.

(*ii*) *Amended returns.* This paragraph (b)(3)(ii)(C)(*6*)(*ii*) applies if the date of the filing required under paragraph (b)(3)(ii)(C)(*6*)(*i*) of this section is not at least 150 days after the date of the statutory amendment to the carryback period referred to in paragraph (b)(3)(ii)(C)(*2*)(*iv*) of this section. Under this paragraph (b)(3)(ii)(C)(*6*)(*ii*), an amended statute split-waiver election statement or extended split-waiver election statement may be attached to an amended return filed by the date that is 150 days after the date of the statutory amendment referred to in paragraph (b)(3)(ii)(C)(*2*)(*iv*) of this section.

(*iii*) *Certain taxable years beginning before January 1, 2021.* This paragraph (b)(3)(ii)(C)(*6*)(*iii*) applies to taxable years beginning before January 1, 2021, for which the date of the filing required under paragraph (b)(3)(ii)(C)(*6*)(*i*) of this section precedes November 30, 2020. Under this paragraph (b)(3)(ii)(C)(*6*)(*iii*), an amended statute split-waiver election statement or extended split-waiver election statement may be attached to an amended return filed by November 30, 2020.

(D) *Examples.* The following examples illustrate the rules of paragraph (b)(3)(ii)(C) of this section. For purposes of these examples: All affiliated groups file consolidated returns; all corporations are includible corporations that have calendar taxable years; each of P, X, and T is a

corporation having one class of stock outstanding; each of P and X is the common parent of a consolidated group (P Group and X Group, respectively); neither the P Group nor the X Group includes an insolvent financial institution or an insurance company; no NOL is a farming loss; there are no other relevant NOL carrybacks to the X Group's consolidated taxable years; except as otherwise stated, the X Group has sufficient consolidated taxable income determined under § 1.1502–11 (CTI) to absorb the stated NOL carryback by T; T has sufficient SRLY register income within the X Group to absorb the stated NOL carryback by T; all transactions occur between unrelated parties; and the facts set forth the only relevant transactions.

(*1*) *Example 1: Computation and absorption of amended carrybacks*—(*i*) *Facts.* In Year 1, T became a member of the X Group. On the last day of Year 5, P acquired all the stock of T from X. At the time of P's acquisition of T stock, the default carryback period was zero taxable years. The P Group did not make an irrevocable split-waiver election under § 1.1502–21(b)(3)(ii)(B) to relinquish, with respect to all CNOLs attributable to T while a member of the P Group, the portion of the carryback period for which T was a member of the X Group (that is, a former group). In Year 7, the P Group sustained a $1,000 CNOL, $600 of which was attributable to T pursuant to § 1.1502–21(b)(2)(iv)(B). In that year, P did not make an irrevocable general waiver election under section 172(b)(3) and § 1.1502–21(b)(3)(i) with respect to the $1,000 CNOL when the P Group filed its consolidated return for Year 7. In Year 8, legislation was enacted that amended section 172 to require a carryback period of five years for NOLs arising in a taxable year beginning after Year 5 and before Year 9.

(*ii*) *Analysis.* As a result of the amended carryback rules enacted in Year 8, the P Group's $1,000 CNOL in Year 7 must be carried back to Year 2. Therefore, T's $600 attributed portion of the P Group's Year 7 CNOL (that is, T's amended carryback CNOL) must be carried back to taxable years of the X Group. See §§ 1.1502–21(b)(1) and 1.1502–21(b)(2)(i). To the extent T's amended carryback CNOL is not absorbed in the X Group's Year 2 taxable year, the remaining portion must be carried to the X Group's Year 3, Year 4, and Year 5 taxable years, as appropriate. See id. Any remaining portion of T's amended carryback CNOL is carried to consolidated return years of the P Group. See § 1.1502–21(b)(1).

(*2*) *Example 2: Amended statute split-waiver election*—(*i*) *Facts.* The facts are the same as in paragraph (b)(3)(ii)(D)(*1*)(*i*) of this section (*Example 1*), except that, following the change in statutory carryback period in Year 8, the P Group made a valid amended statute split-waiver election under paragraph (b)(3)(ii)(C) of this section to relinquish solely the carryback of T's amended carryback CNOL.

(*ii*) *Analysis.* Because the P Group made a valid amended statute split-waiver election, T's amended carryback CNOL is not eligible to be carried back to any taxable years of the X Group (that is, a former group). However, the amended statute split-waiver election does not prevent T's Year 7 amended carryback CNOL from being carried back to years of the P group (that is, the acquiring group) during which T was a member. See paragraph (b)(3)(ii)(C)(*1*)(*v*) of this section. As a result, the entire amount of T's amended carryback CNOL is eligible to be carried back to taxable Year 6 of the P Group. Any remaining CNOL may then be carried over within the P Group. See § 1.1502–21(b)(1).

(*3*) *Example 3: Computation and absorption of extended carrybacks*—(*i*) *Facts.* The facts are the same as in paragraph (b)(3)(ii)(D)(*1*)(*i*) of this section (*Example 1*), except that the X Group had $300 of CTI in Year 4 and $200 of CTI in Year 5 and, at the time of the P Group's acquisition of T, the default carryback period was two years. Therefore, T's $600 attributed portion of the P Group's Year 7 CNOL was required to be carried back to the X Group's Year 5 taxable year, and the X Group was able to offset $200 of CTI in Year 5.

(*ii*) *Analysis.* As a result of the amended carryback rules, the X Group must offset its $300 of CTI in Year 4 against T's amended carryback CNOL. See §§ 1.1502–21(b)(1) and (b)(2)(i). The remaining $100 ($600 − $300 − $200) of T's amended carryback CNOL is carried to taxable years of the P Group. See § 1.1502–21(b)(1).

(*4*) *Example 4: Extended split-waiver election*—(*i*) *Facts.* The facts are the same as in paragraph (b)(3)(ii)(D)(*3*)(*i*) of this section (*Example 3*), except that, following the change in law in Year 8, the P Group made a valid extended split-waiver election under paragraph (b)(3)(ii)(C) of this section to relinquish the extended carryback period for T's amended carryback CNOL for years in which T was a member of the X Group.

(*ii*) *Analysis.* As a result of the P Group's extended split-waiver election, T's amended carryback CNOL is not eligible to be carried back to any portion of the extended carryback period (that is, any taxable year prior to Year 5). See paragraph (b)(3)(ii)(C)(*1*)(*ix*) of this section. As a result, the X Group absorbs $200 of T's $600 loss in Year 5, and the remaining $400 ($600 − $200) is carried to taxable years of the P Group. See § 1.1502–21(b)(1).

(iii) For further guidance, see § 1.1502–21(b)(3)(iii).

(c) For further guidance, see § 1.1502–21(c) through (h)(8).

(d) through (j) [Reserved]

(h)(1) through (8) [Reserved]

(9) *Amended carryback rules*—(i) *Applicability date.* Paragraphs (b)(3)(ii)(C) and (D) of this section apply to any CNOLs arising in a taxable year ending after July 2, 2020. However, taxpayers may apply paragraphs (b)(3)(ii)(C) and (D) of this section to any CNOLs arising in a taxable year beginning after December 31, 2017.

(ii) *Expiration date.* The applicability of paragraphs (b)(3)(ii)(C) and (D) of this section will expire on July 3, 2023.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 3.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 4.** In § 602.101, paragraph (b), the entry for § 1.1502–21T is revised to read as follows:

§ 602.101 OMB Control Numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * * * *	
1.1502.21T	1545–0123
* * * * * * *	

Douglas W. O'Donnell,

Acting Deputy Commissioner for Services and Enforcement.

Approved: June 23, 2020.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2020–14426 Filed 7–2–20; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0199]

RIN 1625–AA00

Safety Zone; Amelia River, Fernandina, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving safety zone for navigable waters within a 500-yard radius of the VB–10,000 work barge while transiting the Sector Jacksonville Captain of the Port Zone. Once the VB–10,000 work barge is moored at the Nassau Terminal in Fernandina Beach, FL, the safety zone will be reduced to a 100-yard radius. This safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards associated with a barge of this size and with restricted manuerverability. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Jacksonville.

DATES: This rule is effective without actual notice from July 8, 2020 through July 31, 2020. For the purposes of enforcement, actual notice will be used from July 3, 2020 through July 8, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2020–0199 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 LT Emily Sysko, Sector Jacksonville, Waterways Management, U.S. Coast Guard; telephone 904–714–7616, email *Emily.T.Sysko@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is inpracticable. Due to shifting dates and delays resulting from the COVID–19 pandemic, the Coast Guard did not received a specific date and time for the transit of the VB–10,000 work barge.The barge is expected to arrive at Nassau Termainal in Fernandina Beach, FL on July 3, 2020. It is impracticable to publish an NPRM because we must establish this safety zone prior to the barge getting underway and entering the COTP Jacksonville zone.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because action is needed to respond to the potential safety and navigational hazards associated with a large work barge transiting the channel.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port (COTP) Jacksonville has determined that potential hazards associated with the VB–10,000 work barge will be a safety concern for anyone within a 500-yard radius of the barge while in transit and within a 100-yard radius of the barge while moored at the Nassau Terminal in Fernandina Beach, FL. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the barge is transiting through the COTP Jacksonville Zone and moored at Nassau Terminal.

IV. Discussion of the Rule

This rule establishes a safety zone around the VB–10,000 work barge. The safety zone will cover all navigable waters within 500 yards of the barge while in transit and all navigable waters within 100 yards of the barge while moored at the Nassau Terminal in Fernandina Beach, FL. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the barge is present. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the time and duration the VB–10,000 work barge will be in the Sector Jacksonville Captain of the Port Zone. Vessel traffic will be able to safely transit around the 500 yard radius safety zone which will be reduced to a 100-yard radius while the barge is moored at the Nassau Terminanl in Fernandina Beach, FL. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels unable to pass safely to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions

with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety 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.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit entry within navigable waters outlined in the Discussion of the Rule above. 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. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165 Regulated Navigation Areas and Limited Access Areas

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T07–0199 to read as follows:

§ 165.T07–0199 Safety Zone; VB–10,000 work barge, Sector Jacksonville Captain of the Port Zone, Fernandina Beach, FL.

(a) *Location.* The following is a safety zone: All navigable waters within a 500 yard radius around the VB–10,000 work barge during the vessel's transit within the Sector Jacksonville Captain of the Port Zone. While it is moored at Nassau Terminal, Fernandina Beach, FL, the saftey zone will encompass navigable waters within a 100 yard radius.

(b) *Definitions.* As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and Federal, State, and local officers designated by or assisting the Captain of the Port Jacksonville (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Jacksonville or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Jacksonville by telephone at (904) 714–7557, or a designated representative via VHF–FM radio on channel 16, to request authorization. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP Jacksonville or a designated representative.

(3) The Coast Guard will provide notice of the regulated area through Broadcast Notice to Mariners via VHF–FM channel 16.

(d) *Enforcement period.* This section will be enforced from July 3, 2020 through July 31, 2020, unless terminated sooner by the Sector Jacksonville Captain of the Port Zone.

Dated: June 30, 2020.

M.C. Reed,

Commander, U.S. Coast Guard, Captain of the Port Jacksonville, Acting.

[FR Doc. 2020–14788 Filed 7–7–20; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 86 and 600

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 523, 531, 533, 536, and 537

[NHTSA–2018–0067; EPA–HQ–OAR–2018–0283; FRL 10000–45–OAR]

RIN 2127–AL76; 2060–AU09

The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks; Correction

AGENCY: Environmental Protection Agency and National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Final rule; correction.

SUMMARY: This document corrects technical errors in the final rule that appeared in the **Federal Register** on April 30, 2020, entitled ''The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks.'' That document promulgated final standards for Corporate Average Fuel Economy (CAFE) and carbon dioxide emissions for passenger cars and light trucks (collectively, light-duty vehicles) to be manufactured in model years 2021–2026.

DATES: This correcting document is effective July 8, 2020.

FOR FURTHER INFORMATION CONTACT: *EPA:* Christopher Lieske, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number (734) 214–4584; fax number (734) 214–4816; email address: *lieske.christopher@epa.gov,* or contact the Assessment and Standards Division, email address: *otaq@epa.gov.* *NHTSA:* James Tamm, Office of Rulemaking, Fuel Economy Division, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone number (202) 493–0515.

SUPPLEMENTARY INFORMATION: In FR Doc. 2020–06967 published April 30, 2020, make the following corrections:

1. On pages 25091–25098, tables VII–144 through VII–147 are corrected to read as follows:

BILLING CODE 4910–59–P

Table VII-144 – Discounted (at 3%) Benefits and Costs through 2050 under CAFE Standards

Present Value of Cumulative Incremental Benefits and Costs ($b) through 2050 (3% Discount Rate)	0.00%/Y Pc And 0.00%/Y Lt During 2021-2026	0.50%/Y Pc And 0.50%/Y Lt During 2021-2026	1.50%/Y Pc And 1.50%/Y Lt During 2021-2026	1.00%/Y Pc And 2.00%/Y Lt During 2021-2026	1.00%/Y Pc And 2.00%/Y Lt During 2022-2026	2.00%/Y Pc And 3.00%/Y Lt During 2021-2026	2.00%/Y Pc And 3.00%/Y Lt During 2022-2026
Benefits							
Retail Fuel Savings	(531)	(521)	(435)	(416)	(311)	(289)	(205)
Rebound Fuel Consumer Surplus	(115)	(113)	(95)	(88)	(62)	(54)	(35)
Refueling Time Benefit	(9)	(9)	(8)	(8)	(5)	(4)	(3)
Rebound Fatality Benefit	(37)	(36)	(31)	(29)	(22)	(20)	(14)
Rebound Non-Fatal Crash Benefit	(60)	(59)	(51)	(48)	(36)	(32)	(22)
Subtotal - Private Benefits	**(752)**	**(737)**	**(620)**	**(589)**	**(435)**	**(398)**	**(279)**
Avoided Petroleum Market Externalities	(8)	(8)	(7)	(7)	(5)	(5)	(3)
Avoided Damages from CO2	(16)	(16)	(13)	(12)	(9)	(9)	(6)
Avoided Damages from NOx	(2)	(2)	(2)	(2)	(1)	(1)	(1)
Avoided Damaged from VOC	-	-	-	-	-	-	-
Avoided Damages from SO2	16	17	15	16	13	16	10
Avoided Damages from PM	(12)	(11)	(9)	(9)	(7)	(6)	(5)
Subtotal - External Benefits	**(22)**	**(21)**	**(16)**	**(13)**	**(9)**	**(5)**	**(5)**
Total Benefits	**(774)**	**(758)**	**(635)**	**(602)**	**(444)**	**(403)**	**(284)**
Costs							
Technology Costs	(360)	(353)	(295)	(283)	(214)	(199)	(141)
Implicit Opportunity Costs	-	-	-	-	-	-	-
Lost New Vehicle Consumer Surplus	(2)	(2)	(1)	(1)	(1)	(1)	(0)
Rebound Fatality Costs	(41)	(40)	(35)	(33)	(24)	(22)	(15)
Rebound Non-Fatal Crash Costs	(67)	(65)	(57)	(54)	(40)	(36)	(25)
Reduced Fuel Tax Revenue	(90)	(88)	(74)	(71)	(53)	(50)	(36)
Subtotal - Private Costs	**(560)**	**(548)**	**(461)**	**(441)**	**(332)**	**(307)**	**(217)**
Congestion Costs	(141)	(138)	(120)	(114)	(84)	(75)	(53)
Noise Costs	(1)	(1)	(1)	(1)	(1)	(0)	(0)
Non-Rebound Fatality Costs	(8)	(8)	(7)	(7)	(6)	(5)	(3)
Non-Rebound Non-Fatal Crash Costs	(13)	(13)	(12)	(12)	(9)	(8)	(6)
Subtotal - External Costs	**(163)**	**(159)**	**(139)**	**(133)**	**(100)**	**(89)**	**(62)**
Total Costs	**(723)**	**(708)**	**(601)**	**(575)**	**(432)**	**(396)**	**(279)**
Benefits							
Private	(752)	(737)	(620)	(589)	(435)	(398)	(279)
External	(22)	(21)	(16)	(13)	(9)	(5)	(5)
Total Benefits	**(774)**	**(758)**	**(635)**	**(602)**	**(444)**	**(403)**	**(284)**
Costs							
Private	**(560)**	**(548)**	**(461)**	**(441)**	**(332)**	**(307)**	**(217)**
External	**(163)**	**(159)**	**(139)**	**(133)**	**(100)**	**(89)**	**(62)**
Total Costs	**(723)**	**(708)**	**(601)**	**(575)**	**(432)**	**(396)**	**(279)**
Net Benefits	**(51)**	**(50)**	**(34)**	**(27)**	**(13)**	**(7)**	**(5)**

Table VII-145 – Discounted (at 7%) Benefits and Costs through 2050 under CAFE Standards

Present Value of Cumulative Incremental Benefits and Costs ($b) through 2050 (7% Discount Rate)	0.00%/Y Pc And 0.00%/Y Lt During 2021-2026	0.50%/Y Pc And 0.50%/Y Lt During 2021-2026	1.50%/Y Pc And 1.50%/Y Lt During 2021-2026	1.00%/Y Pc And 2.00%/Y Lt During 2021-2026	1.00%/Y Pc And 2.00%/Y Lt During 2022-2026	2.00%/Y Pc And 3.00%/Y Lt During 2021-2026	2.00%/Y Pc And 3.00%/Y Lt During 2022-2026
Benefits							
Retail Fuel Savings	(267)	(261)	(221)	(211)	(156)	(147)	(103)
Rebound Fuel Consumer Surplus	(61)	(60)	(51)	(47)	(33)	(29)	(19)
Refueling Time Benefit	(6)	(6)	(6)	(5)	(4)	(3)	(2)
Rebound Fatality Benefit	(19)	(19)	(16)	(15)	(11)	(10)	(7)
Rebound Non-Fatal Crash Benefit	(31)	(31)	(27)	(25)	(18)	(17)	(12)
Subtotal - Private Benefits	**(385)**	**(377)**	**(320)**	**(304)**	**(222)**	**(206)**	**(143)**
Avoided Petroleum Market Externalities	(4)	(4)	(3)	(3)	(2)	(2)	(2)
Avoided Damages from CO2	(16)	(16)	(13)	(12)	(9)	(9)	(6)
Avoided Damages from NOx	(1)	(1)	(1)	(1)	(0)	(0)	(0)
Avoided Damaged from VOC	-	-	-	-	-	-	-
Avoided Damages from SO2	6	6	5	6	5	7	4
Avoided Damages from PM	(5)	(5)	(4)	(4)	(3)	(3)	(2)
Subtotal - External Benefits	**(20)**	**(20)**	**(15)**	**(14)**	**(10)**	**(7)**	**(6)**
Total Benefits	**(405)**	**(397)**	**(335)**	**(318)**	**(232)**	**(213)**	**(149)**
Costs							
Technology Costs	(221)	(217)	(183)	(176)	(132)	(125)	(88)
Implicit Opportunity Costs	-	-	-	-	-	-	-
Lost New Vehicle Consumer Surplus	(1)	(1)	(1)	(1)	(1)	(0)	(0)
Rebound Fatality Costs	(21)	(21)	(18)	(17)	(12)	(11)	(8)
Rebound Non-Fatal Crash Costs	(35)	(34)	(30)	(28)	(20)	(19)	(13)
Reduced Fuel Tax Revenue	(46)	(45)	(38)	(36)	(27)	(26)	(18)
Subtotal - Private Costs	**(324)**	**(317)**	**(269)**	**(258)**	**(193)**	**(181)**	**(128)**
Congestion Costs	(76)	(75)	(65)	(62)	(45)	(41)	(28)
Noise Costs	(0)	(0)	(0)	(0)	(0)	(0)	(0)
Non-Rebound Fatality Costs	(6)	(5)	(5)	(5)	(4)	(4)	(2)
Non-Rebound Non-Fatal Crash Costs	(9)	(9)	(8)	(8)	(6)	(6)	(4)
Subtotal - External Costs	**(91)**	**(90)**	**(78)**	**(75)**	**(55)**	**(50)**	**(35)**
Total Costs	**(416)**	**(407)**	**(348)**	**(334)**	**(248)**	**(232)**	**(163)**
Benefits							
Private	(385)	(377)	(320)	(304)	(222)	(206)	(143)
External	(20)	(20)	(15)	(14)	(10)	(7)	(6)
Total Benefits	**(405)**	**(397)**	**(335)**	**(318)**	**(232)**	**(213)**	**(149)**
Costs							
Private	**(324)**	**(317)**	**(269)**	**(258)**	**(193)**	**(181)**	**(128)**
External	**(91)**	**(90)**	**(78)**	**(75)**	**(55)**	**(50)**	**(35)**
Total Costs	**(416)**	**(407)**	**(348)**	**(334)**	**(248)**	**(232)**	**(163)**
Net Benefits	**11**	**10**	**13**	**16**	**16**	**18**	**13**

Table VII-146 – Discounted (at 3%) Benefits and Costs through 2050 under CO_2 Standards

Present Value of Cumulative Incremental Benefits and Costs ($b) through 2050 (3% Discount Rate)	0.00%/Y Pc And 0.00%/Y Lt During 2021-2026	0.50%/Y Pc And 0.50%/Y Lt During 2021-2026	1.50%/Y Pc And 1.50%/Y Lt During 2021-2026	1.00%/Y Pc And 2.00%/Y Lt During 2021-2026	1.00%/Y Pc And 2.00%/Y Lt During 2022-2026	2.00%/Y Pc And 3.00%/Y Lt During 2021-2026	2.00%/Y Pc And 3.00%/Y Lt During 2022-2026
Benefits							
Retail Fuel Savings	(506)	(491)	(406)	(388)	(285)	(255)	(159)
Rebound Fuel Consumer Surplus	(138)	(132)	(106)	(101)	(73)	(68)	(46)
Refueling Time Benefit	(7)	(7)	(7)	(6)	(5)	(6)	(3)
Rebound Fatality Benefit	(41)	(40)	(33)	(31)	(23)	(22)	(15)
Rebound Non-Fatal Crash Benefit	(67)	(65)	(54)	(51)	(38)	(36)	(24)
Subtotal - Private Benefits	**(759)**	**(735)**	**(607)**	**(576)**	**(425)**	**(386)**	**(248)**
Avoided Petroleum Market Externalities	(8)	(7)	(6)	(6)	(4)	(4)	(2)
Avoided Damages from CO2	(15)	(14)	(12)	(11)	(8)	(8)	(5)
Avoided Damages from NOx	(2)	(2)	(1)	(1)	(1)	(1)	(0)
Avoided Damaged from VOC	-	-	-	-	-	-	-
Avoided Damages from SO2	4	4	3	4	1	(2)	(6)
Avoided Damages from PM	(9)	(9)	(7)	(7)	(5)	(4)	(2)
Subtotal - External Benefits	**(30)**	**(28)**	**(24)**	**(22)**	**(18)**	**(18)**	**(15)**
Total Benefits	**(789)**	**(763)**	**(631)**	**(598)**	**(443)**	**(404)**	**(263)**
Costs							
Technology Costs	(322)	(313)	(265)	(253)	(189)	(172)	(112)
Implicit Opportunity Costs	-	-	-	-	-	-	-
Lost New Vehicle Consumer Surplus	(1)	(1)	(1)	(1)	(1)	(0)	(0)
Rebound Fatality Costs	(46)	(44)	(37)	(35)	(26)	(24)	(17)
Rebound Non-Fatal Crash Costs	(75)	(72)	(60)	(57)	(42)	(39)	(27)
Reduced Fuel Tax Revenue	(82)	(80)	(66)	(63)	(46)	(41)	(24)
Subtotal - Private Costs	**(526)**	**(511)**	**(429)**	**(408)**	**(303)**	**(276)**	**(180)**
Congestion Costs	(163)	(157)	(130)	(122)	(90)	(84)	(58)
Noise Costs	(1)	(1)	(1)	(1)	(1)	(1)	(0)
Non-Rebound Fatality Costs	(7)	(6)	(6)	(5)	(4)	(5)	(4)
Non-Rebound Non-Fatal Crash Costs	(11)	(11)	(9)	(9)	(7)	(8)	(6)
Subtotal - External Costs	**(182)**	**(175)**	**(146)**	**(137)**	**(103)**	**(97)**	**(68)**
Total Costs	**(707)**	**(686)**	**(574)**	**(545)**	**(406)**	**(374)**	**(248)**
Benefits							
Private	(759)	(735)	(607)	(576)	(425)	(386)	(248)
External	(30)	(28)	(24)	(22)	(18)	(18)	(15)
Total Benefits	**(789)**	**(763)**	**(631)**	**(598)**	**(443)**	**(404)**	**(263)**
Costs							
Private	**(526)**	**(511)**	**(429)**	**(408)**	**(303)**	**(276)**	**(180)**
External	**(182)**	**(175)**	**(146)**	**(137)**	**(103)**	**(97)**	**(68)**
Total Costs	**(707)**	**(686)**	**(574)**	**(545)**	**(406)**	**(374)**	**(248)**
Net Benefits	**(81)**	**(78)**	**(56)**	**(53)**	**(37)**	**(31)**	**(15)**

Table VII-147 – Discounted (at 7%) Benefits and Costs through 2050 under CO_2 Standards

Present Value of Cumulative Incremental Benefits and Costs ($b) through 2050 (7% Discount Rate)	0.00%/Y Pc And 0.00%/Y Lt During 2021-2026	0.50%/Y Pc And 0.50%/Y Lt During 2021-2026	1.50%/Y Pc And 1.50%/Y Lt During 2021-2026	1.00%/Y Pc And 2.00%/Y Lt During 2021-2026	1.00%/Y Pc And 2.00%/Y Lt During 2022-2026	2.00%/Y Pc And 3.00%/Y Lt During 2021-2026	2.00%/Y Pc And 3.00%/Y Lt During 2022-2026
Benefits							
Retail Fuel Savings	(258)	(250)	(207)	(198)	(144)	(132)	(83)
Rebound Fuel Consumer Surplus	(71)	(69)	(56)	(53)	(38)	(36)	(25)
Refueling Time Benefit	(4)	(4)	(4)	(3)	(3)	(3)	(2)
Rebound Fatality Benefit	(21)	(20)	(17)	(16)	(12)	(11)	(8)
Rebound Non-Fatal Crash Benefit	(34)	(33)	(28)	(26)	(20)	(19)	(13)
Subtotal - Private Benefits	**(388)**	**(376)**	**(311)**	**(296)**	**(217)**	**(202)**	**(131)**
Avoided Petroleum Market Externalities	(4)	(4)	(3)	(3)	(2)	(2)	(1)
Avoided Damages from CO2	(15)	(14)	(12)	(11)	(8)	(8)	(5)
Avoided Damages from NOx	(1)	(1)	(1)	(1)	(0)	(0)	(0)
Avoided Damaged from VOC	-	-	-	-	-	-	-
Avoided Damages from SO2	1	1	0	1	(1)	(2)	(4)
Avoided Damages from PM	(4)	(4)	(3)	(3)	(2)	(2)	(1)
Subtotal - External Benefits	**(23)**	**(22)**	**(18)**	**(17)**	**(14)**	**(13)**	**(10)**
Total Benefits	**(411)**	**(398)**	**(330)**	**(313)**	**(231)**	**(215)**	**(141)**
Costs							
Technology Costs	(197)	(192)	(163)	(155)	(116)	(108)	(70)
Implicit Opportunity Costs	-	-	-	-	-	-	-
Lost New Vehicle Consumer Surplus	(1)	(1)	(1)	(1)	(0)	(0)	(0)
Rebound Fatality Costs	(23)	(23)	(19)	(18)	(13)	(13)	(9)
Rebound Non-Fatal Crash Costs	(38)	(37)	(31)	(29)	(22)	(21)	(14)
Reduced Fuel Tax Revenue	(42)	(41)	(34)	(32)	(23)	(21)	(13)
Subtotal - Private Costs	**(301)**	**(293)**	**(247)**	**(235)**	**(174)**	**(163)**	**(106)**
Congestion Costs	(86)	(83)	(69)	(65)	(48)	(45)	(32)
Noise Costs	(1)	(1)	(0)	(0)	(0)	(0)	(0)
Non-Rebound Fatality Costs	(5)	(4)	(4)	(4)	(3)	(3)	(2)
Non-Rebound Non-Fatal Crash Costs	(8)	(7)	(7)	(6)	(5)	(5)	(4)
Subtotal - External Costs	**(99)**	**(95)**	**(80)**	**(75)**	**(56)**	**(54)**	**(38)**
Total Costs	**(400)**	**(388)**	**(327)**	**(310)**	**(230)**	**(217)**	**(144)**
Benefits							
Private	(388)	(376)	(311)	(296)	(217)	(202)	(131)
External	(23)	(22)	(18)	(17)	(14)	(13)	(10)
Total Benefits	**(411)**	**(398)**	**(330)**	**(313)**	**(231)**	**(215)**	**(141)**
Costs							
Private	**(301)**	**(293)**	**(247)**	**(235)**	**(174)**	**(163)**	**(106)**
External	**(99)**	**(95)**	**(80)**	**(75)**	**(56)**	**(54)**	**(38)**
Total Costs	**(400)**	**(388)**	**(327)**	**(310)**	**(230)**	**(217)**	**(144)**
Net Benefits	**(11)**	**(10)**	**(3)**	**(2)**	**(0)**	**2**	**3**

BILLING CODE 4910–59–C

40 CFR Chapter I [Corrected]

2. On page 25268, in the first and second columns, the words of issuance for EPA are corrected to read as follows: ''For the reasons set forth in the preamble, the Environmental Protection Agency is amending parts 86 and 600 of title 40, chapter I of the Code of Federal Regulations as follows:''

40 CFR 86.1869–12 [Corrected]

■ 3. On page 25270, in the first column, amendatory instruction 5 is corrected to read as follows: ''Section 86.1869–12 is amended by revising paragraph (a), adding paragraphs (b)(1)(ix) and

(b)(4)(xiii), and revising paragraph (d)(2) to read as follows:''

Andrew Wheeler,

Administrator, Environmental Protection Agency.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.5

James Clayton Owens,

Deputy Administrator, National Highway Traffic Safety Administration.

[FR Doc. 2020–14642 Filed 7–6–20; 8:45 am]

BILLING CODE 4910–59–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–SFUND–1990–0010; FRL–10011–62–Region 5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the DuPage County Landfill/ Blackwell Forest Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 5 is publishing a direct final Notice of Deletion of the DuPage County Landfill/Blackwell Forest Superfund Site (DuPage County Landfill Site), located in Warrenville, Illinois, from the National Priorities List (NPL). The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of Illinois, through the Illinois Environmental Protection Agency (IEPA), because EPA has determined that all appropriate response actions under CERCLA, other than operation and maintenance, monitoring, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This direct final deletion is effective September 8, 2020 unless EPA receives adverse comments by August 7, 2020. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1990–0010, by one of the following methods:

https://www.regulations.gov. Follow the on-line instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Email: Deletions@usepa.onmicrosoft.com.

Phone: Public comment by phone may be made by calling (312) 353–6288 and following the directions provided for public comment.

Written comments submitted by mail are temporarily suspended and no hand deliveries will be accepted. We encourage the public to submit comments via email or at *https://www.regulations.gov.*

Instructions: Direct your comments to Docket ID No. EPA–HQ–SFUND–1990–0010. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov* or email. The *https://www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *https://www.regulations.gov* index, Docket ID No. EPA–HQ–SFUND–1990–0010. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *https://www.regulations.gov* and at *https://www.epa.gov/superfund/dupage-county-landfill* or you may contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

The EPA is temporarily suspending its Docket Center and Regional Records Centers for public visitors to reduce the risk of transmitting COVID–19. In addition, many site information repositories are closed and information in these repositories, including the deletion docket, has not been updated with hardcopy or electronic media. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

FOR FURTHER INFORMATION CONTACT: Karen Cibulskis, NPL Deletion Coordinator, U.S. Environmental Protection Agency Region 5, at (312) 886–1843 or via email at *cibulskis.karen@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

EPA Region 5 is publishing this direct final Notice of Deletion of the DuPage County Landfill Site, from the NPL. The NPL constitutes Appendix B of 40 CFR part 300, which is the NCP, which EPA promulgated pursuant to Section 105 of CERCLA of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

Section II of this document explains the criteria for deleting sites from the NPL. Section III of this document discusses the procedures that EPA is using for this action. Section IV of this document discusses where to access and review information that demonstrates how the deletion criteria have been met at the DuPage County Landfill Site. Section V of this document discusses EPA's action to delete the DuPage County Landfill Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA Section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the DuPage County Landfill Site:

(1) EPA consulted with the State of Illinois prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete co-published today in the ''Proposed Rules'' section of the **Federal Register**.

(2) EPA has provided the State thirty (30) working days for review of this action and the parallel Notice of Intent to Delete prior to their publication today, and the State, through the IEPA, concurred with the deletion of the DuPage County Landfill Site from the NPL on May 19, 2020.

(3) Concurrently with the publication of this direct final Notice of Deletion, an announcement of the availability of the parallel Notice of Intent to Delete is being published in a major local newspaper, the Chicago suburban Daily Herald. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the DuPage County Landfill Site from the NPL.

(4) EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at *https://www.regulations.gov,* Docket ID No. EPA–HQ–SFUND–1990–0010 and at *https://www.epa.gov/superfund/dupage-county-landfill.*

(5) If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Deletion in the **Federal Register** before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The EPA placed a copy of its Final Close Out Report for the Site and other documents supporting the proposed deletion in the deletion docket. The material provides explanation of EPA's rationale for the deletion and demonstrates how it meets the deletion criteria. This information is made available for public inspection in the deletion docket available at *https://www.regulations.gov,* Docket ID No. EPA–HQ–SFUND–1990–0010 and at *https://www.epa.gov/superfund/dupage-county-landfill.*

V. Deletion Action

EPA, with concurrence of the State of Illinois through the IEPA, has determined that all appropriate response actions under CERCLA, other than operation and maintenance, monitoring and five-year reviews have been completed at the DuPage County Landfill Site. Therefore, EPA is deleting the DuPage County Landfill Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective September 8, 2020 unless EPA receives adverse comments by August 7, 2020. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final Notice of Deletion before its effective date and the deletion will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: June 29, 2020.

Kurt Thiede,

Regional Administrator, Region 5.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.;* 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B to Part 300—[Amended]

■ 2. Table 1 of Appendix B to part 300 is amended by removing the entry ''IL,'' ''DuPage County Landfill/Blackwell Forest'', ''Warrenville''.

[FR Doc. 2020–14588 Filed 7–7–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 51, 54, 61, and 69

[WC Docket No. 18–155; FCC 20–79; FRS 16861]

Updating the Intercarrier Compensation Regime To Eliminate Access Arbitrage

AGENCY: Federal Communications Commission.

ACTION: Order on reconsideration.

SUMMARY: In this document, the Federal Communications Commission responds to a petition for reconsideration of the *Access Arbitrage Order* filed by Iowa Network Services d/b/a Aureon Network Services (Aureon) in Iowa. Upon review of the record, we dismiss Aureon's Petition as procedurally defective, and independently, and in the alternative, deny it on substantive grounds.

DATES: The denial of the petition for reconsideration was effective June 11, 2020.

ADDRESSES: The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554, or at the following internet address: At *https://docs.fcc.gov/public/attachments/FCC-20-79A1.pdf.*

FOR FURTHER INFORMATION CONTACT: For further information, please contact Victoria Goldberg, Pricing Policy Division, Wireline Competition Bureau, at *Victoria.goldberg@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration (Order) in WC Docket No. 18–155, adopted June 11, 2020 and released June 11, 2020. The full text of this document is available on the Commission's website at *https://docs.fcc.gov/public/attachments/FCC-20-79A1.pdf.*

I. Introduction

1. In the 2019 *Access Arbitrage Order* (84 FR 57629, Oct. 28, 2019), we tackled, once again, the troublesome use of ''free'' conference calling, chat lines, and certain other services operated out of rural areas to take advantage of inefficiently high access charges allowed under the existing intercarrier compensation regime. As we explained, access stimulation schemes adapted to shrinking end office termination charges by taking advantage of access charges that had not transitioned or were not transitioning to bill-and-keep. As such, these schemes were structured to ensure that interexchange carriers (IXCs) would pay high tandem switching and tandem switched transport charges to access-stimulating local exchange carriers (LECs) and to the intermediate access providers chosen by those access-stimulating LECs. We also found that the vast majority of access-stimulation traffic was bound for LECs that subtended two centralized equal access (CEA) providers, Iowa Network Services d/b/a Aureon Network Services (Aureon) in Iowa and South Dakota Network, LLC (SDN) in South Dakota.

2. To eliminate the financial incentives to engage in access arbitrage, we adopted rules making access-stimulating LECs—rather than IXCs—financially responsible for the tandem switching and transport service access charges associated with the delivery of traffic from an IXC to the access-stimulating LEC end office or its functional equivalent. To facilitate the implementation of the rules in Iowa and South Dakota, we also modified the section 214 authorizations for Aureon and SDN to permit traffic terminating at access-stimulating LECs that subtend those CEA providers' tandems to bypass the CEA tandems.

3. Now Aureon seeks reconsideration of the *Access Arbitrage Order.* In its Petition, Aureon reiterates several of the arguments it made on the record in the Access Arbitrage proceeding. In particular, Aureon objects to our decision to adopt rules making access-stimulating LECs responsible for paying for tandem switching and transport services, and argues that we should instead have adopted one of its proposals—either to ban access stimulation or to require consumers placing calls to access-stimulating LECs to pay their IXCs an additional charge for each such call. Aureon also objects to our decision to modify its section 214 authorization, and it argues that we should have addressed its cost and rate complaints that are at issue in other Commission proceedings. Upon review of the record, we dismiss Aureon's Petition as procedurally defective, and independently, and in the alternative, deny it on substantive grounds.

II. Background

4. The Commission has been combating access stimulation for more than a decade. Traditionally, access-stimulating LECs relied on the existence of high end office terminating switched access rates in rural areas that allowed them to increase their revenue by inflating their terminating call volumes through arrangements with entities that offer high-volume calling services. Because LECs entering traffic-inflating revenue-sharing agreements were not required to reduce their access rates to reflect their increased volume of minutes, access stimulation increased access minutes-of-use and access payments (at constant, per-minute-of-use rates that exceed the actual average per-minute cost of providing access). As a result, IXCs and their customers had to pay those inflated intercarrier compensation charges.

5. In the 2011 *USF/ICC Transformation Order* (76 FR 73830, Nov. 29, 2011), the Commission found that access-stimulating LECs were ''realiz[ing] significant revenue increases and thus inflated profits that almost uniformly [made] their interstate switched access rates unjust and unreasonable.'' The record showed that the ''total cost of access stimulation to IXCs [had] been more than $2.3 billion over the [preceding] five years'' and that ''Verizon estimate[d] the overall costs to IXCs to be between $330 and $440 million per year.'' The Commission explained that all long distance customers ''bear these costs, even though many of them do not use the access stimulator's services, and, in essence, ultimately support businesses designed to take advantage of today's above-cost intercarrier compensation rates.'' The Commission also found that ''[a]ccess stimulation imposes undue costs on consumers, inefficiently diverting capital away from more productive uses such as broadband deployment,'' and that it ''harms competition by giving companies that offer a 'free' calling service a competitive advantage over companies that charge their customers for the service.''

6. The Commission sought to eliminate the detrimental effect of

access stimulation on all American consumers by requiring LECs to refile their interstate switched access tariffs at lower rates if: (1) The LEC has a revenue-sharing agreement; and (2) the LEC either has (a) a 3:1 ratio of terminating-to-originating traffic in any month or (b) has more than a 100% increase in traffic volume in any month measured against the same month during the previous year. These rules were ''narrowly tailored to address harmful practices while avoiding burdens on entities not engaging in access stimulation.'' The LECs that were thereby identified as being engaged in access stimulation were, for the most part, required to change their tariffs for end office access charges. A rate-of-return LEC was required to file its own cost-based tariff under section 61.38 of the Commission's rules and could not file based on historical costs under section 61.39 of the Commission's rules or participate in the NECA traffic-sensitive tariff. A competitive LEC was required to benchmark its tariffed end office access rates to the rates of the price cap LEC with the lowest interstate switched access rates in the state.

7. In the *USF/ICC Transformation Order,* the Commission transitioned end office terminating access charges to bill-and-keep. The Commission found that the transition to bill-and-keep would help reduce access stimulation by reducing ''competitive distortions inherent in the intercarrier compensation system and eliminating carriers' ability to shift network costs to competitors and their customers.'' At the same time, the Commission transitioned tandem switching and transport charges to bill-and-keep for price cap carriers when the terminating price cap carrier owns the tandem in the serving area, 47 CFR 51.907. For rate-of-return carriers, the Commission capped terminating interstate and intrastate transport charges at interstate levels.

8. In September 2017, in light of developments that had occurred in the relevant markets since the *USF/ICC Transformation Order,* the Wireline Competition Bureau (Bureau) sought to refresh the record on several issues, including the transition of the remaining tandem switching and transport charges to bill-and-keep. The comments that the Bureau received suggested that, in response to the reforms adopted in the *USF/ICC Transformation Order,* access stimulation schemes had adapted to shrinking end office termination charges and sought to take advantage of access charges that have not yet transitioned or are not transitioning to bill-and-keep. It appeared that access stimulation schemes had restructured to take advantage of the tandem switching and tandem switched transport charges that IXCs pay to access-stimulating LECs. The access stimulation schemes often involved carriers that billed ''excessive transport charges, including lengthy per-mile, per-minute charges to remote areas on large volumes of stimulated'' traffic.

9. In 2018, the Commission adopted a Notice of Proposed Rulemaking (*Access Arbitrage Notice*) (83 FR 30628, June 29, 2018) proposing to eliminate the financial incentive to engage in access arbitrage by giving access-stimulating LECs two alternatives for connecting to IXCs. First, the access-stimulating LEC could choose to be financially responsible for calls delivered to its network; in this situation, IXCs would no longer pay for the delivery of calls to the access-stimulating LEC's end office or the functional equivalent. Second, instead of accepting this financial responsibility, the access-stimulating LEC could choose to accept direct connections either from the IXC or an intermediate access provider of the IXC's choice; this alternative would permit IXCs to bypass intermediate access providers selected by the access-stimulating LEC. The Commission also sought comment on revising the access stimulation definition, on moving all traffic bound for an access-stimulating LEC to bill-and-keep, and on additional arbitrage schemes and ways to eradicate them.

10. The Commission also sought comment on whether it should modify the section 214 authorizations of Aureon and SDN, which were granted almost 30 years ago. When the then-Common Carrier Bureau adopted the section 214 authorizations which formed the regulatory foundation for the CEA providers, it included a mandatory use provision for Aureon, and an apparent mandatory use provision for SDN. These mandatory use provisions required IXCs delivering terminating traffic to a LEC subtending one of these CEA tandems to deliver the traffic to the CEA tandem rather than indirectly through another intermediate access provider or directly to the subtending LEC. In the *Access Arbitrage Notice,* the Commission proposed to eliminate the mandatory use requirement as it pertains to traffic terminating at access-stimulating LECs because, among other things, delivery of such high volumes of traffic was not the reason that CEA providers were authorized.

11. The Commission received over 140 formal comments and *ex parte* communications, and over 2,500 ''express'' comments in response to the *Access Arbitrage Notice.* In the *Access Arbitrage Order,* we found that the rules adopted in the *USF/ICC Transformation Order* resulted in a dramatic reduction in costs to IXCs—from approximately $330 million to $440 million annually reported in 2010 to between $60 million and $80 million annually reported in 2019—and ''effectively discouraged rate-of-return LEC access stimulation activity.'' We also found that since terminating end office access rates had transitioned to bill-and-keep they were no longer driving access stimulation. Instead, we found that access arbitrage schemes were taking advantage of terminating tandem switching and transport service access charges which, unlike end office switching charges, had not yet transitioned or are not transitioning to bill-and-keep. We also found that access stimulators typically operate in those areas of the country where tandem switching and transport charges remain high and are causing intermediate access providers, including CEA providers, to be included in the call path. We further explained that the tariffed tandem and transport access charges of CEA providers with mandatory use requirements served as a price umbrella for similar services offered by intermediate access providers pursuant to commercial agreement, thus inviting access arbitrage. The intermediate access provider would attract traffic to its facilities by offering a small discount from the applicable tariffed CEA rate.

12. In the *Access Arbitrage Order,* we adopted three key rule modifications of relevance here. First, to reduce the use of the access charge system to subsidize high-volume calling services, we adopted rules making access-stimulating LECs—rather than IXCs—financially responsible for the tandem switching and tandem switched transport access charges for the delivery of terminating traffic from IXCs to the access-stimulating LECs' end offices or their functional equivalents. Second, we modified the definition of access stimulation to include two new alternative triggers without a revenue-sharing component. Third, to facilitate our new rules, we modified the Aureon and SDN section 214 authorizations to eliminate the mandatory use requirements insofar as they apply to traffic being delivered to access-stimulating LECs. We therefore enabled ''IXCs to use whatever intermediate access provider an access-stimulating LEC that otherwise subtends Aureon or SDN chooses.'' We reasoned that our action would ''allow IXCs to directly connect to access-stimulating LECs

where such connections are mutually negotiated and where doing so would be more efficient and cost-effective.''

13. In November 2019, Aureon filed its Petition seeking reconsideration of the *Access Arbitrage Order.* Aureon requests that we: (a) Reconsider our rules requiring access-stimulating LECs to pay tandem switching and transport charges and instead either ban access stimulation or, in the alternative, require callers to high-volume calling services to pay for additional fees to cover the costs of the IXCs' access charges; (b) retain the mandatory use provisions of the section 214 authorizations for Aureon and SDN; and (c) reconsider what Aureon characterizes as additional financial burdens on CEA providers created by our reforms.

14. We released a Public Notice announcing the filing of the Petition and established deadlines for Oppositions and Replies to the Petition. We received Oppositions from AT&T, Verizon and Sprint, and a Reply from Aureon.

15. Any interested party may file a petition for reconsideration of a final action in a rulemaking proceeding, 47 CFR 1.429(a). Reconsideration ''may be appropriate when the petitioner demonstrates that the original order contains a material error or omission, or raises additional facts that were not known or did not exist until after the petitioner's last opportunity to present such matters,'' 47 CFR 1.429(b). Petitions for reconsideration that do not warrant consideration by the Commission include those that: ''[f]ail to identify any material error, omission, or reason warranting reconsideration; [r]ely on facts or arguments which have not been previously presented to the Commission; [r]ely on arguments that have been fully considered and rejected by the Commission within the same proceeding;'' or ''[r]elate to matters outside the scope of the order for which reconsideration is sought,'' 47 CFR 1.429(l)(1)–(3), (5). The Commission may consider facts or arguments not previously presented if: (1) They ''relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission'', 47 CFR 1.429(b)(1); (2) they were ''unknown to petitioner until after [their] last opportunity to present them to the Commission, and . . . could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity,'' 47 CFR 1.429(b)(2); or (3) ''[t]he Commission determines that consideration of the facts or arguments relied on is required in the public interest,'' 47 CFR 1.429(b)(3).

III. Discussion

16. We consider and dismiss Aureon's Petition as procedurally deficient. Separately, we deny the Petition on the merits. In the discussion below, we address the Petition's procedural defects and then turn to the shortcomings of Aureon's substantive arguments.

A. Aureon's Petition Is Procedurally Defective

17. Aureon fails to meet the standard to justify reconsideration. It does not identify any material error or omission in the *Access Arbitrage Order;* raise facts that were not known or did not exist before Aureon's last opportunity to present such matters in the underlying rulemaking; or demonstrate that reconsideration would be in the public interest. Instead, Aureon's Petition suffers from numerous procedural flaws—repeating arguments that Aureon previously raised and to which we responded, raising ''new'' arguments that it could have made in the underlying proceeding, and presenting arguments that are beyond the scope of this proceeding—that warrant dismissal, 47 CFR 1.429(l).

18. *The Commission Need Not Address Petitions that Repeat Previous Arguments.* Our rules and precedent are clear that we need not consider petitions for reconsideration, such as Aureon's, that ''merely repeat arguments we previously . . . rejected'' in the underlying order. Nonetheless, Aureon focuses its Petition on arguments it already made. Most notably, notwithstanding Aureon's claim to the contrary, in the *Access Arbitrage Order,* we fully considered and rejected its recommendations to ban access stimulation or to allow IXCs to charge users of access-stimulating services for the access costs associated with those services.

19. We recognize that we are required to '' 'consider responsible alternatives to [our] chosen policy and to give a reasoned explanation for [our] rejection of such alternatives.' '' At the same time, while ''an agency ordinarily must consider less restrictive alternatives and should explain its reasons for failing to adopt such alternatives,'' we are required only to provide an explanation of our decision to reject any particular proposal.

20. With respect to Aureon's proposal to ban access stimulation, in the *Access Arbitrage Order,* we recognized Aureon's proposal and found, as the Commission concluded in the *USF/ICC Transformation Order,* that a ban would be an overbroad solution. As we explained, we therefore opted to ''prescribe narrowly focused conditions for providers engaged in access stimulation'' that strike an ''appropriate balance between addressing access stimulation and the use of intermediate access providers while not affecting those LECs that are not engaged in access stimulation.'' Thus, we fully considered and rejected Aureon's proposal.

21. With respect to Aureon's proposal to require IXCs to charge access-stimulation service customers the cost of related access charges, we explicitly addressed Aureon's previous, more specific proposal that we allow IXCs to charge a penny a minute to their customers making calls to access-stimulating LECs. We gave two reasons for rejecting Aureon's proposal on the merits, explaining that: (1) There was no evidence to suggest that access-stimulation calls cost a penny per minute, ''so the proposal would simply trade one form of inefficiency for another;'' and (2) ''such an overbroad proposal . . . would confuse consumers and unnecessarily spill into, and potentially affect, the operation of the more-competitive wireless marketplace.'' Aureon now claims that it never intended to propose charging customers ''a specific price for the call, such as a penny'' and insists that its intent was simply to suggest charging customers ''something other than zero for a call that has been falsely represented in the past as being 'free.'" Putting aside Aureon's attempt to recast its proposal, Aureon fails to persuade us that our consideration of the concept of IXCs charging end users for placing calls to access-stimulating LECs was insufficient.

22. We also fully considered and rejected another request that Aureon now repeats: That we not modify its section 214 certification. As we explained when we rejected this request, Aureon provided no supporting detail for its claim that modifying its section 214 authorization would negatively affect its ability to provide services in rural areas and to maintain its network. We further explained that ''[o]ur decision to permit traffic being delivered to an access-stimulating LEC to be routed around a CEA tandem does not affect traffic being delivered to non-access-stimulating LECs that remain on the CEA network, and will not impact Aureon's ability to serve rural areas, contrary to Aureon's concern.'' As these arguments have been ''fully considered and rejected by the Commission,'' they are procedurally improper here.

23. Aureon also repeats various other arguments that we addressed in the *Access Arbitrage Order.* For example, Aureon again claims that our access arbitrage rules shift costs to ''a few thousand rural customers paying for access stimulation services that they never use, as the LECs recover their costs from their rural end users.'' The claim is incorrect. As we explained in the *Access Arbitrage Order,* our new rules ''shift the recovery of costs associated with the delivery of traffic to an access-stimulating LEC's end office from IXCs to the LEC.'' And, under our new rules, carriers may respond to the shifting financial responsibilities ''in a number of ways—including in combination—such as by changing end-user rates,'' selecting less costly intermediate access providers or traffic routes, or seeking out other revenue sources, such as ''through an advertising-supported approach to offering free services or services provided at less than cost.''

24. Aureon also rehashes its previous argument that under the new rules, large IXCs ''could engage in arbitrage with respect to wholesale IXC transport and transit service.'' In the *Access Arbitrage Order,* we found ''no merit'' to these same arguments because Aureon failed to explain how IXCs would accomplish such arbitrage. As we explained, our new rules did not shift arbitrage opportunities to IXCs or to any other providers.

25. Aureon also repeats the argument that our new rules could lead to call completion problems. In the *Access Arbitrage Order,* we concluded that an intermediate access provider may consider its call completion duties satisfied ''once it has delivered the call to the tandem designated by the access-stimulating LEC.'' Finally, Aureon again raises concerns about the ''demise'' of its network without access-stimulating LECs (one that it does not attempt to square with its request to outlaw access stimulation). Aureon raised these concerns during the rulemaking proceeding and we dismissed them because Aureon provided no data to support its claims.

26. Apparently recognizing this weakness in its Petition, Aureon contends that we should exercise our discretion and consider its Petition even though it repeats arguments we have already rejected. Yet, to support this contention, Aureon relies on three Commission orders denying other petitions for reconsideration. We find none of the proffered orders persuasive. The first order is simply inapposite—it does not even discuss review of repetitious petitions for reconsideration. The second order denies the petitions at issue in part because they were repetitive. In the third order, the Commission considers a repetitious petition for reconsideration, as Aureon would have us do here, but ultimately denies the petition because the petitioner failed to demonstrate any material error or omission or to raise any new facts, and found that the new arguments were unpersuasive. Thus, the orders Aureon cites do little to advance its cause. Certainly nothing in those orders requires us to review, much less grant, Aureon's Petition to the extent it merely repeats arguments it made in the underlying proceeding.

27. *The New Arguments That Aureon Now Makes Should Have Been Known to It.* Aureon complains for the first time about possible costs it may incur related to compliance with the switch in financial responsibility for tandem switching and transport services provided to access arbitrage customers, claiming that it would be an ''administrative nightmare'' if LECs change their status from access-stimulating LECs to non-access-stimulating LECs—which it contends incorrectly could take place monthly, 47 CFR 61.3(bbb)(2)–(3). Aureon also predicts an increase in billing disputes related to the *Order.* Aureon failed to raise these challenges in its various filings in the underlying proceeding, and it has provided no explanation why it could not have raised these issues before the *Access Arbitrage Order* was adopted.

28. Also for the first time, Aureon provides data purporting to illustrate that ''Aureon would be prevented from charging a cost-based rate above the competitive LEC benchmark rate if access stimulation traffic were removed from the CEA network.'' Certainly, Aureon should have been able to provide such illustrative data during the rulemaking proceeding. The application of the competitive LEC benchmark rule is not new, and Aureon was on notice of our proposed course of action with respect to access stimulation. Aureon has provided no explanation as to why it could not have provided this financial data during the rulemaking proceeding (nor, again, how its argument here squares with its request to outlaw access arbitrage), 47 CFR 1.429(l); 47 U.S.C. 405.

29. *Aureon Seeks Reconsideration Based on Issues Beyond the Scope of This Proceeding.* We also find that Aureon's Petition is procedurally deficient and subject to dismissal insofar as it requests that on reconsideration we address the rates that Aureon can charge as a CEA provider. Aureon complains about ''rate differentials,'' the Commission's ''accounting directive'' for CEA service, and the rate caps that have applied to Aureon since before the *Access Arbitrage Order.* Aureon also asserts that the reforms adopted in the *Access Arbitrage Order* will prevent it from recovering its costs—because of the preexisting cap on its rates—and complains that those same reforms ''do[ ] not allow Aureon to earn the authorized rate of return or to charge just and reasonable rates.'' We dismiss these arguments because they are outside the scope of the proceeding. As we explained in the *Access Arbitrage Order,* the rules we adopted in that *Order* ''do not affect the rates charged for tandem switching and transport.'' Likewise, nothing in the *Access Arbitrage Order* affects the method that Aureon must use to calculate its rates. Indeed, the issue of Aureon's rates and the proper method of calculating those rates are the subject of two entirely separate proceedings.

B. Aureon's Petition Fails on the Merits

30. Although Aureon's Petition warrants dismissal on procedural grounds alone, we also find that the Petition fails on the merits. This failure provides an alternative and independent basis for rejecting the Petition. Contrary to Aureon's claims, the rules we adopted in the *Access Arbitrage Order* accomplish our goal of removing the financial incentives to engage in access arbitrage and reducing the use of intercarrier compensation to provide implicit subsidies to services offered by access-stimulating LECs. It was also reasonable for us to find that the rules we adopted are more targeted and more effective than a blanket ban on access stimulation or a rule allowing IXCs to charge consumers more for calls to access-stimulation services. Finally, our decision to modify Aureon's section 214 authorization was supported by the record and furthers our goal of shifting financial responsibility for access stimulation to the access-stimulating LEC.

1. The Reforms Adopted in the *Access Arbitrage Order* Are Consistent With the Commission's Policy Goals

31. *Our Action Removes Financial Incentives to Engage in Access Arbitrage.* In both the *Access Arbitrage Notice* and the *Access Arbitrage Order,* the Commission was clear that the fundamental goal in this proceeding was to remove financial incentives to engage in access arbitrage. In the *USF/ICC Transformation Order,* the Commission successfully sought to reduce the cost of

access arbitrage by defining access stimulation and by capping the terminating end office rates charged by access-stimulating competitive LECs. The Commission also recognized that the transition of all terminating end office charges to bill-and-keep would further reduce the cost of access arbitrage to IXCs and their customers. In the *Access Arbitrage Order,* we found that the Commission's existing rules worked well and reduced the annual cost of access arbitrage to IXCs, and by extension their customers, from between $330 million to $440 million annually to between $60 million to $80 million annually. We explained that, as terminating end office rates fell, those charges no longer drove access-stimulation schemes. Despite this history, Aureon seeks to attack our decisions in the *Access Arbitrage Order,* first by arguing that ''years of experience have shown that [reforming] the intercarrier compensation approach simply does not work'' to curb access arbitrage. This argument ignores the evidence presented in the *Access Arbitrage Order* demonstrating that the rules adopted in the *USF/ICC Transformation Order* substantially reduced access arbitrage.

32. Aureon also ignores the very real benefit of the rules we adopted in the *Access Arbitrage Order.* By making access-stimulating LECs financially responsible for the rates charged to terminate traffic to their end offices or functional equivalents, we now prevent access-stimulating LECs from passing the costs of their services—or the services of their high-volume calling provider partners—on to IXCs and, by extension, the public at large. This may, in turn, cause ''users to cease using those services, and cause access-stimulating LECs or their [high-volume calling provider partners] to terminate the calling services altogether.'' This outcome is more than just hypothetical. While most of the rules have only been in effect since November 2019, we have already received letters from several entities stating that they are exiting the access stimulation business. Aureon neither acknowledges these developments nor provides any new evidence demonstrating that IXCs are, or even could, engage in the type of hypothetical arbitrage it theorizes about. Aureon argues that our new rules are ineffective at reducing access stimulation, citing the behavior of two companies that Aureon believes are taking steps to evade our new rules. We stand ready to address and prevent any efforts to circumvent our new rules. Indeed, the Wireline Competition Bureau has already initiated one such investigation. However, efforts to circumvent our rules do not undermine our reasonable predictive judgment that the rules adopted in the *Access Arbitrage Order* will help eliminate ''the financial incentives to engage in access arbitrage,'' a prediction confirmed by the number of companies that have notified us that they have left the access stimulation business. In sum, Aureon's Petition does not support its claim that our new rules work at cross-purposes with our goal.

33. Our Actions Address the Use of Intercarrier Compensation to Provide Implicit Subsidies to Services Offered by Access-Stimulating LECs. As we explained in the Access Arbitrage Order and Aureon has now acknowledged, prior to the Access Arbitrage Order, ''it was the IXCs' customers that subsidized the access costs incurred for a small subset of customers to use an access stimulating service.'' Under our new rules, a significant benefit of requiring access-stimulating LECs to pay for tandem switching and transport is that doing so ends the use of intercarrier compensation to implicitly subsidize access stimulation services. Yet, Aureon claims that our access arbitrage rules shift costs to ''a few thousand rural customers paying for access stimulation services that they never use, as the LECs recover their costs from their rural end users.'' This argument makes a number of unsupported assumptions. First, it assumes that access-stimulation schemes will continue to operate out of rural areas, despite the loss of the financial incentives in the form of intercarrier compensation revenue that led them there in the first place. Second, it assumes that access-stimulating LECs have customers not engaged in access-stimulation schemes and that those customers would remain customers should they face higher prices. Finally, it assumes that access-stimulating LECs are charging or will charge their non-access-stimulation customers more to cover their new costs and fails to consider the possibility that access-stimulating LECs will instead pass tandem switching and transport charges through to the high-volume calling service providers that cause the LECs to incur those costs. The latter possibility properly aligns financial incentives by shifting costs to the cost causers, which is what we set out to accomplish. And, despite significant evidence that access-stimulating LECs have already exited the access-stimulation business, we have no evidence that our rules have led to an increase in rural rates and we have no evidence that future departures from the access-stimulation business will cause such increases.

34. There Is No Reason to Think that the Access Arbitrage Order Will Have a Negative Impact on the Commission's Goal of Fostering Competition in Rural Areas. Aureon further argues that amending its section 214 authorization to exempt traffic delivered to access-stimulating LECs from the mandatory use provision of that authorization is inconsistent with a goal of that section 214 authorization: Encouraging long distance competition in rural areas. Aureon does not explain how modification of its section 214 authorization to eliminate the mandatory use requirement for traffic delivered to access-stimulating LECs will decrease IXC competition. Rather, Aureon suggests that loss of access-stimulation traffic will lead to the ''demise'' of its network, which it argues will have a deleterious impact on competition in rural areas. Yet, in its Petition, Aureon does not explain why it thinks the loss of access-stimulation traffic will lead to its demise, nor does it attempt to reconcile the inconsistency between its advocacy for an order on reconsideration that prohibits access stimulation and its apparent claim that loss of access-stimulation traffic will cause the Aureon network to collapse and eliminate long distance competition in rural Iowa. Furthermore, there is no evidence that access-stimulation traffic existed when Aureon received its section 214 authorization. Indeed, the section 214 authorization was granted based on the Commission's understanding that the CEA network would be supported primarily by intrastate traffic, not interstate traffic. Aureon also fails to acknowledge that another CEA provider, Minnesota Independent Equal Access Corporation, does not have a mandatory use requirement in its authorization and that SDN has not challenged the modification of its section 214 certification in the Access Arbitrage Order. Both facts suggest that the mandatory use requirement is not necessary for the successful operation of a CEA network.

2. The Commission Justifiably Rejected Aureon's Proposals

35. We continue to find no merit to Aureon's position that either its proposed ban on access stimulation or its proposal to allow IXCs to charge end users for some of the access costs required to complete a call to a high-volume calling service would be better than the more nuanced approach we took in the *Access Arbitrage Order.*

36. In its Petition, Aureon argues that by failing to ban access stimulation, the new rules will require it to ''maintain large and potentially unused capacity to accommodate potential 'whipsawing' of traffic between networks.'' Aureon fails to explain, however, how these issues stem from our access arbitrage rules and in its Petition provides no data—such as forecasted capacity requirements or the cost to Aureon of engineering its network to accommodate the alleged capacity requirements—to support its claims. We fail to see how Aureon's allegations about its capacity issues are attributable to the new access arbitrage rules. If anything, the issue of capacity on Aureon's network likely predates the *Access Arbitrage Order*.

37. We are also unpersuaded by Aureon's argument that banning access stimulation would be preferable to our current rules because under the new rules, rural end users will pay for access stimulation services, even if those consumers don't use the services. We disagree with Aureon's conclusion. Aureon does not attempt to square these unsupported assertions with the fundamental premise of the rules adopted in the *Access Arbitrage Order:* To make the access-stimulating LEC—not rural end users—financially responsible for the rates charged for stimulated traffic terminated to the LEC's end office or functional equivalent. We agree with AT&T that, contrary to Aureon's assertions, ''the bulk of the access termination costs will be borne by access stimulation LECs, the [free calling partners] or their customers—not by rural customers who do not use the services.''

38. Moreover, we agree with AT&T and Sprint that Aureon's proposed ''ban'' would be unlikely to be effective. Aureon proposed to define ''High Call Volume Service'' as a high call volume operation marketed as free to the end user and to ban services that met that definition. Aureon also proposed a blanket prohibition on carrying traffic associated with a high-volume calling operation ''with a rebuttable trigger of 100,000 minutes per month to a single telephone number whereby calls to that number would be prohibited.'' Aureon does not explain how we would effectively monitor whether a high-volume calling service is marketed as free to end users, however. Nor does Aureon explain how we would enforce a prohibition on calls to a single number that exceed 100,000 minutes in a given month. If the Commission could not effectively identify whether a carrier is providing service to a ''high call volume operation,'' it would not be able to enforce the proposed prohibition against carrying traffic for such providers. In addition, carriers could circumvent Aureon's proposed minutes-of-use trigger by operating enough telephone numbers for a particular access stimulation scheme to keep the call volumes for a single telephone number below the 100,000-minute threshold, and if they did so, it appears that Aureon would have the same issue with managing capacity requirements and call completion. Aureon did not grapple with these issues in its comments during the rulemaking proceeding and makes no effort to do so in its Petition or its Reply.

39. Relatedly, Aureon fails to provide any explanation as to how or why a ban would be less restrictive than the narrowly focused rules we adopted. Confusingly, Aureon asserts that ''[a]ll evidence points to Aureon's proposed [ban] as satisfying both the FCC's existing policy . . . and being less restrictive and burdensome because no sea-change would be required with regard to how . . . the telecommunications industry operated'' prior to the adoption of our new access arbitrage rules. But, surely a complete ban on access stimulation (if it were successful) would result in less traffic being delivered from IXCs to CEA providers, not ''higher traffic volumes'' as Aureon suggests. Aureon likewise provides no information about the alleged ''sea-change'' wrought by our new rules beyond saying that it has always been the norm for IXCs to pay access charges. Simply because ''it has always been done that way'' does not mean that the Commission cannot change course. And a change in course was warranted here to reduce the LECs' incentives to engage in access stimulation.

40. Aureon also fails to substantively support its claim that our new rules create an ''administrative nightmare.'' Aureon complains that it will incur billing costs because LECs could become access stimulators one month and then cease to be access stimulators the next, resulting in the potential for billing disputes. Aureon provides no data to support its concerns about billing costs. Nor does it provide any data about how many LECs would change their status monthly, or even how many access-stimulating LECs currently subtend its network. Moreover, Aureon fails to address the fact that our rules prevent access-stimulating LECs not engaged in revenue sharing from changing their status more than once every six months, 47 CFR 61.3(bbb)(2)–(3). In addition, Aureon does not explain why the reforms adopted in the *Access Arbitrage Order* would lead to increased billing disputes.

41. Aureon claims that the rules requiring access-stimulating LECs to pay Aureon for all terminating CEA services are ''overly broad'' because the CEA traffic will be ''some mix of traditional traffic and access stimulation traffic.'' Aureon's concerns are misplaced. We clearly and intentionally made sure that our rules covered both ''traditional'' and access-stimulation traffic, shifting ''financial responsibility for *all* tandem switching and transport services to access-stimulating LECs.'' As a result, it should make no difference to Aureon whether the traffic it delivers to an access-stimulating LEC consists entirely of access-stimulation traffic, non-access stimulation traffic, or a mix of both.

42. Finally, Aureon argues that the Commission has, ''in analogous contexts, determined that it was *not* overly broad to prohibit certain types of behaviors.'' This argument falls far short of justifying Aureon's requested reconsideration. Simply because the Commission has chosen to ban certain unrelated practices in unrelated proceedings does not mean that we were bound to ban a particular practice in this particular proceeding.

43. Aureon's proposal that we allow IXCs to pass through the costs of access stimulation to customers calling access-stimulating LECs also fails on the merits. Aureon argues that allowing pass-through charges to the users of high-volume calling services sends the correct pricing signals whereas, as Aureon implies, the rules adopted in the *Access Arbitrage Order* do not. But Aureon still does not provide any data about what the pass-through cost could or should be, it does not explain why it provided no such data in the underlying proceeding, nor does it explain how we could reach a decision about what would be an appropriate charge without such data. Our approach, which places financial responsibility on the access-stimulating LECs, is simpler to administer and avoids the difficulty of attempting to calculate a pass-through charge absent relevant data, which, as we recognized in the *Access Arbitrage Order,* is lacking.

44. In any event, contrary to Aureon's assertion, consumers are ''provided with more-accurate pricing signals for high-volume calling services'' under our new rules. In the *Access Arbitrage Order,* we moved the cost of terminating access charges for stimulated traffic from IXCs to access-stimulating LECs, thereby aligning the cost of using high-volume calling services closer to the actual users of those services. As AT&T aptly explains, access-stimulating LECs and

high-volume calling service providers now ''have a choice to either absorb the terminating access cost themselves, or pass them along to the users of free calling services.'' If access-stimulating LECs decide to pass those costs through to the users of those calling services, those services will no longer be free. But, in either case, end users will receive more accurate indications of the price of the services they use. Our approach is also more consistent with cost causation principles because it aligns the ''costs associated with traffic destined for 'free' conference call services to the carrier directly serving the free conference call company rather than to all the carriers that deliver conference call traffic that originates all over the world.'' We agree with Sprint that ''[a]ligning costs this way . . . requir[es] the final carrier—the cost causer access stimulating LEC (and ultimately its customers, the conference call company)—to bear the costs of decisions they make as to where to place the switch that is serving the conference call company.'' Thus, we agree with commenters that Aureon has not shown that requiring IXCs to pass through costs to end users would be more effective at eliminating access arbitrage than our chosen approach. We also reaffirm our conclusion that the rules we adopted in the *Access Arbitrage Order* provide customers with more accurate pricing signals than they had before our *Order*.

3. Aureon Fails To Show That Our Decision To Modify Its Section 214 Authorization Should Be Reconsidered

45. We also deny on the merits Aureon's request that we reconsider the modifications to Aureon's and SDN's section 214 authorizations that now explicitly permit IXCs terminating traffic at an access-stimulating LEC that subtends either of their CEA tandems to use routes other than those CEA tandems to reach the access-stimulating LEC. Aureon raises several objections, but none have merit.

46. To begin with, the reforms adopted in the *Order* do not prohibit any access-stimulating LEC from choosing Aureon or SDN as its intermediate carrier and paying them to provide service. Second, Aureon argues that we did not consider how changing the mandatory use policy would affect competition for long distance services. Although it is not clear, Aureon's argument seems to be based on a prediction that a reduction of access-stimulation traffic on the Aureon and SDN networks as a result of the *Access Arbitrage Order* will lead to Aureon's demise. Relatedly, Aureon complains that it will be harmed because it relied on the grant of its section 214 authorization in building and maintaining its network. These arguments make little sense for a number of reasons. First, the *Order* does not eliminate the mandatory use requirements as they may apply to traffic terminating at non-access-stimulating LECs. The mandatory use requirements continue to apply to IXCs delivering traffic to dozens of non-access-stimulating LECs that subtend Aureon's and SDN's tandems. Third, although we previously dismissed Aureon's concerns about the financial impact on Aureon in the *Arbitrage Order* because Aureon provided no data to support its claims, Aureon once again failed to provide data supporting its concerns in the Petition.

47. Aureon raised concerns about the ''demise'' of its network in the underlying rulemaking, and we dismissed those concerns because Aureon provided no data to support its concerns. AT&T points out that merely repeating those arguments without ''put[ting] forward any supporting data'' does not provide a basis for reconsideration. While Aureon did provide some data in its Reply, it uses the data to spin a tale about the hypothetical removal of access-stimulation traffic. Such speculation cannot justify Aureon's request for reconsideration. Aureon provides three tables showing select information from its most recent tariff filing. It manipulates these tables to show revenue shortfalls if access-stimulation traffic were to leave its network. However, there is evidence in the record that a significant amount of traffic already bypasses Aureon's CEA tandem. In addition, Aureon bases its calculations on data provided by AT&T in a different proceeding, using AT&T's data to calculate the percentage of revenues Aureon may lose in its hypothetical. But Aureon never confirms whether AT&T's data is correct. So it is difficult to determine, on the basis of the data submitted, the actual, verifiable effect of the *Access Arbitrage Order* on Aureon's network. Furthermore, while Aureon appears to claim that the *Access Arbitrage Order* may lead to its demise by taking access-stimulation traffic off its network, Aureon does not even attempt to square that claim with its argument that access stimulation should be banned. If Aureon's proposed ban were successful, Aureon would also stop carrying access stimulation traffic, which would have the same financial impact that Aureon alleges the *Access Arbitrage Order* will have. As Verizon points out, banning access stimulation ''would likely cause the same, or even greater, reduction in traffic on CEA providers' networks'' as the section 214 modifications.

48. Next, Aureon claims that the Commission ''authorized the mandatory use policy to . . . bring advanced services to rural areas'' and therefore its mandatory use authority should not be replaced. Aureon is not able to offer support for this claim because the *Aureon Section 214 Order* says nothing about advanced services, which was not a commonly used term when the then-Common Carrier Bureau adopted that Order in the 1980s. Instead, the Common Carrier Bureau found that the mandatory use policy was justified by the revenues that would be generated by requiring Northwestern Bell to use the CEA network for intrastate, intraLATA toll calls in Iowa. And the Iowa Supreme Court relied on the same justification when it upheld the Iowa Utilities Board's authorization for the CEA network. We also reject as a reason for reconsideration Aureon's assertion that our modification to the mandatory use policy is contrary to the Commission's original intent in establishing the mandatory use policy—to ensure that tariffed CEA rates would remain affordable for AT&T's smaller IXC competitors. To the contrary, IXCs carrying terminating access-stimulation traffic should be paying less now because they will not be paying tandem switching and transport charges for access-stimulation traffic. Moreover, Aureon also fails to acknowledge that CEAs were created to facilitate rural customers' ability to *originate* calls through the long-distance carrier of their choice. Our changes to Aureon's section 214 authorization should not have any effect on its ability to provide centralized equal access service.

49. Aureon goes on to claim that we erred in modifying its section 214 authorization because the mandatory use provisions were in the public interest. While we acknowledge that the then-Common Carrier Bureau determined that those provisions were in the public interest in 1988, we also recognize that, at the time, the Common Carrier Bureau and others envisioned that the majority of the traffic traversing the CEA network would be *intrastate*. As we explained in the *Access Arbitrage Order,* however, ''[a]ccess stimulation has upended the original projected interstate-to-intrastate traffic ratios carried by the CEA networks.'' SDN and Aureon ended up acting as a price umbrella that allowed access-stimulating LECs and the intermediate access providers with which they

partnered to overcharge for transport, as long as they offered a rate that was slightly under the CEA rate. And, ''because the Commission's rules disrupt[ed] accurate price signals, tandem switching and transport providers for access stimulation [had] no economic incentives to meaningfully compete on price.'' The result was that '' 'AT&T and other carriers routinely discover that carriers located in remote areas with long transport distances and high transport rates enter into arrangements with high volume service providers . . . for the sole purpose of extracting inflated intercarrier compensation rates due to the distance and volume of traffic.' '' Based on these changed circumstances, we find that we properly determined ''that the public interest will be served by changing any mandatory use requirement for traffic bound to access-stimulating LECs to be voluntary usage'' and ''that access stimulation presents a reasonable circumstance for departing from the mandatory use policy.'' Thus, although the mandatory use policy requiring IXCs to use SDN and Aureon for traffic terminating at participating telephone companies may have been in the public interest in 1988, it is not in the public interest today with respect to traffic terminating at access-stimulating LECs.

50. Aureon also claims that the Commission should have used a ''less restrictive and less burdensome'' measure when it modified the section 214 authorizations. We disagree. Rather than eliminating the mandatory use provisions altogether, an option that we considered, we modified them only with respect to traffic terminating at access-stimulating LECs and only because doing so was necessary to effectuate our other access stimulation rules. As such, we adopted an approach that is narrowly tailored and well suited to the problem of the price umbrellas created by mandatory use that access-stimulating intermediate providers and their partners were using to their benefit. In the *Access Arbitrage Order*. we found that the ''vast majority'' of access-stimulation traffic was routed to LECs that subtend Aureon and SDN. Given that finding, we decided to modify Aureon's and SDN's section 214 authorizations to enable IXCs to use whatever intermediate access provider an access-stimulating LEC that otherwise subtends Aureon or SDN chooses. We reasoned that doing so will allow IXCs to choose more efficient and cost-effective routing options—such as direct connections—to reach access-stimulating LECs. We do not see—and Aureon has not suggested—a ''less restrictive'' mechanism for achieving our goal.

51. Finally, Aureon's assertions regarding the importance of the mandatory use provision are belied by information in the record indicating that traffic often bypasses its network. Thus, we find no merit in Aureon's request that we reconsider our decision to modify its section 214 authorization.

IV. Procedural Matters

52. *Paperwork Reduction Act Analysis.* This *Order on Reconsideration* does not contain any new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. Thus, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

53. *Congressional Review Act.* The Commission will not send a copy of this *Order on Reconsideration* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because no rule was adopted or amended.

54. *Regulatory Flexibility Act Analysis.* In the *Access Arbitrage Order,* the Commission provided a Final Regulatory Flexibility Analysis pursuant to the Regulatory Flexibility Act of 1980, as amended (RFA). We received no petitions for reconsideration of that Final Regulatory Flexibility Analysis. In this present *Order on Reconsideration,* the Commission promulgates no additional final rules. Our present action is, therefore, not an RFA matter.

V. Ordering Clauses

55. Accordingly, *it is ordered* that, pursuant to sections 1, 2, 4(i), 4(j), 201, 214, 218–220, 251, 252, 403 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 201, 214, 218–220, 251, 252, 403, 405, and §§ 1.47(h), 1.429, 63.10 and 64.1195 of the Commission's rules, 47 CFR 1.47(h), 1.429, 63.10 and 64.1195, this *Order on Reconsideration is adopted*.

56. *It is further ordered* that the Petition for Reconsideration filed by Iowa Network Services, Inc. d/b/a Aureon Network Services, *is dismissed* and, on alternate and independent grounds, it is *denied*.

57. *It is further ordered* that, pursuant to § 1.103 of the Commission's rules, 47 CFR 1.103, this *Order on Reconsideration shall be effective* upon release.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–13183 Filed 7–7–20; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 200626–0173]

RIN 0648–BJ15

Vessel Monitoring Systems; Requirements for Type-Approval of Cellular Transceiver Units

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

ACTION: Final rule.

SUMMARY: The U.S. Vessel Monitoring System (VMS) program type-approves enhanced mobile transceiver units (EMTUs) for use in U.S. fisheries. Currently, the only approved method for transferring VMS data from a vessel to NMFS is by satellite-linked communication services. This final rule amends the existing VMS type-approval regulations to add cellular-based EMTUs (EMTU-Cs) type-approval application and testing procedures; compliance and revocation processes; and technical, service, and performance standards. This rule is necessary to allow for the use of EMTU-Cs and cellular communication service, in addition to satellite-only models, in federally managed fisheries.

DATES: The final rule will be effective August 7, 2020.

ADDRESSES: Copies of the Final Regulatory Impact Review, Final Regulatory Flexibility Analysis and the information collection request submitted to the Office of Management and Budget (OMB) may be obtained at *https://www.fisheries.noaa.gov/topic/enforcement#vessel-monitoring.* Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to the NMFS Office of Law Enforcement, attention Kelly Spalding, 1315 East-West Highway, Silver Spring, MD 20910, or to OMB by email *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Kelly Spalding, Vessel Monitoring System Program Manager, NMFS: 301–427–8269 or *kelly.spalding@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

If Federal fishery regulations require use of VMS, fishing vessels must have a NMFS-approved EMTU (or mobile transmitter unit, although MTUs are no longer approved for new installations). EMTUs are affixed to fishing vessels as required by Federal regulations, and report GPS locations and potentially other fisheries information to NMFS. The EMTU allows the NMFS Office of Law Enforcement (OLE) to determine the geographic position of the vessel at specified intervals or during specific events, via satellite mobile communication services (MCSs). These satellite MCSs and EMTUs send data securely and at near real-time so that fisheries management and enforcement can monitor vessels' activity as it occurs.

Fishermen must comply with applicable Federal fishery VMS regulations, and in doing so, may select from a variety of EMTU vendors that have been approved by NMFS to participate in the VMS program for specific fisheries. NMFS uses national VMS type-approval standards (50 CFR part 600, subpart Q) to approve an EMTU, including any installed software, and associated MCS, collectively referred to as a bundle, before they are authorized for use in federally managed fisheries (79 FR 77399, December 24, 2014).

On October 26, 2018, NMFS published a proposed rule that would require owners and operators of recreational charter vessels and headboats (for-hire vessels) with Gulf of Mexico (Gulf) permits for reef fish or coastal migratory pelagic species to report GPS vessel location information to NMFS, among other management measures (83 FR 54069). NMFS approved an amendment to the fishery management plans associated with that proposed rule, and is nearing completion of a final rule to implement those requirements. The Gulf of Mexico Fishery Management Council determined that real-time satellite transmission is not necessary to meet the requirements for the Gulf for-hire reporting rule's vessel monitoring purposes and that cellular data transmission will be sufficient.

NMFS seeks to accommodate the requirements for for-hire Gulf permit holders and to adapt to fishery monitoring trends while also maintaining type-approval standards that are equitably applied to all fisheries. So, in light of the above rule, this final rule modifies the existing NMFS VMS type-approval regulations to provide for type-approval of EMTU-Cs and allow VMS communications to be sent through secure cellular communication services. Having a single, codified type-approval process for satellite and cellular-based tracking devices will ensure the approval process is efficient, transparent, and enforceable for all approved devices nation-wide. Although the impetus for this rule was the Gulf proposed rule, this rule will apply nationally for type-approval of EMTU-Cs, if cellular-based VMS systems are adopted in other NMFS regions and monitoring programs.

NMFS issued a proposed rule to provide for type-approval of EMTU-Cs on January 24, 2020 (85 FR 4257). The proposed rule provides further background on this rulemaking, which is not repeated here. Written comments on the proposed rule were received through February 24, 2020 through the Federal e-rulemaking portal, and are available for viewing in the docket for this rulemaking (see *https://www.regulations.gov/docket?D=NOAA-NMFS-2019-0126*). In the following section, NMFS summarizes and responds to public comments received on the proposed rule.

Changes From the Proposed Rule

There are no changes from the proposed rule.

Responses to Public Comments

NMFS received seven public comments on the proposed rule.

Comment 1. A commenter asked if solar-powered EMTU-Cs would be allowed in the VMS program in addition to cable-powered EMTU-Cs, and if so, suggested that solar panels would need to be kept sufficiently clean so as to ensure sufficient power.

Response 1. Solar powered VMS units will be allowed in the NMFS Vessel Monitoring Program. NMFS will not regulate the type of power source for VMS units and will not regulate the proper care of solar panels used to power VMS units. NMFS does require that the unit operate properly and continuously, so cleaning the solar panel may be necessary in order for a fisherman to remain in compliance with VMS regulations.

Comment 2. One commenter asked if there would be a requirement for EMTU-Cs to have an internal backup battery.

Response 2. The NMFS VMS type-approval regulations do not require that any EMTU have an internal back-up battery. Regulations for fisheries that have a VMS requirement generally require that the VMS unit be operational for the duration of the fishing trip, and in some cases, even while in port. Because of these requirements, it is advisable that any EMTU always be connected to a reliable and continuous power source in order for a vessel to remain in compliance.

Comment 3. A commenter asked if EMTU-C devices submitted to OLE will require prior Federal Communications Commission (FCC) certification.

Response 3. NMFS does not enforce FCC requirements. If the FCC has set requirements for VMS units, then type-approval applicants and holders, and VMS vendors should ensure compliance with the FCC and with all other government requirements.

Comment 4. Another commenter asked if NMFS will consider type approval for units that can serve both EMTU and EMTU-C end-users? In other words, a single device that is ''dual band'' in that it can be programmed to accommodate either cellular or satellite transmissions (or both, via least cost routing logic)?

Response 4. If the VMS regulations applicable to a particular fishery allow for the use of store-and-forward reporting, then an EMTU, EMTU-C, or a hybrid of the two may be used (see definition of ''Vessel Monitoring System (VMS) Unit'' under § 600.1500).

Comment 5. One commenter expressed concern that the rule, as proposed, would allow vessels to take infinite time to send position reports if they do not enter areas with cellular coverage.

Response 5. The time frames for sending position reports in fisheries that require use of VMS and allow store-and-forward position reporting will be established in the VMS regulations applicable to that particular fishery. Type-approved VMS units will automatically send a vessel's stored VMS data once the VMS unit is in its cellular range, and fishermen will be responsible for ensuring that the VMS unit that they purchase has sufficient cellular coverage within their geographic fishing range.

Comment 6. A commenter suggested that non-real time reporting/monitoring devices (store and forward position reporting) should not be limited to cellular-based systems. The commenter noted that satellite-based systems could significantly lower the cost of service if they are not required to report in real time (cost competitive with cellular, but with the advantage of global coverage) and that limiting all non-real time reporting to cellular-based systems would discourage future technological advancements by manufacturers of satellite-based systems and deny them the opportunity to compete.

Response 6. We recognize that satellite-based VMS units are approved and can be used for store and forward services. If the VMS regulations applicable to a particular fishery allow for the use of store-and-forward reporting, then an EMTU, EMTU-C, or a hybrid of the two may be used (see definition of ''Vessel Monitoring System (VMS) Unit'' under § 600.1500).

Comment 7. One commenter noted that in the proposed rule, 90 percent of all GPS position reports over a 24-hour period must reach the NMFS within 15 minutes of being transmitted by the EMTU-C (for 10 out of 11 consecutive days). However, fishermen may fish in areas with little or no cellular coverage for hours on end during any 24-hour period, making it difficult, if not impossible, to meet this requirement.

Response 7. If a vessel fishes beyond the range of cellular service, the EMTU-C would still record and store position reports, but would not send them to NMFS until back within cellular service range. At that time, the latency requirement in this rule would be triggered: 90 Percent of position reports must be received within 15 minutes of being sent. This latency requirement is in addition to whatever fishery-specific regulations are applicable. Likely, VMS regulations for fisheries that allow use of cellular VMS units will require VMS data to be reported within a specified time before and/or after landing or coming in to port.

Classification

The NMFS Assistant Administrator has determined that this rule is consistent with the Magnuson-Stevens Act, and other applicable laws.

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13771

This final rule is considered an Executive Order 13771 deregulatory action.

Regulatory Flexibility Act (RFA)

A Final Regulatory Flexibility Analysis (FRFA) was prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the action.

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here. The full FRFA is included below.

The Magnuson-Stevens Act provides the statutory basis for this final rule. A description of this final rule, why it is being implemented, and the purpose of this final rule are contained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this final rule.

The public did not submit any comments relating to the IRFA or to, in general, socio-economic implications, and no changes to this final rule were made as a result of public comment. No comments were received from the Office of Advocacy for the Small Business Administration (SBA).

This final rule will directly apply to any companies that wish to obtain VMS type-approval for EMTU-Cs in the future. There are currently no EMTU-C units that have been type-approved by NMFS and no end users of such devices. NMFS received inquiries and quotes from six prospective telecommunications and/or computer and electronic product manufacturing companies within the past year expressing interest in seeking VMS type-approval for EMTU-Cs. Half of these are foreign companies based in either the United Kingdom or New Zealand. Because these foreign companies do not have a place of business located in the United States, do not operate primarily within the United States, or make a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor, they are not considered to be small businesses by the Small Business Administration (SBA) and only the effects on U.S. applicant companies will be discussed. One of the prospective U.S. companies is a publicly traded firm that primarily operates in the satellite telecommunications industry. The other two prospective U.S. applicant companies for EMTU-Cs are privately held businesses that do not publicly disclose total earnings or employment numbers. Based on information from their websites and product offerings, NMFS believes that one of them primarily operates in the radio and television broadcasting, and wireless communications equipment manufacturing industry, and the other primarily operates in the search, detection, navigation, guidance, aeronautical, and nautical system and instrument manufacturing industry. It is not possible to estimate how many additional companies may enter the marketplace for NMFS approved EMTU-Cs in the future.

It is important to note that this final rule will not be expected to affect the existing satellite-based EMTU type-approval process. Therefore, no impacts on current VMS type-approval holders or end users are anticipated.

Additionally, this final rule will not directly apply to fishing businesses or end users of EMTU-C devices. This final rule may affect the availability of EMTU-Cs for purchase, the retail price of these devices, monthly service charges, and future replacement costs. However, these will all be indirect effects of this final rule. Consideration of indirect effects is outside the scope of the RFA and, therefore, only the effects on EMTU-C vendor companies will be discussed.

The SBA has established size standards for all major industry sectors in the U.S. including satellite telecommunications businesses (NAICS code 517410), radio and television broadcasting and wireless communications equipment manufacturers (NAICS code 334220), and search, detection, navigation, guidance, aeronautical, and nautical system and instrument manufacturers (NAICS 334511). A business primarily involved in the satellite telecommunications industry is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $32.5 million for all its affiliated operations worldwide. A business primarily involved in the radio and television broadcasting and wireless communications equipment manufacturing industry is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and employs 1,250 or fewer persons on a full-time, part-time, temporary, or other basis at all its affiliated operations worldwide. Finally, a business primarily involved in the search, detection, navigation, guidance, aeronautical, and nautical system and instrument manufacturing industry is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and employs 1,250 or fewer persons on a full-time, part-time, temporary, or other basis at all its affiliated operations worldwide.

Based on financial records from a 2018 annual report to stockholders, NMFS has determined that the publicly traded U.S. vendor company that may be directly affected by this final rule will not be considered a small business under the SBA size criteria for its

industry designation, the satellite telecommunications industry. NMFS conservatively assumes that the other two prospective U.S. vendor companies for EMTU-Cs that are believed to primarily operate in either the radio and television broadcasting, and wireless communications equipment manufacturing industry, or the search, detection, navigation, guidance, aeronautical, and nautical system and instrument manufacturing industry are small entities. NMFS therefore estimates that this rule will impact at least two small entities in the short term and likely more in the long term.

This final rule will involve reporting, record keeping, and other compliance requirements for the type-approval application process, notifications to NMFS for any substantive changes to type-approved EMTU-Cs or MCSs, customer service, potential responses to revocation notices or revocation appeals, and litigation support.

The type-approval application process will require an applicant requesting type-approval of an EMTU-C, MCS, or bundle to make a written request to NMFS that must include the following information pertaining to the EMTU-C, MCS, or bundle: Communication class; manufacturer; brand name; model name; model number; software version and date; firmware version number and date; hardware version number and date; antenna type; antenna model number and date; tablet, monitor or terminal model number and date; MCS to be used in conjunction with the EMTU-C; entity providing MCS to the end user; current global and regional coverage of the MCS; the requestor-approved third party business entities associated with the EMTU-C and its use; the NMFS region(s) and/or Federal fisheries reporting program for which type-approval is sought; copies of, or citation to, applicable VMS regulations and requirements; communications functionality; position report data formats and transmission standards; latency specifications; messaging and electronic form capabilities; communications security specifications; details of customer service that will be provided to NMFS and fishermen; general durability and reliability of the unit; protection of PII, BII, and other protected information associated with the purchase or activation of an EMTU-C from disclosure; certification that the features, components, configuration, and services of the requestor's EMTU-C, MCS, or bundle comply with each applicable requirement set out in 50 CFR 600.1502 through 600.1509 and the applicable VMS regulations and requirements in effect for the NMFS region(s) and/or Federal fisheries reporting program for which the requestor seeks type-approval; and a certification that the requestor accepts responsibility for ensuring compliance with type-approval regulations during the type-approval period. In addition, the application must include two EMTU-Cs, loaded with forms and software if required by the applicable fishery(s), with activated MCS, at no cost to the government for each NMFS region or Federal fishery for which the application is made for a minimum of 90 calendar days for testing and evaluation. Two EMTU-Cs are needed for testing in each NMFS region or Federal fishery in order to quickly conduct in-office and field trials simultaneously. The application must also include thorough documentation, including EMTU-C fact sheets, installation guides, user manuals, any necessary interfacing software, MCS global and regional coverage, performance specifications, and technical support information. This application process will likely require engineering and product manager expertise for preparation of the application.

The final rule will also require type-approval holders to notify NMFS within 2 calendar days of any substantive changes from the original submission for type-approval. Such change or modification notices will likely require engineering and product manager support as well.

EMTU-C type-approval holders will be responsible for ensuring that customer service includes diagnostic and troubleshooting support to NMFS and fishermen, which is available 24 hours a day, 7 days per week, and year round. This may require dedicated customer service representative or technician support.

If NMFS issues a Notification Letter indicating intent to revoke a type-approval, the type-approval holder must respond, in writing, within 30 to 120 calendar days from the date specified in the NMFS Notification Letter if they believe the notification is in error or can propose a solution to correct the issue. This response will likely require engineering and product manager expertise to develop. Additionally, a type-approval holder may file a petition to appeal a type-approval revocation, which could involve additional technical or legal support.

Finally, as a condition of type-approval, the type-approval holder will be required to provide technical and expert support for litigation to substantiate the EMTU-C, MCS, or bundle capabilities to establish NMFS OLE cases against potential violators, as needed. If the technology has been subject to prior scrutiny in a court of law, the type-approval applicant or holder will be required to provide a brief summary of the litigation and any court finding on the reliability of the technology.

The final rule will apply to all companies that wish to obtain VMS type-approval for EMTU-Cs in the future. As discussed previously, there are currently no EMTU-C units that have been type-approved by NMFS and no end users of such devices. However, three U.S. companies are expected to request type-approvals for EMTU-Cs. NMFS believes two of these companies are small entities. It is unknown how many additional companies may enter this market in the future. Because the majority of prospective applicant companies that are likely to be directly regulated by this final rule are believed to be small entities, NMFS conservatively assumes that this rule will affect a substantial number of small entities.

All entities likely to be affected by this rule are expected to face comparable costs for the type-approval application process. Although detailed company information is not available for the small entities that will be directly regulated by this final rule, based on the nature of the products and services sold by these businesses, it is assumed they have the requisite resources to comply with most of the technical requirements included in this final rule as well. The requirement for customer service that is available 24 hours a day, 7 days per week, and year round will, however, have the potential to disproportionately burden small entities relative to large entities. This final rule may necessitate that small businesses hire dedicated customer service support staff. This increase in overhead costs could place them at a competitive disadvantage to large businesses that likely already have robust customer service resources. Small entities are typically not able to achieve the same economies of scale or scope as large entities. In other words, large entities are able to drive down overhead costs per unit by operating at higher levels of output or spreading overhead costs, such as customer service labor, across multiple products. This requirement may create a barrier to entry for small businesses that wish to participate in the EMTU-C market.

The following information summarizes the expected direct effects of this final rule on small entities.

Vessel Monitoring System Type-Approval Application Process

Under this final rule, an applicant will need to submit a written type-approval request and electronic copies of supporting materials that include the information required under 50 CFR 600.1501 to NMFS OLE. The application process will likely require engineering and product manager expertise for preparation of the application. NMFS estimates that applicants will utilize up to approximately 40 hours of engineering labor and 40 hours of product management labor to compile the written request and statement that details how the applicant's EMTU-C meets the minimum national VMS standards as required by this rule. This estimate also includes the amount of time it will take to compile the EMTU-C documentation and the packaging of the EMTU-Cs to ship to each NMFS region or Federal fishery for which an application is submitted. Based on the Bureau of Labor Statistics May 2018 National Occupational Employment and Wage Estimates, the mean hourly wage for engineers is $47.71 per hour; for general and operations managers it is approximately $59.56 per hour. Therefore, NMFS estimates the total wage costs to be approximately $4,300 per EMTU-C application.

With respect to providing OLE two EMTU-Cs for each NMFS region, NMFS estimates that applicants will likely spend between $55 and $86 per shipment (two units each) based on current United States Postal Service (USPS) ground shipping rates for a package of up to 30 pounds ($49.62–$80.51 depending on the region) and box/packaging costs of $5.00. Upon completion of testing and evaluation by OLE in each NMFS region, applicants will also be responsible for the cost of EMTU-C return shipments. Therefore, assuming an applicant sends units to all five NMFS regions, the total shipping cost per application will be $674 based on USPS ground delivery costs of approximately $50 per region in the continental United States and $81 per region for the Alaska and the Pacific Islands offices. The cost will be lower if type-approval is requested for fewer regions.

In addition, applicants will be responsible for covering the costs of the MCS during the testing period. Using the average applicant quoted monthly service charge to customers, NMFS estimates that this could run approximately $25 per month per unit. Assuming a 90-day testing period for 10 units (2 sent to each NMFS region), the total MCS cost will be approximately $750. It will be less for requests that involve fewer regions.

The average estimated retail price of an EMTU-C unit, as based on six different vendor quotes, is approximately $458. The applicant seeking type-approval will be unable to sell the EMTU-C units as new after providing them to NMFS for testing and evaluation for 90 days. They might only get 60 to 80 percent of the regular retail value on refurbished units. If 10 EMTU-Cs that regularly retail new for $458 each are sent to 5 regions, the reduced retail revenue will total approximately $916 to $1,832 per type-approval application. Again, if type-approval is requested for fewer than five regions, the cost will be lower. Alternatively, the applicant may opt to use these units as demo units for trade shows and other marketing purposes and therefore considerably lower the costs of providing the evaluation units. It is difficult to estimate the exact costs associated with providing the units to NMFS given the uncertainty associated with what applicants will do with these EMTU-Cs after the 90-day evaluation period.

The total upper bound cost to applicants of the VMS type-approval application process is estimated to be $6,631 to $7,547 per application ($4,291 in wages, plus $674 in shipping, plus $750 in MCS charges, plus $916 to $1,832 in reduced retail revenue for the demo units). This cost will be lower if type-approval is requested for fewer than five regions.

Changes or Modifications to Type-Approvals

After a type-approval is issued, the type-approval holder must notify NMFS OLE in writing no later than 2 days following modification to or replacement of any functional component or piece of their type-approved EMTU-C, MCS, or bundle. If the changes are substantial, NMFS OLE will notify the type-approval holder in writing within 60 calendar days that an amended type-approval is required or that NMFS will initiate the type-approval revocation process. NMFS estimates that small entities will utilize up to approximately 4 hours of engineering labor and 4 hours of product management labor to notify NMFS of any substantive changes to the original type-approval submission and provide the agency with the details of those changes. NMFS estimates the total wage costs to be approximately $429 for the change notification process. NMFS estimates that there will likely be less than two change/modification notices submitted per year based on past experience. There were two change/modification notices submitted in 2017 for existing VMS type-approvals, as well as two in 2018. Therefore, the annual total cost to small entities for this provision will likely be less than $858 per year.

Customer Service

The type-approval holder will be responsible for ensuring that customer service includes: Diagnostic and troubleshooting support to NMFS and fishermen, which is available 24 hours a day, 7 days per week, and year round; response times for customer service inquiries that do not exceed 24 hours; warranty and maintenance agreements; escalation procedures for resolution of problems; established facilities and procedures to assist fishermen in maintaining and repairing their EMTU-C; assistance to fishermen in the diagnosis of the cause of communications anomalies; assistance in resolving communications anomalies that are traced to the EMTU-C; and assistance to NMFS OLE and its contractors, upon request, in VMS operation, resolving technical issues, and data analyses related to the VMS Program or system. NMFS is unable to estimate the direct costs to businesses to comply with these customer service requirements. However, they may be nontrivial. Costs will likely vary depending on each vendor's existing assets, liabilities, and profit maximization strategies.

Revocation Process

If at any time, a type-approved EMTU-C or bundle fails to meet requirements at 50 CFR 600.1502 through 600.1509 or applicable VMS regulations and requirements in effect for the region(s) and Federal fisheries for which the EMTU-C is type-approved, NMFS OLE may issue a Notification Letter to the type-approval holder that: Identifies the EMTU-C, MCS, or bundle that allegedly fails to comply with type-approval regulations and requirements; identifies the alleged failure to comply with type-approval regulations and requirements, and the urgency and impact of the alleged failure; cites relevant regulations and requirements under 50 CFR 600, subpart Q; describes the indications and evidence of the alleged failure; provides documentation and data demonstrating the alleged failure; sets a response date by which the type-approval holder must submit to NMFS OLE a written response to the Notification Letter, including, if applicable, a proposed solution; and explains the type-approval holder's options if the type-approval holder

believes the Notification Letter is in error.

NMFS will establish a response date between 30 and 120 calendar days from the date of the Notification Letter. The type-approval holder's response must be received in writing by NMFS on or before the response date. If the type-approval holder fails to respond by the response date, the type-approval will be revoked. At its discretion and for good cause, NMFS may extend the response date to a maximum of 150 calendar days from the date of the Notification Letter. A type-approval holder who has submitted a timely response may meet with NMFS within 21 calendar days of the date of that response to discuss a detailed and agreed-upon procedure for resolving the alleged failure. The meeting may be in person, conference call, or webcast.

If the type-approval holder disagrees with the Notification Letter and believes that there is no failure to comply with the type-approval regulations and requirements, NMFS has incorrectly defined or described the failure or its urgency and impact, or NMFS is otherwise in error, the type-approval holder may submit a written objection letter to NMFS on or before the response date in accordance with 50 CFR 600.1512.

NMFS estimates that the revocation process will potentially involve 16 hours of engineering labor and 8 hours of product management labor, per instance, to investigate the issues raised by NMFS and prepare a written response. Based on the wage costs previously discussed, NMFS estimates the revocation process could result in approximately $1,240 in labor costs. However, the actual amount of labor costs could vary considerably depending on the complexity of the issues causing the potential violations NMFS identified. Some vendors may decide not to challenge the revocation or may be unable to bring the issue to final resolution to NMFS' satisfaction and then face the revocation of the type-approval for their product. The vendor will then be impacted by the loss of future EMTU-C sales and monthly data communication fees from vessels required to carry and operate a type-approved EMTU-C, MCS, or bundle.

The vendor could also opt to appeal the type-approval revocation. In addition to the costs associated with the engineering and product management support provided during the revocation process, the vendor may also decide to employ legal assistance to challenge the agency's decision. These costs could vary considerably depending on the complexity of the appeal arguments.

Litigation Support

Finally, in accordance with 50 CFR 600.1515, the final rule will also require the type-approval holder's litigation support. All technical aspects of a type-approved EMTU-C, MCS, or bundle are subject to being admitted as evidence in a court of law, if needed, and the type-approval holder will be required to provide technical and expert support for litigation to substantiate the EMTU-C, or bundle capabilities to establish NMFS OLE cases against violators. NMFS will pay the reasonable cost for such assistance in NMFS-authorized service or purchase agreements, work orders or contracts. If the technologies have previously been subject to such scrutiny in a court of law, the type-approval holder must provide NMFS with a brief summary of the litigation and any court findings on the reliability of the technology. This litigation support, if not fully paid for by NMFS, will be another potential cost of this final rule to EMTU-C vendors or mobile communications service providers. Because details of future litigation support needs are unknown, it is not possible to estimate these costs.

In conclusion, participation in the EMTU-C market will be voluntary. It is assumed vendors are profit maximizing firms that will only apply for type-approvals if the expected profits from selling EMTU-C units and services justify the costs presented in this RFA analysis. However, there may be disproportionate effects on small entities relative to large entities, due to the customer service requirements included as part of this final rule.

The following discussion describes the alternatives that were not selected as preferred by NMFS.

Only two alternatives were considered for this rule. The first alternative, the no-action alternative, would not add EMTU-Cs and cellular based transmissions of VMS data to the VMS type-approval regulations. Currently there is no type-approval process for EMTU-Cs. This alternative was not selected by NMFS, because a type-approval process is required in order to facilitate the use of EMTU-Cs and cellular-based VMS transmissions in federally regulated fisheries that will require, or allow the use of, such in the future. Therefore, the no-action alternative was not a viable alternative. The second alternative, which includes all of the provisions laid out in this final rule, is the preferred alternative. NMFS has not identified any other alternatives that would meet the objectives of the final rule while minimizing economic impacts on small entities.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as 'small entity compliance guides.' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. Copies of the compliance guide for this final rule are available (see **ADDRESSES**).

Paperwork Reduction Act (PRA)

This final rule contains collection-of-information requirements that have been submitted for approval to OMB under the PRA, Control Number 0648–0789, Type-Approval Requirements for Vessel Monitoring Systems. Public reporting burden for the application process is estimated to average 80 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS OLE at the **ADDRESSES** above, or to OMB by email *OIRA_Submission@omb.eop.gov.*

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to 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 collections of information may be viewed at *http://www.cio.noaa.gov/services_programs/prasubs.html.*

List of Subjects in 50 CFR Part 600

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 29, 2020.

Christopher Wayne Oliver,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 600 is amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

■ 2. Revise subpart Q to part 600 to read as follows:

Subpart Q—Vessel Monitoring System Type-Approval

Sec.

600.1500 Definitions and acronyms.
600.1501 Vessel Monitoring System type-approval process.
600.1502 Communications functionality.
600.1503 Position report data formats and transmission.
600.1504 Latency requirement.
600.1505 Messaging.
600.1506 Electronic forms.
600.1507 Communications security.
600.1508 Customer service.
600.1509 General.
600.1510 Notification of type-approval.
600.1511 Changes or modifications to type-approvals.
600.1512 Type-approval revocation process.
600.1513 Type-approval revocation appeals process.
600.1514 Revocation effective date and notification to vessel owners.
600.1515 Litigation support.
600.1516 Reimbursement opportunities for revoked Vessel Monitoring System type-approval products.

§ 600.1500 Definitions and acronyms.

In addition to the definitions in the Magnuson-Stevens Act and in § 600.10, and the acronyms in § 600.15, the terms and acronyms in this subpart have the following meanings:

Authorized entity means a person, defined at 16 U.S.C. 1802(36), authorized to receive data transmitted by a VMS unit.

Bench configuration means the configuration of a VMS unit after it has been customized to meet the Federal VMS requirements.

Bundle means a mobile communications service and VMS unit sold as a package and considered one product. If a bundle is type-approved, the requestor will be the type-approval holder for the bundled MCS and VMS unit.

Cellular communication means the wireless transmission of VMS data via a cellular network.

Communication class means the satellite or cellular communications operator from which communications services originate.

Electronic form means a pre-formatted message transmitted by a VMS unit that is required for the collection of data for a specific fishery program (*e.g.,* declaration system, catch effort reporting).

Enhanced Mobile Transceiver Unit (EMTU) means a type of MTU that is capable of supporting two-way communication, messaging, and electronic forms transmission via satellite. An EMTU is a transceiver or communications device, including an antenna, and dedicated message terminal and display which can support a dedicated input device such as a tablet or keyboard, installed on fishing vessels participating in fisheries with a VMS requirement.

Enhanced Mobile Transceiver Unit, Cellular Based (EMTU-C) means an EMTU that transmits and receives data via cellular communications, except that it may not need a dedicated message terminal and display component at the time of approval as explained at § 600.1502(a)(6). An EMTU–C only needs to be capable of transmission and reception when in the range of a cellular network.

Latency means the state of untimely delivery of Global Positioning System position reports and electronic forms to NMFS (*i.e.,* information is not delivered to NMFS consistent with timing requirements of this subpart).

Mobile Communications Service (MCS) means the satellite and/or cellular communications services used with particular VMS units.

Mobile Communications Service Provider (MCSP) means an entity that sells VMS satellite and/or cellular communications services to end users.

Mobile Transmitter Unit (MTU) means a VMS unit capable of transmitting Global Positioning System position reports via satellite. (MTUs are no longer approved for new installations on VMS vessels).

Notification Letter means a letter issued by NMFS to a type-approval holder identifying an alleged failure of a VMS unit, MCS, or the type-approval holder to comply with the requirements of this subpart.

Position report means the unique global positioning system (GPS) report generated by a vessel's VMS unit, which identifies the vessel's latitude/longitude position at a point in time. Position reports are sent from the VMS unit via the MCS, to authorized entities.

Requestor means a vendor seeking type-approval.

Service life means the length of time during which a VMS unit remains fully operational with reasonable repairs.

Sniffing means the unauthorized and illegitimate monitoring and capture, through use of a computer program or device, of data being transmitted over a network.

Spoofing means the reporting of a false Global Positioning System position and/or vessel identity.

Time stamp means the time, in hours, minutes, and seconds in a position report. Each position report is time stamped.

Type-approval holder means an applicant whose type-approval request has been approved pursuant to this subpart.

Vendor means a commercial provider of VMS hardware, software, and/or mobile communications services.

Vessel Monitoring System (VMS) means, for purposes of this subpart, a satellite and/or cellular based system designed to monitor the location and movement of vessels using onboard VMS units that send Global Positioning System position reports to an authorized entity.

Vessel Monitoring System (VMS) data means the data transmitted to authorized entities from a VMS unit.

Vessel Monitoring System Program means the Federal program that manages the vessel monitoring system, data, and associated program-components, nationally and in each NMFS region; it is housed in the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service's Office of Law Enforcement.

Vessel Monitoring System (VMS) Unit means MTU, EMTU or EMTU-C, as well as the units that can operate as both an EMTU and an EMTU-C.

Vessel Monitoring System (VMS) Vessels means vessels that operate in federally managed fisheries with a requirement to carry and operate a VMS unit.

§ 600.1501 Vessel Monitoring System type-approval process.

(a) *Applicability.* Unless otherwise specified, this section applies to EMTUs, EMTU-Cs, units that operate as both an EMTU and EMTU-C, and MCSs. Units that can operate as both an EMTU and EMTU-C must meet the requirements for both an EMTU and an EMTU-C in order to gain type-approval as both. MTUs are no longer eligible for type-approval.

(b) *Application submission.* A requestor must submit a written type-approval request and electronic copies

of supporting materials that include the information required under this section to the NMFS Office of Law Enforcement (OLE) at: U.S. Department of Commerce; National Oceanic and Atmospheric Administration; National Marine Fisheries Service; Office of Law Enforcement; Attention: Vessel Monitoring System Office; 1315 East-West Highway, SSMC3, Suite 3301, Silver Spring, Maryland 20910.

(c) *Application requirements.* (1) EMTU, EMTU-C, and MCS Identifying Information: In a type-approval request, the requestor should indicate whether the requestor is seeking approval for an EMTU, EMTU-C, MCS, or bundle and must specify identifying characteristics, as applicable: Communication class; manufacturer; brand name; model name; model number; software version and date; firmware version number and date; hardware version number and date; antenna type; antenna model number and date; tablet, monitor or terminal model number and date; MCS to be used in conjunction with the EMTU/EMTU-C; entity providing MCS to the end user; and current global and regional coverage of the MCS.

(2) Requestor-approved third party business entities: The requestor must provide the business name, address, phone number, contact name(s), email address, specific services provided, and geographic region covered for the following third party business entities:

(i) Entities providing bench configuration for the EMTU/EMTU-C at the warehouse or point of supply.

(ii) Entities distributing/selling the EMTU/EMTU-C to end users.

(iii) Entities currently approved by the requestor to install the EMTU/EMTU-C onboard vessels.

(iv) Entities currently approved by the requestor to offer a limited warranty.

(v) Entities approved by the requestor to offer a maintenance service agreement.

(vi) Entities approved by the requestor to repair or install new software on the EMTU/EMTU-C.

(vii) Entities approved by the requestor to train end users.

(viii) Entities approved by the requestor to advertise the EMTU/EMTU-C.

(ix) Entities approved by the requestor to provide other customer services.

(3) Regulatory Requirements and Documentation: In a type-approval request, a requestor must:

(i) Identify the NMFS region(s) and/or Federal fisheries for which the requestor seeks type-approval.

(ii) Include copies of, or citation to, applicable VMS regulations and requirements in effect for the region(s) and Federal fisheries identified under paragraph (c)(3)(i) of this section that require use of VMS.

(iii) Provide a table with the type-approval request that lists in one column each requirement set out in §§ 600.1502 through 600.1509 and regulations described under paragraph (c)(3)(ii) of this section. NMFS OLE will provide a template for the table upon request. The requestor must indicate in subsequent columns in the table:

(A) Whether the requirement applies to the type-approval; and

(B) Whether the EMTU, EMTU-C, MCS, or bundle meets the requirement.

(iv) Certify that the features, components, configuration and services of the requestor's EMTU/EMTU-C, MCS, or bundle comply with each requirement set out in §§ 600.1502 through 600.1509 and the regulations described under paragraph (c)(3)(ii) of this section.

(v) Certify that, if the request is approved, the requestor agrees to be responsible for ensuring compliance with each requirement set out in §§ 600.1502 through 600.1509 and the regulations described under paragraph (c)(3)(ii) of this section over the course of the type-approval period.

(vi) Provide NMFS OLE with two EMTU/EMTU-Cs loaded with forms and software, if applicable, for each NMFS region or Federal fishery, with activated MCS, for which a type-approval request is submitted for a minimum of 90 calendar days for testing and evaluation. For EMTU-Cs, the forms and software may be loaded onto a dedicated message terminal and display component to which the EMTU-C can connect. Copies of forms currently used by NMFS are available upon request. As part of its review, NMFS OLE may perform field tests and at-sea trials that involve demonstrating every aspect of EMTU/EMTU-C and communications operation. The requestor is responsible for all associated costs including paying for: Shipping of the EMTU/EMTU-C to the required NMFS regional offices and/or headquarters for testing; the MCS during the testing period; and shipping of the EMTU/EMTU-C back to the vendor.

(vii) Provide thorough documentation for the EMTU/EMTU-C and MCS, including: EMTU/EMTU-C fact sheets; installation guides; user manuals; any necessary interfacing software; MCS global and regional coverage; performance specifications; and technical support information.

(d) *Certification.* A requestor seeking type-approval of an EMTU/EMTU-C to operate with a class or type of communications, as opposed to type-approval for use with a specific MCS, shall certify that the EMTU/EMTU-C meets requirements under this subpart when using at least one MCSP within that class or type of communications.

(e) *Notification.* Unless additional time is required for EMTU/EMTU-C testing, NMFS OLE will notify the requestor within 90 days after receipt of a complete type-approval request as follows:

(1) If a request is approved or partially approved, NMFS OLE will provide notice as described under § 600.1510 and the type-approval letter will serve as official documentation and notice of type-approval. OLE will publish and maintain the list of type-approved units on their Vessel Monitoring System web page.

(2) If a request is disapproved or partially disapproved:

(i) OLE will send a letter to the requestor that explains the reason for the disapproval/partial disapproval.

(ii) The requestor may respond to NMFS OLE in writing with additional information to address the reasons for disapproval identified in the NMFS OLE letter. The requestor must submit this response within 21 calendar days of the date of the OLE letter sent under paragraph (e)(2)(i) of this section.

(iii) If any additional information is submitted under paragraph (e)(2)(ii) of this section, NMFS OLE, after reviewing such information, may either take action under paragraph (e)(1) of this section or determine that the request should continue to be disapproved or partially disapproved. In the latter case, the NMFS OLE Director will send a letter to the requestor that explains the reasons for the continued disapproval/partial disapproval. The NMFS OLE Director's decision is final upon issuance of this letter and is not appealable.

§ 600.1502 Communications functionality.

(a) Unless otherwise specified, this subsection applies to all VMS units. Units that can operate as both an EMTU and EMTU-C must meet the requirements for both an EMTU and an EMTU-C in order to gain type-approval as both. The VMS unit must:

(1) Be able to transmit all automatically-generated position reports.

(2) Provide visible or audible alarms onboard the vessel to indicate malfunctioning of the VMS unit.

(3) Be able to disable non-essential alarms in non-Global Maritime Distress and Safety System (GMDSS) installations.

(4) EMTU/EMTU-Cs must be able to send communications that function uniformly throughout the geographic

area(s) covered by the type-approval, except an EMTU-C only needs to be capable of transmission and reception when in the range of a cellular network.

(5) EMTU/EMTU-Cs must have two-way communications between the unit and authorized entities, via MCS, or be able to connect to a device that has two-way communications.

(6) EMTU/EMTU-Cs must be able to run or to connect to a dedicated message terminal and display component that can run software and/or applications that send and receive electronic forms and internet email messages for the purpose of complying with VMS reporting requirements in Federal fisheries. Depending on the reporting requirements for the fishery(s) in which the requester is seeking type-approval, an EMTU-C type-approval may not require the inclusion of a dedicated message terminal and display component at the time of approval, but the capability to support such a component must be shown.

(7) Have messaging and communications mechanisms that are completely compatible with NMFS vessel monitoring and surveillance software.

(b) In addition, messages and communications from a VMS unit must be able to be parsed out to enable clear billing of costs to the government and to the owner of a vessel or EMTU/EMTU-C, when necessary. Also, the costs associated with position reporting and the costs associated with other communications (for example, personal email or communications/reports to non-NMFS Office of Law Enforcement entities) must be parsed out and billed to separate parties, as appropriate.

§ 600.1503 Position report data formats and transmission.

Unless otherwise specified, this subsection applies to all VMS units, MCSs and bundles. Units that can operate as both an EMTU and EMTU-C must meet the requirements for both an EMTU and an EMTU-C in order to gain type-approval as both. To be type-approved in any given fishery, a VMS unit must also meet any additional positioning information as required by the applicable VMS regulations and requirements in effect for each fishery or region for which the type-approval applies. The VMS unit must meet the following requirements:

(a) Transmit all automatically-generated position reports, for vessels managed individually or grouped by fleet, that meet the latency requirement under § 600.1504.

(b) When powered up, must automatically re-establish its position reporting function without manual intervention.

(c) Position reports must contain all of the following:

(1) Unique identification of an EMTU/EMTU-C and clear indication if the unit is an EMTU-C.

(2) Date (year/month/day with century in the year) and time stamp (GMT) of the position fix.

(3) Date (year/month/day with century in the year) and time stamp (GMT) that the EMTU-C position report was sent from the EMTU-C.

(4) Position fixed latitude and longitude, including the hemisphere of each, which comply with the following requirements:

(i) The position fix precision must be to the decimal minute hundredths.

(ii) Accuracy of the reported position must be within 100 meters (328.1 ft).

(d) An EMTU/EMTU-C must have the ability to: (1) Store 1,000 position fixes in local, non-volatile memory.

(2) Allow for defining variable reporting intervals between 5 minutes and 24 hours.

(3) Allow for changes in reporting intervals remotely and only by authorized users.

(e) An EMTU/EMTU-C must generate specially identified position reports upon:

(1) Antenna disconnection.

(2) Loss of positioning reference signals.

(3) Security events, power-up, power down, and other status data.

(4) A request for EMTU/EMTU-C status information such as configuration of programming and reporting intervals.

(5) The EMTUs loss of the mobile communications signals.

(6) An EMTU must generate a specially identified position report upon the vessel crossing of a pre-defined geographic boundary.

§ 600.1504 Latency requirement.

(a) Ninety percent of all pre-programmed or requested Global Positioning System position reports during each 24-hour period must reach NMFS within 15 minutes or less of being sent from the VMS unit, for 10 out of 11 consecutive days (24-hour time periods).

(b) NMFS will continually examine latency by region and by type-approval holder.

(c) Exact dates for calculation of latency will be chosen by NMFS. Days in which isolated and documented system outages occur will not be used by NMFS to calculate a type-approval holder's latency.

§ 600.1505 Messaging.

(a) Unless otherwise specified, this section applies to all VMS units, MCSs, and bundles. Units that can operate as both an EMTU and EMTU-C must meet the requirements for both an EMTU and an EMTU-C in order to gain type-approval as both. Depending on the reporting requirements for the fishery(s) in which the requester is seeking type-approval, an EMTU-C type-approval may not require the inclusion of a dedicated message terminal and display component at the time of approval, but the capability to support such a component must be shown. To be type-approved in any given fishery, a VMS unit must meet messaging information requirements under the applicable VMS regulations and requirements in effect for each fishery or region for which the type-approval applies. The VMS unit must also meet the following requirements:

(b) An EMTU must be able to run software and/or applications that send email messages for the purpose of complying with VMS reporting requirements in Federal fisheries that require email communication capability. An EMTU-C must be able to run or connect to a device that can run such software and/or applications. In such cases, the EMTU/EMTU-C messaging must provide for the following capabilities:

(1) Messaging from vessel to shore, and from shore to vessel by authorized entities, must have a minimum supported message length of 1 KB. For EMTU-Cs, this messaging capability need only be functional when in range of shore-based cellular communications.

(2) There must be a confirmation of delivery function that allows a user to ascertain whether a specific message was successfully transmitted to the MCS email server(s).

(3) Notification of failed delivery to the EMTU/EMTU-C must be sent to the sender of the message. The failed delivery notification must include sufficient information to identify the specific message that failed and the cause of failure (*e.g.,* invalid address, EMTU/EMTU-C switched off, *etc.*).

(4) The EMTU/EMTU-C must have an automatic retry feature in the event that a message fails to be delivered.

(5) The EMTU/EMTU-C user interface must:

(i) Support an ''address book'' capability and a function permitting a ''reply'' to a received message without re-entering the sender's address.

(ii) Provide the ability to review by date order, or by recipient, messages that were previously sent. The EMTU/EMTU-C terminal must support a

minimum message history of 50 sent messages—commonly referred to as an ''Outbox'' or ''Sent'' message display.

(iii) Provide the ability to review by date order, or by sender, all messages received. The EMTU/EMTU-C terminal must support a minimum message history of at least 50 messages in an inbox.

§ 600.1506 Electronic forms.

Unless otherwise specified, this subsection applies to all EMTUs, EMTU-Cs, MCSs, and bundles.

(a) *Forms.* An EMTU/EMTU-C must be able to run, or to connect to and transmit data from a device that can run electronic forms software. Depending on the reporting requirements for the fishery(s) in which the requester is seeking type-approval, an EMTU-C type-approval may not require the inclusion of a dedicated message terminal and display component at the time of approval, but the capability to support such a component must be shown. The EMTU/EMTU-C must be able to support forms software that can hold a minimum of 20 electronic forms, and it must also meet any additional forms requirements in effect for each fishery or region for which the type-approval applies. The EMTU/EMTU-C must meet the following requirements:

(1) *Form Validation:* Each field on a form must be capable of being defined as Optional, Mandatory, or Logic Driven. Mandatory fields are those fields that must be entered by the user before the form is complete. Optional fields are those fields that do not require data entry. Logic-driven fields have their attributes determined by earlier form selections. Specifically, a logic-driven field must allow for selection of options in that field to change the values available as menu selections on a subsequent field within the same form.

(2) A user must be able to select forms from a menu on the EMTU/EMTU-C.

(3) A user must be able to populate a form based on the last values used and ''modify'' or ''update'' a prior submission without unnecessary re-entry of data. A user must be able to review a minimum of 20 past form submissions and ascertain for each form when the form was transmitted and whether delivery was successfully sent to the type-approval holder's VMS data processing center. In the case of a transmission failure, a user must be provided with details of the cause and have the opportunity to retry the form submission.

(4) VMS Position Report: Each form must include VMS position data, including latitude, longitude, date and time. Data to populate these fields must be automatically generated by the EMTU/EMTU-C and unable to be manually entered or altered.

(5) Delivery and Format of Forms Data: Delivery of form data to NMFS must employ the same transport security and reliability as set out in § 600.1507 of this subpart. The forms data and delivery must be completely compatible with NMFS vessel monitoring software.

(b) *Updates to Forms.* (1) The EMTU/EMTU-C and MCS must be capable of providing updates to forms or adding new form requirements via wireless transmission and without manual installation.

(2) From time to time, NMFS may provide type-approved applicants with requirements for new forms or modifications to existing forms. NMFS may also provide notice of forms and form changes through the NMFS Work Order System. Type-approved applicants will be given at least 60 calendar days to complete their implementation of new or changed forms. Applicants will be capable of, and responsible for translating the requirements into their EMTU/EMTU-C-specific forms definitions and wirelessly transmitting the same to all EMTU/EMTU-C terminals supplied to fishing vessels.

§ 600.1507 Communications security.

Communications between an EMTU/EMTU-C and MCS must be secure from tampering or interception, including the reading of passwords and data. The EMTU/EMTU-C and MCS must have mechanisms to prevent to the extent possible:

(a) Sniffing and/or interception during transmission from the EMTU/EMTU-C to MCS.

(b) Spoofing.

(c) False position reports sent from an EMTU/EMTU-C.

(d) Modification of EMTU/EMTU-C identification.

(e) Interference with Global Maritime Distress and Safety System (GMDSS) or other safety/distress functions.

(f) Introduction of malware, spyware, keyloggers, or other software that may corrupt, disturb, or disrupt messages, transmission, and the VMS system.

(g) The EMTU/EMTU-C terminal from communicating with, influencing, or interfering with the Global Positioning System antenna or its functionality, position reports, or sending of position reports. The position reports must not be altered, corrupted, degraded, or at all affected by the operation of the terminal or any of its peripherals or installed-software.

(h) VMS data must be encrypted and sent securely through all associated cellular, satellite, and internet communication pathways and channels.

§ 600.1508 Field and Technical Services.

As a requirement of its type-approval, a type-approval holder must communicate with NMFS to resolve technical issues with a VMS Unit, MCS or bundle and ensure that field and technical services includes:

(a) Diagnostic and troubleshooting support to NMFS and fishers, which is available 24 hours a day, seven days per week, and year-round.

(b) Response times for customer service inquiries that shall not exceed 24 hours.

(c) Warranty and maintenance agreements.

(d) Escalation procedures for resolution of problems.

(e) Established facilities and procedures to assist fishers in maintaining and repairing their EMTU, EMTU-C, or MTU.

(f) Assistance to fishers in the diagnosis of the cause of communications anomalies.

(g) Assistance in resolving communications anomalies that are traced to the EMTU, EMTU-C, or MTU.

(h) Assistance to NMFS Office of Law Enforcement and its contractors, upon request, in VMS system operation, resolving technical issues, and data analyses related to the VMS Program or system.

§ 600.1509 General.

(a) An EMTU/EMTU-C must have the durability and reliability necessary to meet all requirements of §§ 600.1502 through 600.1507 regardless of weather conditions, including when placed in a marine environment where the unit may be subjected to saltwater (spray) in smaller vessels, and in larger vessels where the unit may be maintained in a wheelhouse. The unit, cabling and antenna must be resistant to salt, moisture, and shock associated with sea-going vessels in the marine environment.

(b) PII and Other Protected Information. Personally identifying information (PII) and other protected information includes Magnuson-Stevens Act confidential information as provided at 16 U.S.C. 1881a and Business Identifiable Information (BII), as defined in the Department of Commerce Information Technology Privacy Policy. A type-approval holder is responsible for ensuring that:

(1) All PII and other protected information is handled in accordance with applicable state and Federal law.

(2) All PII and other protected information provided to the type-approval holder by vessel owners or other authorized personnel for the purchase or activation of an EMTU/EMTU-C or arising from participation in any Federal fishery are protected from disclosure not authorized by NMFS or the vessel owner or other authorized personnel.

(3) Any release of PII or other protected information beyond authorized entities must be requested and approved in writing, as appropriate, by the submitter of the data in accordance with 16 U.S.C. 1881a, or by NMFS.

(4) Any PII or other protected information sent electronically by the type-approval holder to the NMFS Office of Law Enforcement must be transmitted by a secure means that prevents interception, spoofing, or viewing by unauthorized individuals.

§ 600.1510 Notification of type-approval.

(a) If a request made pursuant to § 600.1501 (type-approval) is approved or partially approved, NMFS will issue a type-approval letter to indicate the specific EMTU/EMTU-C model, MCSP, or bundle that is approved for use, the MCS or class of MCSs permitted for use with the type-approved EMTU, and the regions or fisheries in which the EMTU/EMTU-C, MCSP, or bundle is approved for use.

(b) The NMFS Office of Law Enforcement will maintain a list of type-approved EMTUs/EMTU-C, MCSPs, and bundles on a publicly available website and provide copies of the list upon request.

§ 600.1511 Changes or modifications to type-approvals.

Type-approval holders must notify NMFS Office of Law Enforcement (OLE) in writing no later than 2 days following modification to or replacement of any functional component or piece of their type-approved EMTU, EMTU-C, or MTU configuration, MCS, or bundle. If the changes are substantial, NMFS OLE will notify the type-approval holder in writing within 60 calendar days that an amended type-approval is required or that NMFS will initiate the type-approval revocation process.

§ 600.1512 Type-approval revocation process.

(a) If at any time, a type-approved EMTU/EMTU-C, MCS, or bundle fails to meet requirements at §§ 600.1502 through 600.1509 or applicable VMS regulations and requirements in effect for the region(s) and Federal fisheries for which the EMTU/EMTU-C or MCS is type-approved, or if an MTU fails to meet the requirements under which it was type-approved, OLE may issue a Notification Letter to the type-approval holder that:

(1) Identifies the MTU, EMTU, EMTU-C, MCS, or bundle that allegedly fails to comply with type-approval regulations and requirements;

(2) Identifies the alleged failure to comply with type-approval regulations and requirements, and the urgency and impact of the alleged failure;

(3) Cites relevant regulations and requirements under this subpart;

(4) Describes the indications and evidence of the alleged failure;

(5) Provides documentation and data demonstrating the alleged failure;

(6) Sets a response date by which the type-approval holder must submit to NMFS OLE a written response to the Notification Letter, including, if applicable, a proposed solution; and

(7) Explains the type-approval holder's options if the type-approval holder believes the Notification Letter is in error.

(b) NMFS will establish a response date between 30 and 120 calendar days from the date of the Notification Letter. The type-approval holder's response must be received in writing by NMFS on or before the response date. If the type-approval holder fails to respond by the response date, the type-approval will be revoked. At its discretion and for good cause, NMFS may extend the response date to a maximum of 150 calendar days from the date of the Notification Letter.

(c) A type-approval holder who has submitted a timely response may meet with NMFS within 21 calendar days of the date of that response to discuss a detailed and agreed-upon procedure for resolving the alleged failure. The meeting may be in person, conference call, or webcast.

(d) If the type-approval holder disagrees with the Notification Letter and believes that there is no failure to comply with the type-approval regulations and requirements, NMFS has incorrectly defined or described the failure or its urgency and impact, or NMFS is otherwise in error, the type-approval holder may submit a written objection letter to NMFS on or before the response date. Within 21 calendar days of the date of the objection letter, the type-approval holder may meet with NMFS to discuss a resolution or redefinition of the issue. The meeting may be in person, conference call, or webcast. If modifications to any part of the Notification Letter are required, then NMFS will issue a revised Notification Letter to the type-approval holder. However, the response date or any other timeline in this process would not restart or be modified unless NMFS decides to do so, at its discretion.

(e) The total process from the date of the Notification Letter to the date of final resolution should not exceed 180 calendar days, and may require a shorter timeframe, to be determined by NMFS, depending on the urgency and impact of the alleged failure. In rare circumstances, NMFS, at its discretion, may extend the time for resolution of the alleged failure. In such a case, NMFS will provide a written notice to the type-approval holder informing him or her of the extension and the basis for the extension.

(f) If the failure to comply with type-approval regulations and requirements cannot be resolved through this process, the NMFS OLE Director will issue a Revocation Letter to the type-approval holder that:

(1) Identifies the MTU, EMTU, EMTU-C, MCS, or bundle for which type-approval is being revoked;

(2) Summarizes the failure to comply with type-approval regulations and requirements, including describing its urgency and impact;

(3) Summarizes any proposed plan, or attempts to produce such a plan, to resolve the failure;

(4) States that revocation of the MTU, EMTU, EMTU-C, MCS, or bundle's type-approval has occurred;

(5) States that no new installations of the revoked unit will be permitted in any NMFS-managed fishery requiring the use of VMS;

(6) Cites relevant regulations and requirements under this subpart;

(7) Explains why resolution was not achieved;

(8) Advises the type-approval holder that:

(i) The type-approval holder may reapply for a type-approval under the process set forth in § 600.1501, and

(ii) A revocation may be appealed pursuant to the process under § 600.1513.

§ 600.1513 Type-approval revocation appeals process.

(a) If a type-approval holder receives a Revocation Letter pursuant to § 600.1512, the type-approval holder may file an appeal of the revocation to the NMFS Assistant Administrator.

(b) An appeal must be filed within 14 calendar days of the date of the Revocation Letter. A type-approval holder may not request an extension of time to file an appeal.

(c) An appeal must include a complete copy of the Revocation Letter and its attachments and a written statement detailing any facts or

circumstances explaining and refuting the failures summarized in the Revocation Letter.

(d) The NMFS Assistant Administrator may, at his or her discretion, affirm, vacate, or modify the Revocation Letter and send a letter to the type-approval holder explaining his or her determination, within 21 calendar days of receipt of the appeal. The NMFS Assistant Administrator's determination constitutes the final agency decision.

§ 600.1514 Revocation effective date and notification to vessel owners.

(a) Following issuance of a Revocation Letter pursuant to § 600.1512 and any appeal pursuant to § 600.1513, NMFS will provide notice to all vessel owners impacted by the type-approval revocation via letter and **Federal Register** notice. NMFS will provide information to impacted vessel owners on:

(1) The next steps vessel owners should take to remain in compliance with regional and/or national VMS requirements;

(2) The date, 60–90 calendar days from the notice date, on which the type-approval revocation will become effective;

(3) Reimbursement of the cost of a new type-approved EMTU/EMTU-C, should funding for reimbursement be available pursuant to § 600.1516.

§ 600.1515 Litigation support.

(a) All technical aspects of a type-approved EMTU, EMTU-C, MTU, MCS, or bundle are subject to being admitted as evidence in a court of law, if needed. The reliability of all technologies utilized in the EMTU, EMTU-C, MTU, MCS, or bundle may be analyzed in court for, inter alia, testing procedures, error rates, peer review, technical processes and general industry acceptance.

(b) The type-approval holder must, as a requirement of the holder's type-approval, provide technical and expert support for litigation to substantiate the EMTU/EMTU-C, MCS, or bundle capabilities to establish NMFS Office of Law Enforcement cases against violators, as needed. If the technologies have previously been subject to such scrutiny in a court of law, the type-approval holder must provide NMFS with a brief summary of the litigation and any court findings on the reliability of the technology.

(c) The type-approval holder will be required to sign a non-disclosure agreement limiting the release of certain information that might compromise the effectiveness of the VMS operations.

§ 600.1516 Reimbursement opportunities for revoked Vessel Monitoring System type-approval products.

(a) Subject to the availability of funds, vessel owners may be eligible for reimbursement payments for a replacement EMTU/EMTU-C if:

(1) All eligibility and process requirements specified by NMFS are met as described in NMFS Policy Directive 06–102; and

(2) The replacement type-approved EMTU/EMTU-C is installed on the vessel, and reporting to NMFS Office of Law Enforcement; and

(3) The type-approval for the previously installed EMTU/EMTU-C has been revoked by NMFS; or

(4) NMFS requires the vessel owner to purchase a new EMTU/EMTU-C prior to the end of an existing unit's service life.

(b) The cap for individual reimbursement payments is subject to change. If this occurs, NMFS Office of Law Enforcement will publish a notice in the **Federal Register** announcing the change.

[FR Doc. 2020–14600 Filed 7–7–20; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 131
Wednesday, July 8, 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 THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–125716–18]

RIN 1545–BP27

Consolidated Net Operating Losses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; partial withdrawal of a notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking contains proposed amendments to the consolidated return regulations under section 1502 of the Internal Revenue Code (Code). The proposed regulations provide guidance implementing recent statutory amendments to section 172 and withdraw and re-propose certain sections of proposed regulations issued in prior notices of proposed rulemaking relating to the absorption of consolidated net operating loss carryovers and carrybacks. In addition, the proposed regulations update regulations applicable to consolidated groups that include both life insurance companies and other companies to reflect statutory changes. These proposed regulations would affect corporations that file consolidated returns.

DATES: Written or electronic comments and requests for a public hearing must be received by August 31, 2020. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–125716–18) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically (and, to the extent practicable, any comment submitted on paper) to its public docket.

Send paper submissions to: CC:PA:LPD:PR (REG–125716–18), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Justin O. Kellar at (202) 317–6720, Gregory J. Galvin at (202) 317–3598, or William W. Burhop at (202) 317–5363; concerning submission of comments or requests for a public hearing, Regina Johnson at (202) 317–5177 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations to permit consolidated groups that acquire new members that were members of another consolidated group to elect to waive all or part of the pre-acquisition portion of an extended carryback period under section 172 of the Code for certain losses attributable to the acquired members. The text of those temporary regulations also serves as the text of § 1.1502–21(b)(3)(ii)(C) and (D) of these proposed regulations. The proposed and temporary regulations affect corporations that file consolidated returns.

Background

These proposed regulations revise the Income Tax Regulations (26 CFR part 1) under section 1502 of the Code. Section 1502 authorizes the Secretary of the Treasury or his delegate (Secretary) to prescribe regulations for an affiliated group of corporations that join in filing (or that are required to join in filing) a consolidated return (consolidated group) to reflect clearly the Federal income tax liability of the consolidated group and to prevent avoidance of such tax liability. See § 1.1502–1(h) (defining the term ''consolidated group''). For purposes of carrying out those objectives, section 1502 also permits the Secretary to prescribe rules that may be different from the provisions of chapter 1 of the Code that would apply if the corporations composing the consolidated group filed separate returns. Terms used in the consolidated return regulations generally are defined in § 1.1502–1.

These proposed revisions implement certain statutory amendments made by Public Law 115–97, 131 Stat. 2054 (December 22, 2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA). Specifically, section 13302 of the TCJA amended section 172 of the Code, relating to net operating loss (NOL) deductions, and sections 13511 through 13519 of the TCJA amended subchapter L of chapter 1 of the Code (subchapter L), relating to the taxation of insurance companies. These proposed regulations also implement further statutory amendments to section 172 of the Code made by the Coronavirus Aid, Relief, and Economic Security Act, Public Law 116–136, 134 Stat. 281 (March 27, 2020) (CARES Act). Additionally, these proposed regulations update regulations under section 1502 concerning consolidated groups that include life insurance companies and other companies (life-nonlife groups) to implement amendments under prior tax legislation.

I. Net Operating Loss Deductions

Prior to amendment by the TCJA, section 172(a) allowed a taxpayer to use its aggregate NOL carryovers and carrybacks to a taxable year to offset all taxable income in the taxable year, and section 172(b)(1) generally permitted taxpayers to carry back NOLs two years and carry over NOLs 20 years. The TCJA amended section 172 to provide new NOL deduction rules based on (i) the type of entity generating the NOL or using an NOL to offset income, or (ii) the character of the loss giving rise to an NOL. The CARES Act extended the carryback period for NOLs arising in a taxable year beginning after December 31, 2017, and before January 1, 2021. See part I.A of this Background. Both the TCJA and the CARES Act also made other changes to section 172 that are not pertinent to this notice of proposed rulemaking.

A. General NOL Rules

As amended by section 13302(a)(1) of the TCJA and section 2303(a)(1) of the CARES Act, section 172(a)(2) of the Code allows an NOL deduction for a taxable year beginning after December 31, 2020, in an amount equal to the sum of two factors. The first factor is the aggregate amount of NOLs arising in taxable years beginning before January 1, 2018 (pre-2018 NOLs), that are carried to such taxable year. The second factor is the lesser of (i) the aggregate amount of NOLs arising in taxable years beginning after December 31, 2017 (post-2017 NOLs), that are carried to such taxable year, or (ii) 80 percent of the excess (if any) of (I) taxable income computed without regard to any deductions under sections 172, 199A, and 250 of the Code, over (II) the aggregate amount of pre-2018 NOLs carried to the taxable year (this latter calculation, the 80-percent limitation). The 80-percent limitation does not apply to taxable years beginning before January 1, 2021. See section 172(a)(1). For any such taxable year, section 172(a)(1) allows an NOL deduction equal to the aggregate amount of NOL carryovers and carrybacks to such year. See id. Moreover, the 80-percent limitation does not apply to limit the use of pre-2018 NOLs. See section 172(a)(2)(A).

Section 13302(b) of the TCJA amended section 172(b) to generally eliminate NOL carrybacks but permit post-2017 NOLs to be carried over indefinitely. Section 2303(b) of the CARES Act further amended section 172(b) to require (unless waived under section 172(b)(3)) a five-year carryback for NOLs arising in taxable years beginning after December 31, 2017, and before January 1, 2021. See section 172(b)(1)(D)(i).

B. Special NOL Rules for Nonlife Insurance Companies

Section 13302(d) of the TCJA added sections 172(b)(1)(C) and 172(f), which provide special rules for insurance companies other than life insurance companies, as defined in section 816(a) (nonlife insurance companies, which commonly are referred to as property and casualty insurance companies or P&C companies). Under section 172(f), the 80-percent limitation does not apply to nonlife insurance companies. Therefore, taxable income of nonlife insurance companies may be fully offset by NOL deductions. In addition, under sections 172(b)(1)(C) and (b)(1)(D)(i), losses of nonlife insurance companies arising in taxable years beginning after December 31, 2020, may be carried back two years and carried over 20 years. (As noted in part I.A of this Background, losses arising in taxable years beginning after December 31, 2017, and before January 1, 2021, are carried back five years.) Thus, for taxable years beginning after December 31, 2020, the operative rules under section 172 effectively apply to nonlife insurance companies in the same manner as those rules applied prior to enactment of the TCJA.

C. Special NOL Rules for Farming Losses

Section 13302(c) of the TCJA amended the special rules for farming losses set forth in sections 172(b)(1)(F) and 172(h), as in effect prior to enactment of the TCJA. For purposes of section 172, a ''farming loss'' is the lesser of (i) the amount that would be the NOL for the taxable year if only income and deductions attributable to farming businesses (as defined in section 263A(e)(4) of the Code) were taken into account, or (ii) the amount of the NOL for that taxable year. See section 172(b)(1)(B)(ii). Under sections 172(b)(1)(B)(i) and (b)(1)(D)(i)(II), any portion of an NOL for a taxable year beginning after December 31, 2020, that is characterized as a farming loss is treated as an NOL that is carried back two years and, as provided in section 172(b)(1)(A)(ii)(II), is carried over indefinitely. Farming losses arising in taxable years beginning after December 31, 2017, and before January 1, 2021, are carried back five years. Section 172(b)(1)(D)(i).

II. Insurance Company Provisions

The TCJA also made several changes to subchapter L (which addresses the taxation of insurance companies) that are relevant to this notice of proposed rulemaking. First, sections 13511(a) and 13511(b) of the TCJA (i) struck section 805(b)(4), which generally denied life insurance companies the NOL deduction provided in section 172, and (ii) made a conforming amendment by striking section 810, which provided a deduction for operations losses for life insurance companies. As a result, effective for taxable years beginning after December 31, 2017, life insurance companies are entitled to an NOL deduction under the general rules of section 172. Second, section 13001(b)(2)(A) of the TCJA struck section 1201, which imposed a minimum tax on capital gains. Third, section 13514(a) of the TCJA struck section 815, which provided continued deferral of tax on policyholders surplus accounts. Fourth, under section 13514(d) of the TCJA, stock life insurance companies must pay the tax imposed by section 801 on the balance of any policyholders surplus accounts (determined as of the close of such company's last taxable year beginning before January 1, 2018) ratably over the first eight taxable years beginning after December 31, 2017.

Additionally, section 2303(b) of the CARES Act added a special rule for life insurance companies. Section 172(b)(1)(D)(iii) provides that, in the case of a life insurance company, if an NOL is carried back under section 172(b)(1)(D)(i)(I) to a life insurance company taxable year beginning before January 1, 2018, such NOL carryback shall be treated in the same manner as an operations loss carryback (within the meaning of section 810 as in effect before its repeal) of such company to such taxable year.

Because the repeal of section 810 is effective for losses arising in taxable years beginning after December 31, 2017, operations loss carryovers from taxable years beginning before January 1, 2018, continue to be allowed as deductions in taxable years beginning after December 31, 2017, in accordance with section 810 as in effect before its repeal by the TCJA. See Staff of the Joint Comm. on Tax'n, 115th Cong., General Explanation of Public Law 115–97, at 226 (Dec. 2018).

Final regulations applicable to life-nonlife groups under § 1.1502–47 were published in the **Federal Register** on March 18, 1983. See 48 FR 11441 (March 18, 1983) (current life-nonlife regulations). In the years that followed that publication, other legislation also significantly altered the taxation of insurance companies.

Explanation of Provisions

I. Overview

These proposed regulations provide guidance for consolidated groups regarding the application of the 80-percent limitation, as originally enacted as part of the TCJA and subsequently amended by the CARES Act. These proposed regulations also provide guidance regarding the application of the NOL carryback provisions following enactment of the TCJA and the CARES Act. In addition, the proposed regulations withdraw and re-propose certain sections of proposed regulations issued under section 1502 in prior notices of proposed rulemaking that relate to the absorption of NOL carrybacks and carryovers. See part II of this Explanation of Provisions for a further discussion.

These proposed regulations also update § 1.1502–47 to reflect certain changes to the insurance company rules

made by the CARES Act, the TCJA, and prior tax legislation. See part III of this Explanation of Provisions for a further discussion. The Treasury Department and the IRS continue to study other issues pertinent to life-nonlife groups for purposes of potential future guidance.

II. Amendments to § 1.1502–21

A. In General

Under section 172, as amended by the TCJA and the CARES Act, NOLs generated by certain members of a consolidated group (that is, nonlife insurance companies), as well as NOLs generated by certain business activity within a consolidated group (that is, farming losses), are subject to different rules than other NOLs in taxable years beginning after December 31, 2020. The proposed regulations implement these statutory rules with regard to affiliated groups of corporations that file consolidated returns.

B. Application of the 80-Percent Limitation

1. In General

Section 1.1502–21(a) defines the consolidated net operating loss (CNOL) deduction for any consolidated return year as ''the aggregate of the net operating loss carryovers and carrybacks to the year.'' This section specifies that ''[t]he net operating loss carryovers and carrybacks consist of (1) [a]ny CNOLs . . . of the consolidated group; and (2) [a]ny net operating losses of the members arising in separate return years.'' NOL carryovers and carrybacks to a consolidated return year are determined under the principles of section 172 and § 1.1502–21. See § 1.1502–21(b)(1). For example, losses permitted to be absorbed in a consolidated return year generally are absorbed in the order of the taxable years in which they arose. See id.

As discussed in part I.A of the Background, the 80-percent limitation on the use of post-2017 NOLs to offset taxable income (other than taxable income of nonlife insurance companies) applies to taxable years beginning after December 31, 2020. Consistent with longstanding provisions in § 1.1502–21(b)(1), these proposed regulations generally implement the 80-percent limitation on a consolidated group basis by limiting a group's deduction of post-2017 NOLs for any such taxable year to the lesser of (1) the aggregate amount of post-2017 NOLs carried to such year, or (2) 80 percent of the excess (if any) of the group's consolidated taxable income (CTI) (computed without regard to any deductions under sections 172, 199A, and 250) over the aggregate amount of pre-2018 NOLs carried to such year. Thus, the amount allowed as a deduction for a particular consolidated return year beginning after December 31, 2020, equals the sum of (1) pre-2018 NOLs carried to that year (see section 172(a)(2)(A)), and (2) post-2017 NOLs carried to that year after applying the 80-percent limitation (see section 172(a)(2)(B)). Additionally, the proposed regulations provide special rules applicable to consolidated groups that include at least one nonlife insurance company, as well as rules applicable to losses arising in a separate return limitation year (SRLY).

2. Application of the 80-Percent Limitation to Groups Comprised of Nonlife Insurance Companies, Members Other Than Nonlife Insurance Companies, or Both

Application of the 80-percent limitation depends on the status of the entity whose income is being offset, rather than on the status of the entity whose loss is being absorbed. As noted in part I.B of the Background, section 172(f) provides that the 80-percent limitation does not apply when the taxable income of a nonlife insurance company is offset by an NOL carryback or carryover.

To implement the special rules under section 172 regarding income of nonlife insurance companies, these proposed regulations clarify that application of the 80-percent limitation within a consolidated group to post-2017 NOLs (post-2017 CNOL deduction limit) depends on the status of the entity that generated the income being offset in a consolidated return year beginning after December 31, 2020. Therefore, if a group is comprised solely of members other than nonlife insurance companies during a consolidated return year beginning after December 31, 2020, the post-2017 CNOL deduction limit for the group for that year is determined by applying the 80-percent limitation to all of the group's consolidated taxable income for that year. In contrast, if a group is comprised solely of nonlife insurance companies during a consolidated return year beginning after December 31, 2020, the post-2017 CNOL deduction limit for the group for that year simply equals the group's CTI less the aggregate amount of pre-2018 NOLs carried to that year.

A two-factor computation is required if a consolidated group is comprised of both nonlife insurance companies and other members in a consolidated return year beginning after December 31, 2020. In general, under these proposed regulations, the post-2017 CNOL deduction limit for the group would equal the sum of two amounts.

The first amount relates to the income of those members that are not nonlife insurance companies (residual income pool). This amount equals the lesser of (i) the aggregate amount of post-2017 NOLs carried to that year, or (ii) 80 percent of the excess of the group's CTI for that year (determined without regard to income, gain, deduction, or loss of members that are nonlife insurance companies and without regard to any deductions under sections 172, 199A, and 250) over the aggregate amount of pre-2018 NOLs carried to that year that are allocated to the positive net income of members other than nonlife insurance companies.

The second amount relates to the income of those members that are nonlife insurance companies (nonlife income pool). This amount equals 100 percent of the group's CTI for the year (determined without regard to any income, gain, deduction, or loss of members that are not nonlife insurance companies), less the aggregate amount of pre-2018 NOLs carried to that year that are allocated to the positive net income of nonlife insurance company members.

For purposes of computing the foregoing amounts, pre-2018 NOLs are allocated pro rata between the two types of income pools in the group (that is, the income pool for nonlife insurance companies and the income pool for all other members, respectively). This allocation is based on the relative amounts of positive net income in each pool in the particular consolidated return year.

For example, assume that P, PC1, and PC2 are members of a calendar-year consolidated group (P Group). PC1 and PC2 are nonlife insurance companies, and P is a holding company. In 2017, the P Group has a CNOL of $10 (that is, a pre-2018 NOL). In 2021, P has income of $50, PC1 has income of $70, and PC2 has a loss of $20. Therefore, the P Group has $100 of CTI in 2021. In 2022, the P Group has a $100 CNOL (all of which is attributable to PC1 and PC2) that is carried back to 2021. Under sections 172(a)(2)(B) and 172(f), the P Group's 2022 CNOL would offset P's 2021 income subject to the 80-percent limitation, but it would offset PC1's 2021 income without limitation.

The total amount allowed as a CNOL deduction in the P Group's 2021 consolidated return year equals the aggregate amount of pre-2018 NOLs carried to that year plus the P Group's post-2017 CNOL deduction limit for that year. The P Group has $10 of pre-2018 NOLs carried to 2021. Under section

172(a)(2)(A) and § 1.1502–21(b)(1), this loss would offset $10 of the P Group's 2021 income.

Under these proposed regulations, the P Group's post-2017 CNOL deduction limit for its 2021 consolidated return year is equal to the sum of the following two amounts. The first amount reflects the application of the 80-percent limitation to P's income (that is, the residual income pool). This amount is $36, which equals the lesser of (i) the aggregate amount of the P Group's post-2017 NOLs carried to its 2021 consolidated return year ($100), or (ii) the product obtained by multiplying 80 percent by $45 (the excess of $50 (P's 2021 income) over $5 (the pro rata amount of pre-2018 NOLs allocated to P's income)).

The second amount reflects the application of section 172(f) to the income of PC1 and PC2 (that is, the nonlife income pool). This amount is $45, which is obtained by subtracting $5 (the pro rata amount of pre-2018 NOLs allocated to the income of PC1 and PC2) from $50 (PC1's 2021 income of $70 − PC2's 2021 loss of $20).

Thus, the P Group has a CNOL deduction of $91 for 2021, which includes (1) the aggregate amount of pre-2018 NOLs carried to 2021 ($10), plus (2) the P Group's post-2017 deduction limit ($36 + $45 = $81). The P Group has $9 of CTI in 2021 and carries over the remaining $19 of its 2022 CNOL ($100 − $81) to future taxable years.

If a group's nonlife insurance company members have net income for a particular consolidated return year beginning after December 31, 2020, and its other members have a net loss for that year (or vice-versa), these proposed regulations modify the foregoing computation to ensure that the group's post-2017 CNOL deduction limit for that year is not overstated. If the group's nonlife insurance company members have a loss for the consolidated return year and its other members have income for that year, the group's post-2017 CNOL deduction limit equals the lesser of (i) the aggregate amount of post-2017 CNOLs carried to the year, or (ii) 80 percent of the excess of the group's CTI (determined without regard to any deductions under sections 172, 199A, and 250) over the aggregate amount of pre-2018 NOLs carried to that year. That is, because none of the group's net income has been produced by the group's P&C insurance operations, the 80-percent limitation will apply to all CTI for the year. Conversely, if the group's nonlife insurance company members have income for the consolidated return year and its other members have a loss for that year, the group's post-2017 CNOL deduction limit equals the group's CTI less the aggregate amount of pre-2018 NOLs carried to that year. That is, because all net income of the group has been produced by the operation of members that are nonlife insurance companies (whose income is not subject to the 80-percent limitation), all CTI for the year may be offset by post-2017 CNOL deductions.

In formulating these proposed regulations, the Treasury Department and the IRS considered an alternative approach. Following the enactment of the TCJA and the CARES Act, section 172 provides special rules applicable to entities of different tax status, both with regard to the use of NOLs to offset income and with regard to the manner in which NOLs are carried over. This alternative approach would have required a group to first offset income and loss items within a pool of nonlife insurance companies and a pool of other members for all purposes of section 172 applicable to taxable years beginning after December 31, 2020. In other words, the alternative approach would have applied a pooling concept beyond merely determining the group's post-2017 CNOL deduction limit, but would have required a group's CTI to be allocated between the operations of its nonlife insurance company members, which can be offset fully by CNOL deductions, and the operations of its other members subject to the 80-percent limitation. This alternative approach would also have applied similar rules to allocate CNOLs within groups including both nonlife insurance companies and other members to consistently identify the portions of CNOLs allocable to nonlife insurance company members, which are subject to different carryover rules than those of other members.

Specifically, this alternative approach would have adopted a threshold computational step under which the principles of § 1.1502–21(b)(2)(iv)(B) would apply to offset the income and loss items solely among members that are nonlife insurance companies. The remaining members of the group would be subject to a parallel offset. Following this initial offsetting of pooled items, § 1.1502–21(b)(2)(iv)(B) (or the principles of § 1.1502–21(b)(2)(iv)(B), in the case of a group with CTI) would apply to allocate a post-2017 CNOL among all group members with taxable income. This approach contrasts with the historical application of § 1.1502–21(b)(2)(iv)(B), under which a CNOL for a year is attributed pro rata to all members of a group that produce net loss, without first netting among entities of the same type. This historical approach developed before the enactment of the TCJA, and thus before special carryover rules applied to nonlife insurance companies.

The Treasury Department and the IRS request comments regarding the proposed regulations' methodology for computing a group's post-2017 CNOL deduction limit. The Treasury Department and the IRS also request comments regarding the alternative approach described in the preceding two paragraphs to identify the portion of the CNOL to which the special carryback and carryover rules of section 172(b) (regarding nonlife insurance company losses) would apply.

3. Losses Arising in a SRLY

Generally, an unaffiliated corporation determines its taxable income by offsetting its NOLs against its income. In contrast, a consolidated group member generally offsets its NOLs against the income of all group members. See §§ 1.1502–11 and 1.1502–21. However, an exception to this general rule for consolidated groups applies to a group's use of NOLs incurred by a member (SRLY member) in a taxable year other than a year of the current group (that is, a separate return limitation year or SRLY). A SRLY member may carry its NOLs that arose in a SRLY into the consolidated group, but those NOLs can be absorbed by the group only to the extent that the SRLY member generates income on a separate-entity basis while a member of the group (that is, to the extent of the amount of net income generated by the SRLY member as a member of the group). See generally § 1.1502–21(c)(1)(i) (setting forth the general SRLY limitation rule).

The SRLY rules attempt to replicate, to the extent possible, separate-entity usage of the SRLY attributes of the SRLY member. In other words, the SRLY regulations were designed to obtain an absorption result that varies as little as possible from the absorption that would have occurred if the SRLY member had not joined the consolidated group.

To approximate a SRLY member's absorption of NOLs on a separate-entity basis, the SRLY member's net contribution to the CTI of the group is measured cumulatively over the period during which the corporation is a member of the group by using what is commonly referred to as a ''cumulative register.'' The cumulative register tracks the SRLY member's net positive (or negative) contribution to the income of the group. See § 1.1502–21(c)(1)(i). If the SRLY member has net positive income in a consolidated taxable year, the

member's cumulative register increases. See § 1.1502–21(c)(1)(i)(A) and (C). In turn, if the losses of a SRLY member (including SRLY-limited NOL carryovers) are absorbed by the group, the SRLY member's cumulative register decreases. See § 1.1502–21(c)(1)(i)(B) and (C).

These proposed regulations would modify the cumulative register rules to reflect the application of the 80-percent limitation under section 172(a)(2)(B). Under the proposed regulations, as in current § 1.1502–21, the full amount of the SRLY member's current-year income (or current-year absorbed loss) increases (or decreases) the member's cumulative register. However, when the cumulative register is reduced to account for the group's absorption of any SRLY member's NOLs that are subject to the 80-percent limitation (whether or not those losses are subject to the SRLY limitation), the amount of the reduction equals the full amount of income that would be necessary to support the deduction by the SRLY member.

For example, after absorption of any pre-2018 NOLs of a SRLY member, the SRLY member (other than a nonlife insurance company) would need to have $100 of remaining income to enable the group to absorb $80 of the SRLY member's SRLY-limited post-2017 NOLs in a taxable year beginning after December 31, 2020 (that is, 80 percent of the excess of $100 over $0). Therefore, upon the group's deduction of $80 of NOL (SRLY or otherwise) of the SRLY member, the cumulative register would be reduced to reflect the full $100 of income, not just the $80 of losses absorbed by the group.

The Treasury Department and the IRS have determined that, without the adjustment described, the SRLY member would achieve a different result as a member of a group than as a stand-alone entity. Such result would be contrary to the objective of the SRLY rules, which attempt to replicate the hypothetical separate-entity treatment of the SRLY member. Therefore, the above-described adjustment would be necessary to ensure that the SRLY member achieves the same Federal income tax result as if the SRLY member continued to be a stand-alone entity.

For example, assume that P owns 79 percent of S, and that neither P nor S is a nonlife insurance company. In Year 1 (a taxable year beginning after December 31, 2020), S incurs an $800 NOL that it carries over into Year 2. S has no other NOL carryovers or carrybacks. In Year 2, S has $400 of income; accordingly, S's 80-percent limitation for Year 2 is $320 (that is, the lesser of $800 or 80 percent of the excess of $400 over $0). As a result, S may use $320 of its $800 Year 1 NOL to offset $320 of its $400 Year 2 income. Under section 172(b)(2), the amount of the $800 Year 1 NOL that is carried into Year 3 is the excess of the entire $800 NOL over $320, or $480. S's ability to use any portion of its remaining Year 1 NOL in Year 3 is dependent on its generation of additional taxable income in Year 3.

Now assume that, instead of S filing a separate return for Year 2, P acquires the remaining stock of S at the end of Year 1, and P and S file a consolidated return for Year 2. The P group has $1,000 of income in Year 2, of which S has $400. Thus, S's cumulative register increases from $0 to $400. Because S's $800 Year 1 NOL arose in a SRLY, the absorption of this NOL in Year 2 is subject to both the SRLY limitation and the 80-percent limitation. Under the proposed regulations, the P group may use only $320 (that is, the lesser of $800 or 80 percent of the excess of $400 over $0) of S's Year 1 SRLY NOL to offset the P group's Year 2 income. Upon the absorption of $320 of S's Year 1 SRLY NOL, S's cumulative register is reduced by $400 (that is, the full amount of income necessary to support the $320 deduction of S's Year 1 SRLY NOL) to $0. The remainder of S's Year 1 SRLY NOL is carried over.

If S's cumulative register were not reduced by the full amount of income necessary to support the deduction, the P group's ability to use S's loss would exceed S's ability to use the loss if S had not joined the P group. As an illustration, assume further that, in Year 3, the P group has $200 of income, with no net amount of income or loss attributable to S. Because S's cumulative register would remain at $0, the P group would not be able to offset any of its $200 Year 3 income with S's Year 1 SRLY NOL. If S's cumulative register were reduced solely by the amount of the SRLY NOL deducted in Year 2 ($320), S would have $80 remaining in its cumulative register ($400 − $320), and the P group could absorb an additional $64 (that is, the lesser of $480 or 80 percent of the excess of $80 over $0) of S's remaining Year 1 SRLY NOL in Year 3. In contrast, if S had not joined the P group and had not generated any income in Year 3, it would not have been able to use any of its $480 remaining Year 1 SRLY NOL in Year 3. In other words, S would have been able to use a total of only $320 of its Year 1 SRLY NOL in Years 2 and 3.

Therefore, absent an adjustment to S's cumulative register to account for the 80-percent limitation, S would achieve a different result as a member of a consolidated group than if S had remained a stand-alone entity. As explained earlier in this part II.B.3 of this Explanation of Provisions, such a result would be inconsistent with the purpose of the SRLY regime. See the preamble to TD 8823 published in the **Federal Register** July 2, 1999 (64 FR 36092).

C. Recomputation of Amount of CNOL Attributable to Each Member

Section 1.1502–21(b)(2)(i) generally provides that, if a group has a CNOL that is carried to another taxable year, the CNOL is apportioned among the group's members. For this purpose, § 1.1502–21(b)(2)(iv) provides a fraction, the numerator of which is the separate NOL of each member for the consolidated return year of the loss (determined by taking into account only the member's items of income, gain, deduction, and loss), and the denominator of which is the sum of the separate NOLs of all members for that year.

If a member's portion of a CNOL is absorbed or reduced on a non-pro rata basis, the percentage of the CNOL attributable to each member must be recomputed to reflect the proper allocation of the remaining CNOL. For instance, if a portion of a CNOL allocable to a nonlife insurance company is carried back to and absorbed in a prior taxable year under the special rule for nonlife insurance companies that applies for taxable years beginning after December 31, 2020 (see part I.B of the Background), all or some portion of the CNOL allocable to the nonlife insurance company is reduced even though the portion of the CNOL allocable to other members remains untouched. Therefore, the allocation of the remaining CNOL must be recomputed.

Accordingly, these proposed regulations provide that, if a member's portion of a CNOL is absorbed or reduced on a non-pro rata basis, the percentage of the CNOL attributable to each member is recomputed. The recomputed percentage of the CNOL attributable to each member equals the remaining CNOL attributable to the member at the time of the recomputation, divided by the sum of the remaining CNOL attributable to all of the remaining members at the time of the recomputation. In other words, if at the time of the recomputation a member's attributable portion of the group's remaining CNOL equals $20, and the sum of the remaining CNOL attributable to all of the group's remaining members equals $80, the

recomputed percentage of the CNOL attributable to the member would equal 25 percent.

Proposed regulations (REG–101652–10) published in the **Federal Register** (80 FR 33211) on June 11, 2015 (2015 proposed regulations) contained a similar rule (see § 1.1502–21(b)(2)(iv)(B)(*2*) of the 2015 proposed regulations). These proposed regulations withdraw proposed § 1.1502–21(b)(2)(iv)(B)(*2*) of the 2015 proposed regulations and re-propose substantially similar language in new proposed § 1.1502–21(b)(2)(iv)(B)(*2*).

D. Farming Losses

For a taxable year beginning after December 31, 2020, section 172(b)(1)(B) permits the portion of a taxpayer's NOL for the taxable year that is a farming loss to be carried back two years. Under that provision, the term ''farming loss'' means the lesser of the amount that would be the NOL if only the income and deductions attributable to farming businesses (as defined in section 263A(e)(4)) were taken into account, or the amount of a taxpayer's NOL for the year.

Whereas the special nonlife insurance company rules in section 172 apply based on the status of the entity that generated the loss, the special farming loss carryback rules in section 172 apply based on the character of the loss; that is, whether the loss resulted from farming activity. The special rule for farming losses creates a situation similar to that addressed in *United Dominion Industries, Inc.* v. *United States,* 532 U.S. 822 (2001), which involved the calculation within a consolidated group of a product liability loss (PLL). A PLL was a ''special status loss'' that was subject to a 10-year carryback period and that was equal to the aggregate of all members' product liability expenses (PLEs), limited by the NOL for the year. A consolidated group generally is treated as having a single, unitary CNOL for a taxable year (based on all items of income and loss in the group) that is allocated among members only for specified purposes, including carrybacks and carryovers to other taxable years. See § 1.1502–21(e) (defining the term ''CNOL''); § 1.1502–11(a) (setting forth the general computation for determining CTI). Because the regulations under section 1502 did not allocate the CNOL for purposes of calculating the limitation on PLL, the Supreme Court held that the amount of a group's PLL was limited by the entire amount of the group's CNOL.

In a notice of proposed rulemaking (REG–140668–07) published in the **Federal Register** (77 FR 57452) on September 17, 2012 (2012 proposed regulations), the Treasury Department and the IRS provided rules regarding the apportionment of CNOLs that contain a component portion of a special status loss, such as a corporate equity reduction interest loss or a specified liability loss. Such losses, like farming losses and the PLLs that were considered in *United Dominion,* were subject to special carryback rules. The 2012 proposed regulations effectuated the holding in *United Dominion* that a group's CNOL, which is the limit on the amount of a group's special status losses, may be generated anywhere in the group. See 77 FR 57452, 57458. On that basis, the 2012 proposed regulations apportioned such special status losses to each group member that generated a loss in the year in which the special status loss was incurred, regardless of whether any specific member had undertaken the activities that generated the expenses that effectively were granted special status. See id.

Consistent with the 2012 proposed regulations, these proposed regulations re-propose, in modified form, a specific rule regarding the apportionment of CNOLs that include farming losses arising in taxable years beginning after December 31, 2020, or other special status losses. See proposed § 1.1502–21(b)(2)(iv)(D). (Due to the TCJA's removal of the corporate equity reduction interest loss provisions in former section 172(g), proposed § 1.1502–21(b)(2)(iv)(D) does not contain explicit rules governing such losses.) Under proposed § 1.1502–21(b)(2)(iv)(D), the portion of the CNOL constituting a special status loss is apportioned to each group member separately from the remainder of the CNOL under the method provided in § 1.1502–21(b)(2)(iv). Consistent with the 2012 proposed regulations, this apportionment occurs without separate inquiry into whether a particular member actually incurred the special status loss. See 77 FR 57452, 57458. These proposed regulations withdraw § 1.1502–21(b)(2)(iv)(C), as proposed in the 2012 proposed regulations. The Treasury Department and the IRS request comments regarding this approach.

E. Elections To Waive Portions of the Five-Year Carryback Period Under Section 172(b)(1)(D)(i)

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** add new paragraphs (b)(3)(ii)(C) and (D) to the regulations in § 1.1502–21. The temporary regulations provide rules to permit consolidated groups that acquire new members that were members of another consolidated group to elect to waive all or part of the pre-acquisition portion of an extended carryback period under section 172 for certain losses attributable to the acquired members. The text of those regulations also serves as the text of § 1.1502–21(b)(3)(ii)(C) and (D) of these proposed regulations. The preamble to the temporary regulations explains the amendments.

III. Amendments to § 1.1502–47

A. Overview

1. Legislative Background at the Time the Current Life-Nonlife Regulations Were Promulgated

The Life Insurance Company Income Tax Act of 1959, Public Law 86–69, 73 Stat. 112 (June 25, 1959), established a three-phase system of taxation for life insurance companies (also referred to as life companies). Under the first phase of this three-phase system (phase 1), a life company was taxed on the lesser of its taxable investment income (TII) or its gain from operations (GO). If a company's GO exceeded its TII, the company was taxed on 50 percent of such excess (phase 2). The other half of the GO in excess of TII was added, along with certain other items, to the policyholders surplus account, which was taxed when distributed to shareholders of a stock company (phase 3). Life companies also were permitted certain deductions that were unique to insurance companies, such as increases in reserves to the extent not funded out of the policyholders' share of investment income.

Prior to the enactment of the Tax Reform Act of 1976, Public Law 94–455, 90 Stat. 1520 (October 4, 1976) (1976 Act), life companies were prohibited from filing consolidated returns with nonlife companies, including both nonlife insurance companies and other types of corporations. This prohibition resulted in part from historical differences between the taxation of life companies and nonlife companies.

Section 1507 of the 1976 Act (90 Stat. 1520, 1739–41) permitted life companies to consolidate with nonlife companies, subject to additional restrictions that do not apply to a regular consolidated group. Section 1503(c)(1) (as amended by the 1976 Act and subsequent tax legislation) provides that, if the nonlife company members of a life-nonlife group (nonlife members) have a loss for the taxable year, then under regulations to be issued by the Secretary, the amount of the loss that cannot be carried back and absorbed by the taxable income of the nonlife

members can be taken into account in determining the CTI of the group only to the extent of the lesser of 35 percent of such loss or 35 percent of the taxable income of the life company members of the group (life members). Further, section 1503(c)(2) (as so amended) provides that the losses of a recent nonlife affiliate may not be used by a life company before the sixth taxable year the companies have been members of the same affiliated group.

2. Current Life-Nonlife Regulations

The current life-nonlife regulations adopted a subgroup method for computing a life-nonlife group's CTI. Under the subgroup method, the nonlife members and the life members generally are treated as if the members compose two separate consolidated groups, with certain exceptions (including intercompany transactions, as defined in § 1.1502–13(b)(1)(i)). Thus, each of the life subgroup and the nonlife subgroup separately calculates its taxable income. Subgroup losses that are eligible to be carried back must be carried back to offset subgroup income in prior taxable years before being used to offset income of the other subgroup in the current taxable year, and subgroup losses may not be carried back to offset income of the other subgroup in prior taxable years.

Further, a carryback of a subgroup loss may ''bump'' the loss of the other subgroup used in the carryback year (that is, the loss that is carried back may supplant a loss of the other subgroup in the carryback year). See § 1.1502–47(a)(2)(ii). For example, assume that life subgroup losses were used to offset nonlife subgroup income in Year 1. If the nonlife subgroup incurs losses in Year 2 that are eligible to be carried back to Year 1, those Year 2 nonlife subgroup losses (rather than the Year 1 life subgroup losses) would be used to offset the nonlife subgroup's income in Year 1. The ''bumped'' life subgroup losses from Year 1 then would be carried over to future taxable years.

3. Legislative Changes Regarding the Taxation of Insurance Companies Since Promulgation of the Current Life-Nonlife Regulations

The Deficit Reduction Act of 1984, Public Law 98–369, 98 Stat. 494 (July 18, 1984) (1984 Act), significantly altered the taxation of life companies. The 1984 Act replaced the three-phase system with a statutory mechanism similar to that used to calculate the Federal income tax liability of other corporate taxpayers. Specifically, section 801(a) imposes an income tax on the life insurance company taxable income (LICTI) of a life company, and section 801(b) defines ''life insurance company taxable income'' as life insurance gross income less life insurance deductions. The legislative history of the 1984 Act indicates that, in part, Congress changed the taxation of life companies in order to simplify the Code. See Staff of the Joint Comm. on Tax'n, 98th Cong., General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984, at 577 (December 31, 1984).

In turn, the Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2085 (October 22, 1986) (1986 Act), modified the taxation of nonlife insurance companies. Prior to the 1986 Act, nonlife insurance companies were permitted to defer unearned premium income while currently deducting the expenses associated with earning such income, which created a timing mismatch between the income and expenses of nonlife insurance companies. The 1986 Act addressed this mismatch by requiring a nonlife insurance company to reduce its deduction for unearned premium income by 20 percent. The 1986 Act also repealed special rates, deductions, and exemptions for small mutual insurance companies and added a single provision (section 831(b)) for both small mutual insurance companies and small stock insurance companies.

Lastly, the TCJA made significant additional changes to the taxation of life insurance companies, and the CARES Act added a special rule for such companies in section 172(b)(1)(D)(iii). These changes are described in detail in part II of the Background.

B. Summary of Proposed Changes to § 1.1502–47

As a result of changes in the taxation of insurance companies under the TCJA and prior legislation, various provisions in § 1.1502–47 currently are outdated. Accordingly, to the extent preempted by statute, the current regulations have no application. These proposed regulations update § 1.1502–47 by: (1) Removing paragraphs implementing statutory provisions that have been repealed; (2) revising paragraphs implementing statutory provisions that have been substantially revised; (3) updating terminology and statutory references to account for other statutory changes; and (4) removing paragraphs that contain obsolete transition rules or that are no longer applicable because the effective dates in the current life-nonlife regulations have passed.

1. Removal of Paragraphs Due to Repealed Statutory Provisions

Certain paragraphs in § 1.1502–47 are no longer relevant to the calculation of life-nonlife CTI because of the repeal of the three-phase system by the 1984 Act and later amendments to the Code. Therefore, these proposed regulations remove numerous paragraphs including current §§ 1.1502–47(k) and (l), which provide rules for calculating consolidated TII and the consolidated GO or loss from operations (LO). These proposed regulations also remove (i) § 1.1502–47(f)(7)(ii), which generally provides that the consolidated tax liability of a life-nonlife group includes the tax described by section 1201, and (ii) § 1.1502–47(o), which provides rules for calculating the alternative tax imposed by section 1201 on consolidated capital gain. (As noted in part II of the Background, section 1201 was repealed by the TCJA.)

2. Updates Reflecting Substantially Revised Statutory Provisions

These proposed regulations also update § 1.1502–47 to reflect changes to certain statutory provisions since the current life-nonlife regulations were promulgated. For example, these proposed regulations modify current § 1.1502–47(f)(5) (relating to the dividends received deduction) to reflect changes by the 1986 Act to sections 805(a)(4) and 818(e)(2) (for life companies) and to reflect changes by the 1986 Act and the Technical and Miscellaneous Revenue Act of 1988, Public Law 100–647, 102 Stat. 3342 (November 10, 1988), respectively, to sections 832(b)(5)(B) and (g) (for nonlife insurance companies). Under modified § 1.1502–47(f)(5) (that is, proposed § 1.1502–47(d)(5)), dividends received by an insurance company from another includible member of the group are treated as if the group were not filing a consolidated return. To reflect the repeal of section 815 by the TCJA, these proposed regulations also remove current § 1.1502–47(g)(3) (which provides that life-nonlife groups must include any amounts subtracted under section 815 from life members' policyholders surplus accounts).

Additionally, these proposed regulations update the rules relating to consolidated LICTI to reflect the repeal of the three-phase system by the 1984 Act and other changes to the taxation of life companies. These proposed regulations also move certain provisions in current § 1.1502–47(k) (consolidated TII) and (l) (consolidated GO or LO) that remain applicable following the repeal of the three-phase system to revised

paragraph (g), and they implement the special rule for life insurance companies in section 172(b)(1)(D)(iii) under the CARES Act.

3. Revisions to Account for Other Statutory Changes

These proposed regulations also update terminology and citations to the Code to reflect current law. For example, these proposed regulations remove references to section 821 and mutual insurance companies because the statutory provisions regarding mutual insurance companies were repealed by the 1986 Act. Additionally, these proposed regulations replace references to section 802 with references to section 801 because section 802 was repealed by the 1984 Act. Similarly, these proposed regulations replace references to the LO with references to the NOL deduction under section 172 to reflect the repeal of section 810 by the TCJA.

4. Removal of Obsolete Transition Rules and Other Rules That No Longer Are Applicable

These proposed regulations propose the removal of transition rules regarding the implementation of the current life-nonlife regulations, since those transition rules apply to carryovers that either have been absorbed or have expired. For example, the proposed regulations propose the removal of current § 1.1502–47(h)(3) (setting forth transition rules for NOLs attributable to taxable years ending before January 1, 1981), current § 1.1502–47(k)(6) (containing a similar rule for certain capital loss carryovers), and current § 1.1502–47(e)(4) (granting certain life-nonlife groups permission to discontinue filing a consolidated return for the group's first taxable year for which the current life-nonlife regulations were effective).

These proposed regulations also would remove cross-references to certain prior-law regulations that are designated with an ''A'' because those regulations generally are applicable to years ending in 1999 or earlier. Additionally, these proposed regulations would remove cross-references to § 1.1502–18 (relating to inventory adjustments) because that section does not apply to taxable years beginning after July 11, 1995.

Proposed Effective/Applicability Dates

The regulations in proposed § 1.1502–21 generally are proposed to be applicable to losses arising in taxable years beginning after the date of publication in the **Federal Register** of a Treasury decision adopting these proposed rules as final regulations (Publication Date). The regulations in proposed §§ 1.1502–1 and 1.1502–47 generally are proposed to be applicable to taxable years beginning after the Publication Date. However, a taxpayer deducting post-2017 NOLs on (1) original returns, (2) amended returns, or (3) applications for tentative carryback adjustments, filed for taxable years beginning on or before the Publication Date, may rely on these proposed regulations concerning the Federal income tax treatment of post-2017 NOLs with regard to those filings if the taxpayer relies on the proposed regulations in their entirety and in a consistent manner.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

Executive Orders 13563, 13771, and 12866 direct agencies to assess 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.

These proposed regulations have been designated as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations. The Office of Information and Regulatory Affairs has designated the proposed regulations as significant under section 1(b) of the Memorandum of Agreement. Accordingly, OMB has reviewed the proposed regulations.

A. Background and Need for Regulations

In general, taxpayers whose deductions exceed their income generate a net operating loss (NOL), calculated under the rules of section 172. Section 172 also governs the use of NOLs generated in other years to offset taxable income in the current year. Regulations issued under the authority of section 1502 may be used to govern how section 172 applies to consolidated groups of C corporations. In general, a consolidated group generates a combined NOL at an aggregate level (CNOL), with the CNOL generally equal to the loss generated from treating the consolidated group as a single entity. Under regulations promulgated prior to the Tax Cuts and Jobs Act (TCJA), the allowed CNOL deduction was equal to the lesser of the CNOL carryover or the combined taxable income of the group (before the CNOL deduction).

The TCJA and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) made several changes to section 172. First, the TCJA and the CARES Act disallowed the carry back of NOLs generated in taxable years beginning after 2020, except for farming losses and losses incurred by corporations that are insurance companies other than life insurance companies (nonlife insurance companies). Second, the TCJA and the CARES Act limited the NOL deduction in taxable years beginning after 2020 for NOLs generated in 2018 or later (post-2017 NOLs) to 80 percent of taxable income determined after the deduction for pre-2018 NOLs but before the deduction for post-2017 NOLs. This 80-percent limitation does not apply to nonlife insurance companies.

These proposed regulations implement the changes to section 172 in the context of consolidated groups. In particular, regulations are needed to address three issues related to consolidated groups that were not expressly addressed in the TCJA or the CARES Act. First, the proposed regulations describe how to determine the 80-percent limitation in the case of a ''mixed'' group—that is, a consolidated group containing nonlife insurance companies and other members. Second, the proposed regulations address the calculation and allocation of farming losses. Third, the proposed regulations implement the 80-percent limitation into existing regulations to determine the CNOL deduction attributable to losses a member arising during periods in which that member was not part of that group. Part I.B of this Special Analyses describes the manner by which the proposed regulations addresses each of these issues.

Part I.B also describes an alternative approach that was contemplated by the Treasury Department and the IRS regarding the allocation of currently generated losses to nonlife insurance companies and other members. The Treasury Department and the IRS elected not to implement this approach.

B. Overview of the Proposed Regulations

In this part I.B the following terms are used. The term ''P group'' means a consolidated group of which P is the common parent. The term ''P&C member'' means a member of the P

group that is a nonlife insurance company. The term ''C member'' means a member of the P group that is a corporation other than nonlife insurance company.

1. Application of 80-Percent Limitation in Mixed Groups

Under the statute, the general rule for determining the NOL deduction (for a taxable year beginning after December 31, 2020) effectively proceeds in two steps. First, the taxpayer deducts pre-2018 NOLs without limit. Second, the taxpayer deducts post-2017 NOLs up to 80 percent of the taxpayer's taxable income (computed without regard to the deductions under sections 172, 199A, and 250) determined after the deduction of pre-2018 NOLs (but, naturally, before the deduction for post-2017 NOLs). However, this 80-percent limitation does not apply for corporations that are nonlife insurance companies.

The application of the 80-percent limitation to the P group is straightforward if (i) there are no pre-2018 NOLs and (ii) both classes of P&C members and C members have positive income before the CNOL deduction. In that case, these proposed regulations provide, quite naturally, that the CNOL limitation is determined by adding (i) the pre-CNOL income generated by the class of C members (C member income pool), determined by applying the 80-percent limitation, plus (ii) 100 percent of the pre-CNOL income generated by the class of P&C members (P&C member income pool). This latter treatment reflects the rule in section 172(f) that nonlife insurance companies are not subject to the 80-percent limitation.

One complication arises when the pre-CNOL C member income pool is positive and the pre-CNOL P&C income pool is negative, and the P group has positive combined pre-CNOL taxable income. In this case (where the pre-CNOL income is generated by C members, rather than P&C members), these proposed regulations provide that the post-2017 CNOL deduction limit is determined by applying the 80-percent limitation to the income of the P group. If the situation were reversed, such that the P group had positive combined taxable income but the pre-CNOL income is generated by P&C members, rather than the C members, the post-2017 CNOL deduction limit is equal to the income of the P group (that is, determined without regard to the 80-percent limitation). In essence, in these situations, the amount of the P group's income able to absorb a post-2017 CNOL carryover is defined by the member pool (that is, the C member income pool or the P&C member income pool) that is generating the income.

The other complication occurs when there is a pre-2018 NOL. In this situation, it matters whether the pre-2018 NOL is treated as reducing the amount of the C member income pool or reducing the amount of P&C member income pool. Consider the following example (Example 1). In Example 1, the P group carries $50 in pre-2018 NOLs and $1000 in post-2017 NOLs to 2021. In 2021, the P&C members and the C members, respectively, earn (pre-CNOL) income of $100. If the pre-2018 NOL were treated as solely reducing the amount of C member income pool, then the limitation for the post-2017 CNOL deduction would be $100 plus 80 percent of $50 ($100 minus $50), equal to $140. If the pre-2018 NOL were treated as solely reducing the amount of the P&C member income pool, then the post-2017 CNOL deduction limit for the P group would be $50 ($100 minus $50) plus 80 percent of $100, or $130.

These proposed regulations allocate the pre-2018 NOL pro-rata to the C member income pool and the P&C member income pool in proportion to their current-year income. In Example 1, $25 of the pre-2018 NOL would be allocated to the C member income pool and $25 to the P&C member income pool. Therefore, the post-2017 CNOL deduction limit for the P group would be $75 ($100 minus $25) plus 80 percent of $75 ($100 minus $25), or $135.

2. Farming Losses

Section 172 provides NOLs arising in a taxable year beginning after December 31, 2020, may not be carried back to prior years, with two exceptions: (1) Farming losses and (2) nonlife insurance company losses. Section 172(b)(1)(B) defines a ''farming loss'' as the smaller of the actual loss from farming activities in a given year (that is, the excess of the deductions in farming activities over income in farming activities) and the total NOL generated in that year. This statutory provision means that if a taxpayer incurs a loss in farming activities but has overall income in other activities, the farming loss will be smaller than the loss in farming activities (and can possibly be zero).

Regulations were needed to clarify two issues that arise in the context of consolidated groups. First, these regulations clarify that the maximum amount of farming loss is the CNOL of the group rather than the NOL of the specific member generating the loss in farming activities. This approach closely follows regulations issued by the Treasury Department and the IRS in 2012 in an analogous setting.

Second, given the overlapping categories of carryback-eligible NOLs (farming losses and nonlife insurance companies), regulations are needed to allocate the farming loss to the various members to determine the total amount of CNOL that can be carried back. Consider the following example (Example 2). In Example 2, the P group consists of one C member and one P&C member. In 2021, the C member's only activity is farming and the C member incurs a loss of $30, while the P&C member incurs a loss of $10. The total farming loss is $30, since $30 is less than the P group CNOL of $40. If this farming loss were allocated entirely to the C member, then the total amount eligible for carryback would be $40 (that is, $30 for the farming loss and $10 for the loss incurred by the P&C member). By contrast, if the farming loss were allocated entirely to the P&C member, only $30 would be eligible to be carried back.

Again, following a similar rule as the 2012 regulations, these proposed regulations allocate the farming loss to each member of the group in proportion with their share of total losses, without regard to whether each member actually engaged in farming. In Example 2, this would allocate $7.50 (that is, one-fourth of $30) of the farming loss to the P&C member and the remaining $22.50 (that is, three-fourths of $30) to the C member. Therefore, the P group would be allowed to carry back $32.50 total (that is, the $10 of loss generated by the P&C member and the $22.50 of farming losses allocated to the C member).

3. Separate Return Loss Year Limitation

To reduce ''loss trafficking,'' existing regulations under section 1502 limit the extent to which a consolidated group (that is, the P group) can claim a CNOL attributable to losses generated by some member (M) in years in which M was not a member. In particular, existing rules limit this amount of loss to the amount of the loss that would have been deductible had M remained a separate entity; that is, the rules are designed to preserve neutrality in loss use between being a separate entity or a member of a group. Existing rules operationalize this principle using the mechanic of a ''cumulative register.'' The cumulative register is equal to the (cumulative) amount of M's income that is taken into account in the P group's income. Income earned by M while a member of the P group increases the cumulative register, while losses (carried over or otherwise) taken into account by the group reduce the cumulative register. In general, the existing rules provide that M's pre-group NOLs cannot offset the P

group's income when the cumulative register is less than or equal to zero.

The introduction of the 80-percent limitation in the TCJA and CARES Act necessitates an adjustment to this mechanism in order to retain this neutrality-in-loss-use property. In particular, these proposed regulations provide that any losses by M that are absorbed by the P group and subject to the 80-percent limitation cause a reduction to the register equal to the full amount of income needed to support that deduction. The following example (Example 3) demonstrates why this adjustment is necessary. In Example 3, P and S are each corporations other than nonlife insurance companies (that is, they are subject to the 80-percent limitation). Suppose in 2021, S incurs a loss of $800, which is the only loss incurred by S. In 2022, S incurs income of $400. If S were not a member of a consolidated group, its 2022 NOL deduction would be limited to $320 (80 percent of $400). Suppose instead that P acquires S in 2022 and that P has separate income of $600 in 2022, so the consolidated group has $1000 in pre-CNOL income in 2022. Before claiming any CNOLs, S's cumulative register would increase to $400 in 2022. Without any additional rules, the $400 cumulative register would allow P to claim a CNOL of $400 (bringing the register down to zero), greater than what would have been allowed had S remained a separate entity. By contrast, requiring the register to be reduced by 125 percent of the NOL (as under the current NPRM) allows P to claim only a $320 CNOL, replicating the result if S were a separate entity.

4. Allocation of Current Losses to Nonlife Insurance Companies

In general, under the TCJA and CARES Act, taxpayers may not carry back any losses generated in tax years beginning after 2020, with the exception of losses generated by nonlife insurance companies and farming losses. Existing regulations clarify that CNOLs are allocated to each member in proportion to the total loss. This allocation rule can be illustrated by example (Example 4). In Example 4, the C member has a current loss of $10 (in a tax year beginning in 2021 or later). The P&C members are corporations PC1 and PC2. PC1 has a gain of $40 and PC2 has a loss of $40. Assume that the P group does not engage in any farming activities. The CNOL for the P group is $10. The $10 of CNOL is allocated to the C member and PC2 in proportion to their total losses. The C member has one-fifth of the total loss ($10 divided by $50) and PC2 has four-fifths. Therefore, under the existing regulations, the C member is allocated $2 ($10 times one-fifth) and PC2 is allocated $8 ($10 times four-fifths). In the end, $8 of the CNOL may be carried back in Example 4. The proposed regulations do not alter these existing regulations.

In formulating these proposed regulations, the Treasury Department and the IRS contemplated an alternative approach. Under this alternative, consolidated groups would be required to compute gain and loss by grouping P&C members and C members separately prior to allocating CNOL to members. The application of this approach can be seen by revisiting Example 4. Under this alternative approach, because the P&C members as a whole do not have a loss, no CNOL would be allocated to any P&C member regardless of the gain or loss of any of the individual P&C members. Thus, under the alternative approach, none of the $10 CNOL would be eligible for carryback in Example 4.

C. Economic Analysis

1. Baseline

In this analysis, the Treasury Department and the IRS assess the benefits and costs of the proposed regulations relative to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of these regulations.

2. Summary of Economic Effects

The proposed regulations provide certainty and clarity to taxpayers regarding the treatment of NOLs under section 172 and the regulations under section 1502. In the absence of such guidance, the chance that different taxpayers would interpret the statute and the regulations differently would be exacerbated. Similarly situated taxpayers might interpret those rules differently, with one taxpayer pursuing an economic opportunity that another taxpayer might decline to make because of different interpretations of the ability of losses to offset taxable income. If this second taxpayer's activity were more profitable, the resulting economic decisions are inefficient. Such situations are more likely to arise in the absence of guidance. While no guidance can curtail all differential or inaccurate interpretations of the statute, the regulations significantly mitigate the chance for differential or inaccurate interpretations and thereby increase economic efficiency.

To the extent that the specific provisions of the proposed regulations result in the acceleration or delay of the tax year in which taxpayers deduct an NOL relative to the baseline, those taxpayers may face a change in the present value of the after-tax return to new investment, particularly investment that may result in losses. The resulting changes in the incentives facing the taxpayer are complex and may lead the taxpayer either to increase, decrease, or leave unchanged the volume and risk level of its investment portfolio, relative to the baseline, in ways that depend on the taxpayer's stock of NOLs and the depreciation schedules and income patterns of investments they would typically consider, including whether the investment is subject to bonus depreciation. Because these elements are complex and taxpayer-specific and because the sign of the effect on investment is generally ambiguous, the Treasury Department and the IRS have not projected the specific effects on economic activity arising from the proposed regulations.

The Treasury Department and the IRS project that any such effects will be small relative to the baseline. The effects are small because the regulations apply only to consolidated groups; in addition, several provisions of the proposed regulations apply only to the extent that a consolidated group contains a mix of member types. Moreover, the effects are small because: (i) For provisions of the proposed regulations that affect the deduction for pre-2018 NOLs, the effects are limited to the stock of the pre-2018 NOLs; and (ii) for provisions that affect the allowable rate of loss usage of post-2017 NOLs, the effect arises only from the 20 percentage point differential in the deduction for these NOLs. This latter effect in particular, to which the bulk of the provisions apply, is too small to substantially affect taxpayers' use of NOLs and thus too small to lead to meaningful changes in economic decisions.

The Treasury Department and the IRS have not provided quantitative estimates of the effects of these regulations relative to the baseline because they do not have readily available models that predict the effects of these tax treatments of consolidated group NOLs on the investments or other activities that consolidated groups might undertake. The Treasury Department and the IRS solicit comments on this analysis and on the economic effects of these proposed regulations, and particularly solicit data, models, or other evidence that could enhance the rigor with which the final regulations are developed.

3. Allocation of CNOLs to Specific Members of Consolidated Groups

The proposed regulations do not amend existing rules for the allocation of the CNOL within consolidated groups. The proposed regulations follow existing rules and allocate the CNOLs to each member of the group in proportion to the total loss.

The Treasury Department and the IRS considered an alternative approach that would have required groups to compute gain and loss at the subgroup level prior to allocating CNOL to members. Recall Example 4 in which the PC subgroup had no gain or loss but the C subgroup had a loss of $10. Under this alternative approach, because the PC subgroup as a whole does not have a loss, no CNOL would be allocated to any member in the PC group regardless of the gain or loss of any of the individual members of PC. Thus, in Example 4, none of the $10 CNOL would be eligible for carryback.

The Treasury Department and the IRS recognize that as a result of the TCJA and the CARES Act the adopted approach of allocating losses to each member may provide groups with a potential incentive, relative to the alternative approach, to split their C members into several corporations—some with loss and some with gain. In certain circumstances, such a strategy would effectively enable some share of the losses generated by the other C members to be carried back. This change in the business structure of consolidated groups may entail economic costs because, to the extent this strategy is pursued, it would result from tax-driven rather than market-driven considerations. The Treasury Department and the IRS project, however, that the adopted approach will have lower compliance costs for taxpayers, relative to the alternative approach, because it generally follows existing regulatory practice for allocating losses within a consolidated group.

The Treasury Department and the IRS have not attempted to estimate the economic consequences of either of these effects but project them to be small. The effects are projected to be small because (i) only a small number of taxpayers are likely to be affected; (ii) any reorganization that occurs due to the proposed regulations will primarily be ''on paper'' and entail little or no economic loss; and (iii) the compliance burden of loss allocation, under either the proposed regulations or the alternative approach, is not high.

4. Affected Taxpayers

The Treasury Department and the IRS project that these regulations will primarily affect consolidated groups that contain at least one nonlife insurance member and at least one member that is not a nonlife insurance company. Based on data from 2015, the Treasury Department and the IRS calculate that there were 1,130 such consolidated groups. Approximately 460 of these groups were of ''mixed loss'' status, meaning that at least one nonlife insurance member had a gain and one other member had a loss, or vice versa.

II. Paperwork Reduction Act

For information regarding the collection of information in § 1.1502–21(b)(3)(ii)(C) of these proposed regulations (including where to submit comments on this collection of information and on the accuracy of the estimated burden), please refer to the preamble to the temporary regulations under section 1502 published elsewhere in this issue of the **Federal Register**. This collection of information will be under Office of Management and Budget control number 1545–0123, the same control number as the collection of information in those temporary regulations, and the estimated burden of this collection of information is described in the preamble to those temporary regulations.

III. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations would not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these proposed regulations apply only to corporations that file consolidated Federal income tax returns, and that such corporations almost exclusively consist of larger businesses. Specifically, based on data available to the IRS, corporations that file consolidated Federal income tax returns represent only approximately two percent of all filers of Forms 1120 (U.S. Corporation Income Tax Return). However, these consolidated Federal income tax returns account for approximately 95 percent of the aggregate amount of receipts provided on all Forms 1120. Therefore, these proposed regulations would not create additional obligations for, or impose an economic impact on, small entities. Accordingly, the Secretary certifies that the proposed regulations will not have a significant economic impact on a substantial number of small entities.

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2020, that threshold is approximately $156 million. This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications, does not impose substantial direct compliance costs on state and local governments, and does not preempt state law within the meaning of the Executive Order.

Comments and Requests for a Public Hearing

Before the proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at *www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**. Announcement

2020–4, 2020–17 IRB 1, provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, and Notices cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *http://www.irs.gov.*

Drafting Information

The principal authors of these proposed regulations are Justin O. Kellar, Gregory J. Galvin, and William W. Burhop of the Office of Associate Chief Counsel (Corporate). However, other personnel from the Treasury Department and the IRS participated in their development.

Partial Withdrawal of Notices of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 1502 and 7805, § 1.1502–21(b)(2)(iv)(C) of the notice of proposed rulemaking (REG–140668–07) published in the **Federal Register** (77 FR 57451) on September 17, 2012 is withdrawn, and § 1.1502–21(b)(2)(iv)(B) of the notice of proposed rulemaking (REG–101652–10) published in the **Federal Register** (80 FR 33211) on June 11, 2015 is withdrawn.

List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.1502–1 is amended by adding paragraphs (k) and (l) to read as follows:

§ 1.1502–1 Definitions.

* * * * *

(k) *Nonlife insurance company.* The term *nonlife insurance company* means a member that is an insurance company other than a *life insurance company,* each as defined in section 816(a).

(l) *Applicability date.* Paragraph (k) of this section applies to taxable years beginning after [EFFECTIVE DATE OF FINAL RULE].

■ **Par. 3.** Section 1.1502–21 is amended by:

■ 1. Revising paragraph (a).Redesignating paragraph (a) introductory text as paragraph (a)(1).

■ 2. Revising paragraph (b)(1).

■ 3. In paragraph (b)(2)(iv)(A), removing the language ''shall equal the product of'' with the language ''equals the product obtained by multiplying'', and adding in its place ''such member'' with the language ''the member''.

■ 4. Revising paragraph (b)(2)(iv)(B).

■ 5. Adding paragraphs (b)(2)(iv)(C) through (E).

■ 6. Revising paragraph (b)(2)(v) introductory text.

■ 7. In paragraph (b)(2)(v), redesignating *Examples 1* through *3* as paragraphs (b)(2)(v)(A) through (C), respectively.

■ 8. In newly redesignated paragraphs (b)(2)(v)(A) through (C), redesignating paragraphs (b)(2)(v)(A)(i) and (ii) as paragraphs (b)(2)(v)(A)(*1*) and (*2*), paragraphs (b)(2)(v)(B)(i) and (ii) as paragraphs (b)(2)(v)(B)(*1*) and (*2*), and paragraphs (b)(2)(v)(C)(i) and (ii) as paragraphs (b)(2)(v)(C)(*1*) and (*2*).

■ 9. Adding paragraphs (b)(2)(v)(D) through (G).

■ 10. In paragraph (b)(3)(ii)(B), removing the language ''§ 1.1502–21(b)(3)(ii)(B)(2)'' and adding in its place ''§ 1.1502–21(b)(3)(ii)(B)''.

■ 11. Revising paragraph (b)(3)(ii)(C).

■ 12. Adding paragraph (b)(3)(ii)(D).

■ 13. Revising paragraph (c)(1)(i) introductory text.

■ 14. In paragraph (c)(1)(i)(C)(*2*), removing the language ''and''.

■ 15. In paragraph (c)(1)(i)(D), removing the language ''account.'' and adding in its place ''account; and''.

■ 16. Adding paragraph (c)(1)(i)(E).

■ 17. In paragraph (c)(1)(iii) introductory text, adding a new first sentence.

■ 18. In paragraph (c)(1)(iii), designating *Examples 1* through *5* as paragraphs (c)(1)(iii)(A) through (E), respectively.

■ 19. In newly redesignated paragraphs (c)(1)(iii)(A) through (E), redesignating paragraphs (c)(1)(iii)(A)(i) through (iii) as paragraphs (c)(1)(iii)(A)(*1*) through (*3*), paragraphs (c)(1)(iii)(B)(i) through (vi) as paragraphs (c)(1)(iii)(B)(*1*) through (*6*), paragraphs (c)(1)(iii)(C)(i) through (iii) as paragraphs (c)(1)(iii)(C)(*1*) through (*3*), paragraphs (c)(1)(iii)(D)(i) through (iv) as paragraphs (c)(1)(iii)(D)(*1*) through (*4*), and paragraphs (c)(1)(iii)(E)(i) through (v) as paragraphs (c)(1)(iii)(E)(*1*) through (*5*).

■ 20. In newly redesignated paragraph (c)(1)(iii)(C)(*2*), adding the language '', a taxable year that begins on January 1, 2021'' after the language ''at the beginning of Year 4''.

■ 21. Revising paragraphs (c)(1)(iii)(D)(*2*) through (*4*).

■ 22. Adding paragraph (c)(1)(iii)(D)(*5*).

■ 23. Revising paragraphs (c)(1)(iii)(E)(*2*) through (*5*).

■ 24. Adding paragraphs (c)(1)(iii)(E)(*6*) and (c)(1)(iii)(F).

■ 25. Revising paragraph (c)(2)(v).

■ 26. In paragraph (c)(2)(viii) introductory text, adding a new first sentence.

■ 27. In paragraph (c)(2)(viii), redesignating *Examples 1* through *4* as paragraphs (c)(2)(viii)(A) through (D), respectively.

■ 28. In newly redesignated paragraphs (c)(2)(viii)(A) through (D), redesignating paragraphs (c)(2)(viii)(A)(i) through (vii) as paragraphs (c)(2)(viii)(A)(*1*) through (*7*), paragraphs (c)(2)(viii)(B)(i) through (iv) as paragraphs (c)(2)(viii)(B)(*1*) through (*4*), paragraphs (c)(2)(viii)(C)(i) through (iii) as paragraphs (c)(2)(viii)(C)(*1*) through (*3*), and paragraphs (c)(2)(viii)(D)(i) and (ii) as paragraphs (c)(2)(viii)(D)(*1*) and (*2*).

■ 29. In newly redesignated paragraphs (c)(2)(viii)(A)(*3*) through (*7*), the first sentence of each, adding the language '', including the limitation under paragraph (c)(1)(i)(E) of this section'' after the language ''under paragraph (c) of this section''.

■ 30. In newly redesignated paragraph (c)(2)(viii)(B)(*1*), the first sentence, adding the language '', none of which is a nonlife insurance company'' after the language ''S, T, P and M''.

■ 31. In newly redesignated paragraph (c)(2)(viii)(B)(*1*), the fourth sentence, adding the language ''(a taxable year beginning after December 31, 2020)'' after the language ''Year 3''.

■ 32. Revising newly designated paragraph (c)(2)(viii)(B)(*3*).

■ 33. Redesignating newly redesignated paragraph (c)(2)(viii)(B)(*4*) as paragraph (c)(2)(viii)(B)(*5*).

■ 34. Adding a new paragraph (c)(2)(viii)(B)(*4*).

■ 35. Revising newly redesignated paragraph (c)(2)(viii)(B)(*5*).

■ 36. Adding paragraph (c)(2)(viii)(B)(*6*).

■ 37. In paragraph (g)(5), redesignating *Examples 1* through *9* as paragraphs (g)(5)(i) through (ix), respectively.

■ 38. In newly redesignated paragraphs (g)(5)(i) through (ix), redesignating paragraphs (g)(5)(i)(i) through (iv) as paragraphs (g)(5)(i)(A) through (D), paragraphs (g)(5)(ii)(i) through (iv) as paragraphs (g)(5)(ii)(A) through (D), paragraphs (g)(5)(iii)(i) through (iii) as paragraphs (g)(5)(iii)(A) through (C), paragraphs (g)(5)(iv)(i) through (iv) as paragraphs (g)(5)(iv)(A) through (D),

paragraphs (g)(5)(v)(i) through (iv) as paragraphs (g)(5)(v)(A) through (D), paragraphs (g)(5)(vi)(i) through (iv) as paragraphs (g)(5)(vi)(A) through (D), paragraphs (g)(5)(vii)(i) through (vi) as paragraphs (g)(5)(vii)(A) through (F), paragraphs (g)(5)(viii)(i) through (v) as paragraphs (g)(5)(viii)(A) through (E), and paragraphs (g)(5)(ix)(i) through (vii) as paragraphs (g)(5)(ix)(A) through (G).

■ 39. Revising paragraph (h)(9).

■ 40. Adding paragraph (h)(10).

The revisions and additions read as follows:

§ 1.1502–21 Net operating losses.

(a) *Consolidated net operating loss deduction*—(1) *In general.* Subject to any limitations under the Internal Revenue Code or this chapter (for example, the limitations under section 172(a)(2) and paragraph (a)(2) of this section), the consolidated net operating loss deduction (or CNOL deduction) for any consolidated return year is the aggregate of the net operating loss carryovers and carrybacks to the year. The net operating loss carryovers and carrybacks consist of—

(i) Any CNOLs (as defined in paragraph (e) of this section) of the consolidated group; and

(ii) Any net operating losses (or NOLs) of the members arising in separate return years.

(2) *Application of section 172 for computing net operating loss deductions*—(i) *Overview.* For purposes of § 1.1502–11(a)(2) (regarding a CNOL deduction), the rules of section 172 regarding the use of net operating losses are taken into account as provided by this paragraph (a)(2) in calculating the consolidated taxable income of a group for a particular consolidated return year. More specifically, the aggregate amount of net operating losses arising in taxable years beginning before January 1, 2018 (pre-2018 NOLs) carried to a particular consolidated return year beginning after December 31, 2020, is added to the group's post-2017 CNOL deduction limit (as determined under this paragraph (a)(2)) for such year for purposes of determining the total CNOL deduction allowed for such year. See section 172(a)(2)(A) and (B).

(ii) *Computation of the 80-percent limitation and special rule for nonlife insurance companies*—(A) *Determinations based on status of group members.* If a portion of a CNOL arising in a taxable year beginning after December 31, 2017 (post-2017 CNOL), is carried back or carried over to a consolidated return year beginning after December 31, 2020, whether the members of the group include nonlife insurance companies, other types of corporations, or both determines whether section 172(a) (including the limitation described in section 172(a)(2)(B) (80-percent limitation)), section 172(f), or both, apply to the group for the consolidated return year.

(B) *Determination of post-2017 CNOL deduction limit.* The amount of post-2017 CNOLs that may be absorbed by one or more members of the group in a consolidated return year beginning after December 31, 2020 (post-2017 CNOL deduction limit) is determined under paragraph (a)(2)(iii) of this section by applying section 172(a)(2)(B) (that is, the 80-percent limitation), section 172(f) (that is, the special rule for nonlife insurance companies), or both, to the group's consolidated taxable income for that year.

(C) *Inapplicability of 80-percent limitation.* The 80-percent limitation does not apply to CNOL deductions taken in taxable years beginning before January 1, 2021, or to CNOLs arising in taxable years beginning before January 1, 2018 (that is, pre-2018 CNOLs). See section 172(a).

(iii) *Computations under sections 172(a)(2)(B) and 172(f).* This paragraph (a)(2)(iii) provides rules for applying sections 172(f) and 172(a)(2)(B) to consolidated return years beginning after December 31, 2020 (that is, for computing the post-2017 CNOL deduction limit). Section 172(f) applies to income of nonlife insurance company members, whereas section 172(a)(2)(B) applies to income of members that are not nonlife insurance companies. Thus, this paragraph (a)(2)(iii) provides specific rules for groups with no nonlife insurance company members, only nonlife insurance company members, or a combination of nonlife insurance company members and other members.

(A) *Groups without nonlife insurance company members.* If no member of a group is a nonlife insurance company during a particular consolidated return year beginning after December 31, 2020, section 172(a)(2)(B) (that is, the 80-percent limitation) applies to all income of the group for that year. Therefore, the post-2017 CNOL deduction limit for the group for that year is the lesser of—

(*1*) The aggregate amount of post-2017 NOLs carried to that year; or

(*2*) The amount determined by multiplying—

(*i*) 80 percent, by

(*ii*) Consolidated taxable income for the group for that year (determined without regard to any deductions under sections 172, 199A, and 250) less the aggregate amount of pre-2018 NOLs carried to that year.

(B) *Groups comprised solely of nonlife insurance companies.* If a group is comprised solely of nonlife insurance companies during a particular consolidated return year beginning after December 31, 2020, section 172(f) applies to all income of the group for that year. Therefore, the post-2017 CNOL deduction limit for the group for that year equals consolidated taxable income less the aggregate amount of pre-2018 NOLs carried to that year.

(C) *Groups that include both nonlife insurance companies and other corporations*—(*1*) *General rule.* Except as provided in paragraph (a)(2)(iii)(C)(*5*) of this section, if a group has at least one member that is a nonlife insurance company and at least one member that is not a nonlife insurance company during a particular consolidated return year beginning after December 31, 2020, the post-2017 CNOL deduction limit for the group for that year equals the sum of the amounts determined under paragraphs (a)(2)(iii)(C)(*2*) and (*3*) of this section.

(*2*) *Residual income pool.* The amount determined under this paragraph (a)(2)(iii)(C)(*2*) is the lesser of—

(*i*) The aggregate amount of post-2017 NOLs carried to a consolidated return year beginning after December 31, 2020, or

(*ii*) Eighty percent of the consolidated taxable income of the group for that year (determined without regard to any income, gain, deduction, or loss of members that are nonlife insurance companies and without regard to any deductions under sections 172, 199A, and 250) (residual income pool) after subtracting the aggregate amount of pre-2018 NOLs carried to that year that are allocated to the residual income pool under paragraph (a)(2)(iii)(C)(*4*) of this section (that is, by applying the 80-percent limitation). See section 172(a)(2)(B).

(*3*) *Nonlife income pool.* The amount determined under this paragraph (a)(2)(iii)(C)(*3*) is the consolidated taxable income of the group for a consolidated return year beginning after December 31, 2020 (determined without regard to any income, gain, deduction, or loss of members included in the computation under paragraph (a)(2)(iii)(C)(*2*) of this section) (nonlife income pool) less the aggregate amount of pre-2018 NOLs carried to that year that are allocated to the nonlife income pool under paragraph (a)(2)(iii)(C)(*4*) of this section. See section 172(f).

(*4*) *Pro rata allocation of pre-2018 NOLs between pools of income.* For purposes of paragraphs (a)(2)(iii)(C)(*2*) and (*3*) of this section, the aggregate amount of pre-2018 NOLs carried to any particular consolidated return year beginning after December 31, 2020, is

prorated between the residual income pool and the nonlife income pool based on the relative amounts of positive income of those two pools. For example, if $30 of pre-2018 NOLs is carried over to a year in which the residual income pool contains $75 and the nonlife income pool contains $150, the residual income pool is allocated $10 of the pre-2018 NOLs ($30 × $75/($75 + $150), or $30 × ⅓), and the nonlife income pool is allocated the remaining $20 of pre-2018 NOLs ($30 × $150/($75 + $150), or $30 × ⅔).

(*5*) *Exception.* The post-2017 CNOL deduction limit for the group for a consolidated return year is determined under this paragraph (a)(2)(iii)(C)(*5*) if the amounts computed under paragraphs (a)(2)(iii)(C)(*2*) and (*3*) of this section for that year are not both positive.

(*i*) *Positive residual income pool and negative nonlife income pool.* This paragraph (a)(2)(iii)(C)(*5*)(*i*) applies if the amount computed under paragraph (a)(2)(iii)(C)(*2*) of this section for the residual income pool is positive and the amount computed under paragraph (a)(2)(iii)(C)(*3*) of this section for the nonlife income pool is negative. If this paragraph (a)(2)(iii)(C)(*5*)(*i*) applies, the post-2017 CNOL deduction limit for the group for a consolidated return year equals the lesser of the aggregate amount of post-2017 NOLs carried to that year, or 80 percent of the consolidated taxable income of the entire group (determined without regard to any deductions under sections 172, 199A, and 250) after subtracting the aggregate amount of pre-2018 NOLs carried to that year (that is, by applying the 80-percent limitation). See section 172(a)(2)(B).

(*ii*) *Positive nonlife income pool and negative residual income pool.* If the amount computed under paragraph (a)(2)(iii)(C)(*3*) of this section for the nonlife income pool is positive and the amount computed under paragraph (a)(2)(iii)(C)(*2*) of this section for the residual income pool is negative, the post-2017 CNOL deduction limit for the group for a consolidated return year equals the consolidated taxable income of the entire group less the aggregate amount of pre-2018 NOLs carried to that year. See section 172(f).

(b) * * *

(1) *Carryovers and carrybacks generally.* The net operating loss carryovers and carrybacks to a taxable year are determined under the principles of, and are subject to any limitations under, section 172 and this section. Thus, losses permitted to be absorbed in a consolidated return year generally are absorbed in the order of the taxable years in which they arose, and losses carried from taxable years ending on the same date, and which are available to offset consolidated taxable income for the year, generally are absorbed on a pro rata basis. In addition, except as otherwise provided in this section, the amount of any CNOL absorbed by the group in any year is apportioned among members based on the percentage of the CNOL eligible for carryback or carryover that is attributable to each member as of the beginning of the year. The percentage of the CNOL attributable to a member is determined pursuant to paragraph (b)(2)(iv)(B) of this section. Additional rules provided under the Internal Revenue Code or regulations also apply. See, for example, section 382(l)(2)(B) (if losses are carried from the same taxable year, losses subject to limitation under section 382 are absorbed before losses that are not subject to limitation under section 382). See paragraph (c)(1)(iii) of this section, Example 2, for an illustration of pro rata absorption of losses subject to a SRLY limitation.

(2) * * *

(iv) * * *

(B) *Percentage of CNOL attributable to a member*—(*1*) *In general.* Except as provided in paragraph (b)(2)(iv)(B)(*2*) of this section, the percentage of the CNOL for the consolidated return year attributable to a member equals the separate net operating loss of the member for the consolidated return year divided by the sum of the separate net operating losses for that year of all members having such losses for that year. For this purpose, the separate net operating loss of a member is determined by computing the CNOL by reference to only the member's items of income, gain, deduction, and loss, including the member's losses and deductions actually absorbed by the group in the consolidated return year (whether or not absorbed by the member).

(*2*) *Recomputed percentage.* If, for any reason, a member's portion of a CNOL is absorbed or reduced on a non-pro rata basis (for example, under § 1.1502–11(b) or (c), paragraph (b)(2)(iv)(C) of this section, § 1.1502–28, or § 1.1502–36(d), or as the result of a carryback to a separate return year), the percentage of the CNOL attributable to each member is recomputed. In addition, if a member with a separate net operating loss ceases to be a member, the percentage of the CNOL attributable to each remaining member is recomputed. The recomputed percentage of the CNOL attributable to each member equals the remaining CNOL attributable to the member at the time of the recomputation divided by the sum of the remaining CNOL attributable to all of the remaining members at the time of the recomputation. For purposes of this paragraph (b)(2)(iv)(B)(*2*), a CNOL that is permanently disallowed or eliminated is treated as absorbed.

(C) *Net operating loss carryovers and carrybacks*—(*1*) *General rules.* Subject to the rules regarding allocation of special status losses under paragraph (b)(2)(iv)(D) of this section—

(*i*) *Nonlife insurance companies.* The portion of a CNOL attributable to any members of the group that are nonlife insurance companies is carried back or carried over under the rules in section 172(b) applicable to nonlife insurance companies.

(*ii*) *Corporations other than nonlife insurance companies.* The portion of a CNOL attributable to any other members of the group is carried back or carried over under the rules in section 172(b) applicable to corporations other than nonlife insurance companies.

(*2*) *Recomputed percentage.* For rules governing the recomputation of the percentage of a CNOL attributable to each remaining member if any portion of the CNOL attributable to a member is carried back under section 172(b)(1)(B) or (C) and absorbed on a non-pro rata basis, see paragraph (b)(2)(iv)(B)(*2*) of this section.

(D) *Allocation of special status losses.* The amount of the group's CNOL that is determined to constitute a farming loss (as defined in section 172(b)(1)(B)) or any other net operating loss that is subject to special carryback or carryover rules (special status loss) is allocated to each member separately from the remainder of the CNOL based on the percentage of the CNOL attributable to the member, as determined under paragraph (b)(2)(iv)(B) of this section. This allocation is made without regard to whether a particular member actually incurred specific expenses or engaged in specific activities required by the special status loss provisions. This paragraph (b)(2)(iv)(D) applies only with regard to losses for which the special carryback or carryover rules are dependent on the type of expense generating the loss, rather than on the special status of the entity to which the loss is allocable. See section 172(b)(1)(C) and paragraph (b)(2)(iv)(C)(*1*)(*i*) of this section (applicable to losses of nonlife insurance companies). This paragraph (b)(2)(iv)(D) does not apply to farming losses incurred by a consolidated group in any taxable year beginning after December 31, 2017, and before January 1, 2021.

(E) *Coordination with rules for life-nonlife groups under § 1.1502–47.* For

groups that include at least one member that is a life insurance company and for which an election is in effect under section 1504(c)(2), see § 1.1502–47.

(v) *Examples.* For purposes of the examples in this paragraph (b)(2)(v), unless otherwise stated, all groups file consolidated returns, all corporations have calendar taxable years, all losses are farming losses within the meaning of section 172(b)(1)(B)(ii), all taxable years begin after December 31, 2020, the facts set forth the only corporate activity, value means fair market value and the adjusted basis of each asset equals its value, all transactions are with unrelated persons, and the application of any limitation or threshold under section 382 is disregarded. The principles of this paragraph (b) are illustrated by the following examples:

* * * * *

(D) *Example 4: Allocation of a CNOL arising in a consolidated return year beginning after December 31, 2020.* (*1*) P is the common parent of a consolidated group that includes S. Neither P nor S is a nonlife insurance company. The P group also includes nonlife insurance companies PC1, PC2, and PC3. In the P group's 2021 consolidated return year, all members except S have separate net operating losses, and the P group's CNOL in that year is $40. No member of the P group engages in farming activities. See section 172(b)(1)(B)(ii).

(*2*) Under paragraphs (b)(1) and (b)(2)(iv)(B)(*1*) of this section, for purposes of carrying losses to other taxable years, the P group's $40 CNOL is allocated pro rata among the group members that have separate net operating losses. Under paragraph (b)(2)(iv)(C) of this section, those respective portions of the CNOL attributable to PC1, PC2, and PC3 (that is, members that are nonlife insurance companies) are carried back to each of the two preceding taxable years and then carried over to each of the 20 subsequent taxable years. See section 172(b)(1)(C). The portion attributable to P (which is not a nonlife insurance company) may not be carried back but is carried over to future years. See section 172(b)(1)(A).

(E) *Example 5: Allocation of a CNOL arising in a consolidated return year beginning before January 1, 2021.* The facts are the same as in paragraph (b)(2)(v)(D)(*1*) of this section, except that the P group incurred the CNOL during the P group's 2020 consolidated return year. The allocation among the P group members of the CNOL described in paragraph (b)(2)(v)(D)(*2*) of this section would be the same. However, those respective portions of the CNOL attributable to PC1, PC2, and PC3 (that is, members that are nonlife insurance companies) will be carried back to each of the five preceding taxable years and then carried over to each of the 20 subsequent taxable years. See section 172(b)(1)(C) and section 172(b)(1)(D)(i). The portion attributable to P (which is not a nonlife insurance company) will be carried back to each of the five preceding taxable years and then carried over to future years. See section 172(b)(1)(A) and section 172(b)(1)(D)(i).

(F) *Example 6: CNOL deduction and application of section 172.* (*1*) P (a type of corporation other than a nonlife insurance company) is the common parent of a consolidated group that includes PC1 (a nonlife insurance company). P and PC1 were both incorporated in Year 1 (a year beginning after December 31, 2020). In Year 1, P and PC1 have separate taxable income of $20 and $25, respectively. As a result, the P group has Year 1 consolidated taxable income of $45. In Year 2, P has separate taxable income of $24, and PC1 has a separate taxable loss of $40. Thus, the P group has a Year 2 CNOL of $16. No member of the P group engages in farming activities. See section 172(b)(1)(B)(ii).

(*2*) Under paragraph (b)(2)(iv)(B) of this section, the P group's Year 2 CNOL is entirely attributable to PC1, a nonlife insurance company. Therefore, under section 172(b)(1)(C)(i), the P group may carry back to Year 1 all $16 of its Year 2 CNOL.

(*3*) Under paragraph (a)(2)(ii) of this section, the amount of the Year 2 CNOL that may be used by the P group in Year 1 is determined by taking into account the status (nonlife insurance company or other type of corporation) of the member that has separate taxable income composing in whole or in part the P group's consolidated taxable income. Because the P group includes both a nonlife insurance company member and a member that is not a nonlife insurance company, paragraph (a)(2)(iii)(C) of this section applies to determine the computation of the post-2017 CNOL deduction limit for the group for Year 1. Therefore, the 80-percent limitation is applied to the residual income pool, which consists of the taxable income of P, a type of corporation other than a nonlife insurance company. Under the 80-percent limitation, the amount of P's Year 1 income that may be offset by the P group's Year 2 CNOL is $16, which equals the lesser of the aggregate amount of post-2017 NOLs carried to Year 1 ($16), or 80 percent of the excess of P's taxable income for that year ($20) over the aggregate amount of pre-2018 NOLs allocable to P ($0), which also is $16 (80 percent × ($20 − $0)). See paragraph (a)(2)(iii)(C)(*2*) and (*4*) of this section. PC1 is a nonlife insurance company to which section 172(f), rather than the 80-percent limitation, applies. Therefore, the amount of PC1's Year 1 income that may be offset by the P group's Year 2 CNOL is $25, which equals the excess of PC1's taxable income for Year 1 ($25) over the aggregate amount of pre-2018 NOLs allocable to PC1 ($0). See paragraph (a)(2)(iii)(C)(*3*) and (*4*) of this section.

(*4*) Based on the analysis set forth in paragraph (b)(2)(v)(F)(*3*) of this section, the P group's post-2017 CNOL deduction limit for Year 1 is $41 ($16 + $25). Because the P group's Year 2 CNOL is $16, this amount would offset the Year 1 income of the P group.

(G) *Example 7: Pre-2018 and post-2017 CNOLs.* (*1*) P is the common parent of a consolidated group. No member of the P group is a nonlife insurance company or is engaged in a farming business, and no member of the P group has a loss that is subject to a SRLY limitation. The P group had the following consolidated taxable income or CNOL for the following taxable years:

TABLE 1 TO PARAGRAPH (b)(2)(v)(G)(*1*)

2014	2015	2016	2017	2018	2019	2020	2021
$60	$0	$0	($90)	$30	($40)	($100)	$120

(*2*) Under section 172(a)(1), all $30 of the P group's 2018 consolidated taxable income is offset by the 2017 CNOL carryover without limitation. The remaining $60 of the P group's 2017 CNOL is carried over to 2021 under section 172(b)(1)(A)(ii)(I).

(*3*) Under section 172(b)(1)(D)(i)(I), the P group's $40 2019 CNOL is carried back to the five taxable years preceding the year of the loss. Thus, the P group's $40 2019 CNOL is carried back to offset $40 of its 2014 consolidated taxable income.

(*4*) Under section 172(a)(2) and paragraph (a)(2)(i) of this section, the P group's CNOL deduction for 2021 equals the aggregate amount of pre-2018 NOLs carried to 2021 plus the group's post-2017 CNOL deduction limit. The P group has $60 of pre-2018 NOLs carried to 2021 ($90 − $30). Because no member of the P group is a nonlife insurance company, paragraph (a)(2)(iii)(A) of this section applies to determine the computation of the group's post-2017 CNOL deduction limit for 2021. See also section 172(a)(2)(B). Therefore, the post-2017 CNOL deduction limit of the P group for 2021 is $48, which equals the lesser of the aggregate amount of post-2017 NOLs carried to 2021 ($100), or 80 percent of the excess of the P group's consolidated taxable income for that year computed without regard to any deductions under sections 172, 199A, and 250 ($120) over the aggregate amount of pre-2018 NOLs carried to 2021 ($60) (that is, 80 percent × $60). Thus, the P group's CNOL deduction for 2021 equals $108 ($60 pre-2018 NOLs carried to 2021 + $48 post-2017 CNOL deduction limit). See section 172(a)(2) and paragraph (a)(2)(i) of this section. The P group offsets $108 of its $120 of 2021 consolidated taxable income, resulting in $12 of consolidated taxable income in 2021. The remaining $52 of the P group's 2020 CNOL ($100 − $48) is carried over to future taxable years. See section 172(b)(1)(A)(ii)(II).

(3) * * *

(ii) * * *

(C) [The text of proposed § 1.1502–21(b)(3)(ii)(C) is the same as the text of § 1.1502–21T(b)(3)(ii)(C) published elsewhere in this issue of the **Federal Register**.]

(D) [The text of proposed § 1.1502–21(b)(3)(ii)(D) is the same as the text of § 1.1502–21T(b)(3)(ii)(D) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(c) * * *

(1) * * *

(i) *General rule.* Except as provided in paragraph (g) of this section (relating to an overlap with section 382), the aggregate of the net operating loss carryovers and carrybacks of a member (SRLY member) arising (or treated as arising) in SRLYs (SRLY NOLs) that are included in the CNOL deductions for all consolidated return years of the group under paragraph (a) of this section may not exceed the aggregate consolidated taxable income for all consolidated return years of the group determined by reference to only the member's items of income, gain, deduction, and loss (cumulative register). For this purpose—

* * * * *

(E) If a limitation on the amount of taxable income that may be offset under section 172(a) (see paragraph (a)(2) of this section) applies in a taxable year to a member whose carryovers or carrybacks are subject to a SRLY limitation (SRLY member), the amount of net operating loss subject to a SRLY limitation that is available for use by the group in that year is limited to the percentage of the balance in the cumulative register that would be available for offset under section 172(a) if the SRLY member filed a separate return and reported as taxable income in that year the amount contained in the cumulative register. For example, assume that a consolidated group has a SRLY member that is a corporation other than a nonlife insurance company, and that the SRLY member has a SRLY NOL that arose in a taxable year beginning after December 31, 2017 (post-2017 NOL). The group's consolidated taxable income for a consolidated return year beginning after December 31, 2020 is $200, but the cumulative register has a positive balance of only $120 (and no other net operating loss carryovers or carrybacks are available for the year). Because the SRLY limitation would be $96 ($120 × 80 percent), only $96 of SRLY loss may be used, rather than $160 ($200 × 80 percent). In addition, to the extent that this paragraph (c)(1)(i)(E) applies, the cumulative register is decreased by the full amount of income required under section 172(a) to support the amount of SRLY NOL absorption. See, for example, paragraph (c)(1)(iii)(A) and (B) of this section for examples illustrating the application of this rule.

* * * * *

(iii) * * * For purposes of the examples in this paragraph (c)(1)(iii), no corporation is a nonlife insurance company and, unless otherwise specified, all taxable years begin after December 31, 2020, and all CNOLs arise in taxable years beginning after December 31, 2020. * * *

(A) * * *

(*2*) T's $100 net operating loss carryover from Year 1 arose in a SRLY. See § 1.1502–1(f)(2)(iii). P's acquisition of T was not an ownership change as defined by section 382(g). Thus, the $100 net operating loss carryover is subject to the SRLY limitation in paragraph (c)(1) of this section. The positive balance of the cumulative register of T for Year 2 equals the consolidated taxable income of the P group determined by reference to only T's items, or $70. However, due to the 80-percent limitation and the application of paragraph (c)(1)(i)(E) of this section, the SRLY limitation is $56 ($70 × 80 percent). No losses from equivalent years are available, and the P group otherwise has sufficient consolidated taxable income to support the CNOL deduction ($300 × 80 percent = $240). Therefore, $56 of the SRLY net operating loss is included under paragraph (a) of this section in the P group's CNOL deduction for Year 2. Although only $56 is absorbed, the cumulative register of T is reduced by $70, the full amount of income necessary to support the $56 deduction after taking into account the 80-percent limitation ($70 × 80 percent = $56).

* * * * *

(B) * * *

(*2*) P's Year 1, Year 2, and Year 3 are not SRLYs with respect to the P group. See § 1.1502–1(f)(2)(i). Thus, P's $40 net operating loss arising in Year 1 and $120 net operating loss arising in Year 3 are not subject to the SRLY limitation under paragraph (c) of this section. Although the P group has $160 of taxable income in Year 4, the 80-percent limitation reduces the P group's net operating loss deduction in that year to $128 ($160 × 80 percent). Under the principles of section 172, paragraph (b) of this section requires that P's $40 loss arising in Year 1 be the first loss absorbed by the P group in Year 4. Absorption of this loss leaves $88 ($128 − $40) of the P group's Year 4 consolidated taxable income available for offset by loss carryovers.

(*3*) T's Year 2 and Year 3 are SRLYs with respect to the P group. See § 1.1502–1(f)(2)(ii). P's acquisition of T was not an ownership change as defined by section 382(g). Thus, T's $50 net operating loss arising in Year 2 and $60 net operating loss arising in Year 3 are subject to the SRLY limitation. The positive balance of the cumulative register of T for Year 4 equals the P group's consolidated taxable income determined by reference to only T's items, or $70. Under paragraph (c)(1)(i)(E) of this section, after taking into account the 80-percent limitation, T's SRLY limitation is $56 ($70 × 80 percent). Therefore, the P group can absorb up to $56 of T's SRLY net operating losses in Year 4. Under the principles of section 172, T's $50 SRLY net operating loss from Year 2 is included under paragraph (a) of this section in the P group's CNOL deduction for Year 4. After absorption of this loss, under paragraph (c)(1)(i) of this section, $6 of SRLY limit remains in Year 4 ($56 − $50). Further, the total amount of Year 4 consolidated taxable income available for offset by other loss carryovers under section 172(a) is $38 ($88 − $50).

(*4*) P and T each carry over net operating losses to Year 4 from a taxable year ending on the same date (that is, Year 3). The losses carried over from Year 3 total $180. However, the remaining Year 4 SRLY limit is $6. Therefore, the total amount of loss available for absorption is $126 ($120 allocable to P and $6 allocable to T). Under paragraph (b) of this section, the losses available for absorption that are carried over from Year 3 are absorbed on a pro rata basis, even though one loss arises in a SRLY and the other loss does not. Thus, $36.19 of P's Year 3 loss is absorbed ($120/($120 + $6)) × $38 = $36.19. In addition, $1.81 of T's Year 3 loss is absorbed ($6/($120 + $6)) × $38 = $1.81.

(*5*) After deduction of T's SRLY net operating losses in Year 4, the cumulative register of T is adjusted pursuant to paragraph (c)(1)(i)(E) of this section. A total of $51.81 of SRLY net operating losses were absorbed in Year 4 ($50 + $1.81). After taking into account the 80-percent limitation, the amount of income necessary to support this deduction is $64.76 ($64.76 × 80 percent = $51.81). Therefore, the cumulative register of T is decreased by $64.76, and $5.24 remains in the cumulative register ($70 − $64.76).

(*6*) P carries its remaining $83.81 ($120 − $36.19) Year 3 net operating loss and T carries its remaining $58.19 ($60 − $1.81) Year 3 net operating loss over to Year 5. Assume that, in Year 5, the P group has $90 of consolidated taxable income (computed without regard to the CNOL deduction). The P group's consolidated taxable income determined by reference to only T's items is a CNOL of $4. Therefore, the positive balance of the cumulative register of T in Year 5 equals $1.24 ($5.24 − $4). Under paragraph (c)(1)(i)(E) of this section, after taking into account the 80-percent limitation, T's SRLY limitation is $0.99 ($1.24 × 80 percent). For Year 5, the total amount of Year 5 consolidated taxable income available for offset by loss carryovers as a result of the 80-percent limitation is $72 ($90 × 80 percent). Under paragraph (b) of this section, the losses carried over from Year 3 are absorbed on a pro rata basis, even though one loss arises in a SRLY and the other loss does not. Therefore, $71.16 of P's Year 3 loss is absorbed (($83.81/($83.81 + $0.99)) × $72 = $71.16). In addition, $0.83 of T's Year 3 losses is absorbed (($0.99/($83.81 + $0.99)) × $72 = $0.83).

* * * * *

(D) * * *

(*2*) Under § 1.1502–15(a), T's $100 of ordinary loss in Year 3 constitutes a built-in loss that is subject to the SRLY limitation under paragraph (c) of this section. The amount of the limitation is determined by treating the deduction as a net operating loss carryover from a SRLY. The built-in loss is therefore subject to both a SRLY limitation and the 80-percent limitation for Year 3. The built-in loss is treated as a net operating loss carryover solely for purposes of determining the extent to which the loss is not allowed by reason of the SRLY limitation, and for all other purposes the loss remains a loss arising in Year 3. See § 1.1502–21(c)(1)(i)(D). Consequently, under paragraph (b) of this section, the built-in loss is absorbed by the P group before the net operating loss carryover from Year 1 is absorbed. The positive balance of the cumulative register of T for Year 3 equals the P group's consolidated taxable income determined by reference to only T's items, or $60. Under paragraph (c)(1)(i)(E) of this section, after taking into account the 80-percent limitation, the SRLY limitation for Year 3 is $48 ($60 × 80 percent). Therefore, $48 of the built-in loss is absorbed by the P group. None of T's $100 SRLY net operating loss carryover from Year 1 is allowed.

(*3*) After deduction of T's $48 SRLY built-in loss in Year 4, the cumulative register of T is adjusted pursuant to paragraph (c)(1)(i)(E) of this section. After taking into account the 80-percent limitation, the amount of income necessary to support this deduction is $60 ($60 × 80 percent = $48). Therefore, the cumulative register of T is decreased by $60, and zero remains in the cumulative register ($60 − $60).

(*4*) Under § 1.1502–15(a), the $52 balance of the built-in loss that is not allowed in Year 3 because of the SRLY limitation and the 80-percent limitation is treated as a $52 net operating loss arising in Year 3 that is subject to the SRLY limitation because, under paragraph (c)(1)(ii) of this section, Year 3 is treated as a SRLY. The built-in loss is carried to other years in accordance with the rules of paragraph (b) of this section. The positive balance of the cumulative register of T for Year 4 equals $40 (zero from Year 3 + $40). Under paragraph (c)(1)(i)(E) of this section, after taking into account the 80-percent limitation, the SRLY limitation for Year 4 is $32 ($40 × 80 percent). Therefore, under paragraph (c) of this section, $32 of T's $100 net operating loss carryover from Year 1 is included in the CNOL deduction under paragraph (a) of this section in Year 4.

(*5*) After deduction of T's $32 SRLY net operating loss in Year 4, the cumulative register of T is adjusted pursuant to paragraph (c)(1)(i)(E) of this section. After taking into account the 80-percent limitation, the amount of income necessary to support this deduction is $40 ($40 × 80 percent = $32). Therefore, the cumulative register is decreased by $40, and zero remains in the cumulative register ($40 − $40).

(E) * * *

(*2*) For Year 2, the P group computes separate SRLY limits for each of T's SRLY carryovers from Year 1. The group determines its ability to use its capital loss carryover before it determines its ability to use its ordinary loss carryover. Under section 1212, because the P group has no Year 2 capital gain, it cannot absorb any capital losses in Year 2. T's Year 1 net capital loss and the P group's Year 2 consolidated net capital loss (all of which is attributable to T) are carried over to Year 3.

(*3*) The P group's ability to deduct net operating losses in Year 2 is subject to the 80-percent limitation, based on the P group's consolidated taxable income for the year. Thus, the group's limitation for Year 2 is $72 ($90 × 80 percent). However, use of the Year 1 net operating loss also is subject to the SRLY limitation. The positive balance of the cumulative register of T applicable to SRLY net operating losses for Year 2 equals the P group's consolidated taxable income determined by reference to only T's items, or $60. Under paragraph (c)(1)(i)(E) of this section, after taking into account the 80-percent limitation, the SRLY limitation for Year 2 is $48 ($60 × 80 percent). Therefore, only $48 of T's Year 1 SRLY net operating loss is absorbed by the P group in Year 2. T carries over its remaining $52 of its Year 1 loss to Year 3.

(*4*) After deduction of T's SRLY net operating losses in Year 2, the net operating loss cumulative register is adjusted pursuant to paragraph (c)(1)(i)(E) of this section. The P group deducted $48 of T's SRLY net operating losses in Year 2. After taking into account the 80-percent limitation, the amount of taxable income necessary to support this deduction is $60 ($60 × 80 percent = $48). Therefore, the net operating loss cumulative register of T is decreased by $60, and zero remains in the net operating loss cumulative register ($60 − $60).

(*5*) For Year 3, the P group again computes separate SRLY limits for each of T's SRLY carryovers from Year 1. The group has consolidated net capital gain (without taking into account a net capital loss carryover deduction) of $30. Under § 1.1502–22(c), the aggregate amount of T's $50 capital loss carryover from Year 1 that is included in computing the P group's consolidated net capital gain for all years of the group (in this case, Years 2 and 3) may not exceed $30 (the aggregate consolidated net capital gain computed by reference only to T's items, including losses and deductions actually absorbed (that is, $30 of capital gain in Year 3)). Thus, the P group may include $30 of T's Year 1 capital loss carryover in its computation of consolidated net capital gain for Year 3, which offsets the group's capital gains for Year 3. T carries over its remaining $20 of its Year 1 capital loss to Year 4. Therefore, the capital loss cumulative register of T is decreased by $30, and zero remains in the capital loss cumulative register ($30 − $30). Further, because the net operating loss cumulative register includes all taxable income of T included in the P group, as well as all absorbed losses of T (including capital items), a zero net increase occurs in the net operating loss cumulative register. The P group carries over the Year 2 consolidated net capital loss to Year 4.

(*6*) The P group's ability to deduct net operating losses in Year 3 is subject to the 80-percent limitation, based on the P group's consolidated taxable income for the year. Thus, the P group's taxable income for Year 3 that can be offset, before use of net operating losses, is $40 (80 percent × the sum of zero capital gain, after use of the capital loss carryover, plus $50 of ordinary income). However, use of the Year 1 net operating loss also is subject to the SRLY limitation. The positive balance of the cumulative register of T applicable to SRLY net operating losses for Year 3 equals the P group's consolidated taxable income determined by reference only to T's items, or $40. This amount equals the sum obtained by adding the zero carryover from Year 2, a net inclusion of zero from capital items implicated in Year 3 ($30 − $30), and $40 of taxable income in Year 3. Under paragraph (c)(1)(i)(E) of this section, after taking into account the 80-percent limitation, the SRLY limitation for Year 3 is $32 ($40 × 80 percent). Therefore, only $32 of the Year 1 net operating loss is absorbed by the P group in Year 3. T carries over its remaining $20 of its Year 1 loss to Year 4.

(F) *Example 6: Pre-2018 NOLs and post-2017 NOLs.* (*1*) Individual A owns P. On January 1, 2017, A forms T. P and T are calendar-year taxpayers. In 2017, T sustains a $100 net operating loss that is carried over. During 2018, 2019, and 2020, T deducts a total of $90 of its 2017 net operating loss against its taxable income, and T carries over the remaining $10 of its 2017 net operating loss. In 2021, T sustains a net operating loss of $50. On December 31, 2021, P acquires all the stock of T, and T becomes a member of the P group. The P group has $300 of consolidated taxable income in 2022 (computed without regard to the CNOL deduction). Such consolidated taxable income would be $70 if determined by reference to only T's items. The P group has no other SRLY net operating loss carryovers or CNOL carryovers.

(*2*) T's remaining $10 of net operating loss carryover from 2017 and its $50 net operating loss carryover from 2021 are both SRLY losses in the P group. See § 1.1502–1(f)(2)(iii). P's acquisition of T was not an ownership change as defined by section 382(g). Thus, T's net operating loss carryovers are subject to the SRLY limitation in paragraph (c)(1) of this section. The SRLY limitation for the P group's 2022 consolidated return year is consolidated taxable income determined by reference to only T's items, or $70.

(*3*) Because T's oldest (2017) carryover was sustained in a year beginning before January 1, 2018, its use is not subject to limitation under section 172(a)(2)(B). Therefore, all $10 of T's 2017 SRLY net operating loss (that is, a pre-2018 NOL) is included under paragraph (a) of this section in the P group's CNOL deduction for 2022. After deduction of T's $10 SRLY net operating loss from 2017, the cumulative register of T is reduced on a dollar-for-dollar basis, pursuant to paragraph (c)(1)(i) of this section. Therefore, the cumulative register of T is decreased by $10, and $60 remains in the cumulative register ($70 − $10).

(*4*) The P group's deduction of T's 2021 net operating loss is subject to both a SRLY limitation and the 80-percent limitation under section 172(a)(2)(B). Therefore, the total limitation on the use of T's 2021 net operating loss in the P group is $48 (the

remaining cumulative register of $60 × 80 percent). No losses from equivalent years are available, and the P group otherwise has sufficient consolidated taxable income to support the CNOL deduction ($290 × 80 percent = $232). Therefore, $48 of T's 2021 SRLY net operating loss is included under paragraph (a) of this section in the P group's CNOL deduction for 2022. The remaining $2 of T's 2021 SRLY net operating loss ($50 − $48) is carried over to the P group's 2023 consolidated return year.

(*5*) After deduction of T's $48 SRLY NOL in 2022, the cumulative register of T is adjusted pursuant to paragraph (c)(1)(i)(E) of this section. After taking into account the 80-percent limitation, the amount of income necessary to support this deduction is $60 ($60 × 80 percent = $48). Therefore, the cumulative register of T is decreased by $60, and zero remains in the cumulative register ($60 − $60).

(2) * * *

(v) *Coordination with other limitations.* This paragraph (c)(2) does not allow a net operating loss to offset income to the extent inconsistent with other limitations or restrictions on the use of losses, such as a limitation based on the nature or activities of members. For example, a net operating loss may not offset income in excess of any limitations under section 172(a) and paragraph (a)(2) of this section. Additionally, any dual consolidated loss may not reduce the taxable income to an extent greater than that allowed under section 1503(d) and §§ 1.1503(d)–1 through 1.1503(d)–8. See also § 1.1502–47(k) (relating to preemption of rules for life-nonlife groups).

* * * * *

(viii) * * * For purposes of the examples in this paragraph (c)(2)(viii), no corporation is a nonlife insurance company or has any farming losses. * * *

* * * * *

(B) * * *

(*3*) In Year 4, the M group has $10 of consolidated taxable income (computed without regard to the CNOL deduction for Year 4). That consolidated taxable income would be $45 if determined by reference only to the items of P, S, and T, the members included in the SRLY subgroup with respect to P's loss carryover. Therefore, the positive balance of the cumulative register of the P SRLY subgroup for Year 4 equals $45 and, due to the application of the 80-percent limitation under paragraph (c)(2)(v) of this section, the SRLY subgroup limitation under this paragraph (c)(2) is $36 ($45 × 80 percent). However, the M group has only $10 of consolidated taxable income in Year 4. Thus, due to the 80-percent limitation and the application of paragraph (b)(1) of this section, the M group's deduction of all net operating losses in Year 4 is limited to $8 ($10 × 80 percent). As a result, the M group deducts $8 of P's SRLY net operating loss carryover, and the remaining $37 is carried over to Year 5.

(*4*) After deduction of $8 of P's SRLY net operating loss in Year 4, the cumulative register of the P SRLY subgroup is adjusted pursuant to paragraph (c)(1)(i)(E) of this section. After taking into account the 80-percent limitation, the amount of income necessary to support this deduction is $10 ($10 × 80 percent = $8). Therefore, the cumulative register of the P SRLY subgroup is decreased by $10, and $35 remains in the cumulative register ($45 − $10).

(*5*) In Year 5, the M group has $100 of consolidated taxable income (computed without regard to the CNOL deduction for Year 5). None of P, S, or T has any items of income, gain, deduction, or loss in Year 5. Although the members of the P SRLY subgroup do not contribute to the $100 of consolidated taxable income in Year 5, the positive balance of the cumulative register of the P SRLY subgroup for Year 5 is $35 and, due to the application of the 80-percent limitation under paragraph (c)(2)(v) of this section, the SRLY subgroup limitation under this paragraph (c)(2) is $28 ($35 × 80 percent). Because of the 80-percent limitation and the application of paragraph (b)(1) of this section, the M group's deduction of net operating losses in Year 5 is limited to $80 ($100 × 80 percent). Because the $28 of net operating loss available to be absorbed is less than 80 percent of the M group's consolidated taxable income, $28 of P's SRLY net operating loss is absorbed in Year 5, and the remaining $9 ($37 − $28) is carried over to Year 6.

(*6*) After deduction of $28 of P's SRLY net operating loss in Year 5, the cumulative register of the P SRLY subgroup is adjusted pursuant to paragraph (c)(1)(i)(E) of this section. After taking into account the 80-percent limitation, the amount of income necessary to support this deduction is $35 ($35 × 80 percent = $28). Therefore, the cumulative register of the P SRLY subgroup is decreased by $35, and zero remains in the cumulative register ($35 − $35).

* * * * *

(h) * * *

(9) [The text of proposed § 1.1502–21(h)(9) is the same as the text of § 1.1502–21T(h)(9) published elsewhere in this issue of the **Federal Register**.]

(10) The rules of paragraphs (a), (b)(1), (b)(2)(iv), and (c)(1)(i)(E) of this section apply to losses arising in taxable years beginning after [the date the Treasury decision adopting these rules as final regulations is published in the **Federal Register**].

■ **Par. 4.** Section 1.1502–47 is amended by:

■ 1. Revising paragraphs (a)(2)(i) and (ii).
■ 2. Removing paragraph (a)(3).
■ 3. Redesignating paragraph (a)(4) as paragraph (a)(3).
■ 4. Removing paragraph (j).
■ 5. Redesignating paragraph (n) as paragraph (j).
■ 6. Redesignating paragraph (b) as paragraph (n).
■ 7. Redesignating paragraph (t) as paragraph (n)(3).
■ 8. Removing paragraph (c).
■ 9. Redesignating paragraph (d) as paragraph (b).
■ 10. Revising newly redesignated paragraph (b)(1).
■ 11. Removing newly redesignated paragraph (b)(2).
■ 12. Redesignating newly redesignated paragraphs (b)(3) through (14) as paragraphs (b)(2) through (13), respectively.
■ 13. Revising newly redesignated paragraphs (b)(2), (3), (4), (9), (10), and (12).
■ 14. In newly redesignated paragraph (b)(13), designating *Examples 1* through *14* as paragraphs (b)(13)(i) through (xiv), respectively.
■ 15. In newly redesignated paragraph (b)(13)(i), adding a new last sentence.
■ 16. Revising newly redesignated paragraph (b)(13)(ii).
■ 17. Removing newly redesignated paragraph (b)(13)(xiv).
■ 18. Redesignating paragraph (e) as paragraph (c).
■ 19. Removing newly redesignated paragraphs (c)(4) and (5).
■ 20. Redesignating paragraph (c)(6) as paragraph (c)(4).
■ 21. Redesignating paragraph (f) as paragraph (d).
■ 22. Revising newly redesignated paragraph (d)(5).
■ 23. Removing the last sentence of newly redesignated paragraph (d)(6).
■ 24. Removing newly redesignated paragraph (d)(7)(ii).
■ 25. Redesignating paragraph (d)(7)(iii) as paragraph (d)(7)(ii) and revising it.
■ 26. Redesignating paragraph (g) as paragraph (e).
■ 27. In newly redesignated paragraph (e)(2), removing the language ''partial'' each place it appears.
■ 28. Removing newly redesignated paragraph (e)(3).
■ 29. Redesignating paragraph (h) as paragraph (f).
■ 30. Revising newly redesignated paragraph (f)(2)(iii).
■ 31. In newly designated paragraph (f)(2)(v), removing the language ''partial'' each place it appears.
■ 32. In newly designated paragraph (f)(2)(v), adding a new last sentence.
■ 33. Revising newly designated paragraph (f)(2)(vi) and (vii).
■ 34. Removing newly designated paragraph (f)(3).
■ 35. Redesignating newly designated paragraph (f)(4) as paragraph (f)(3).
■ 36. Revising newly redesignated paragraph (f)(3)(ii).
■ 37. Adding a new paragraph (g).
■ 38. Redesignating paragraph (k)(5) introductory text as paragraph (g)(3)(ii), and redesignating paragraphs (k)(5)(i) through (iv) as paragraphs (g)(3)(ii)(A) through (D), respectively.
■ 39. Removing newly redesignated paragraphs (g)(3)(ii)(C) and (D).
■ 40. Removing paragraphs (k) and (l).
■ 41. Redesignating paragraph (m) as paragraph (h).
■ 42. In newly redesignated paragraph (h), removing the language ''partial'' each place it appears.

■ 43. In newly redesignated paragraph (h)(2)(ii), adding a new last sentence.
■ 44. In newly redesignated paragraph (h)(3)(iv), adding a new last sentence.
■ 45. In newly redesignated paragraph (h)(3)(ix), removing the last two sentences.
■ 46. Removing newly redesignated paragraph (h)(4).
■ 47. Redesignating newly redesignated paragraph (h)(5) as paragraph (h)(4).
■ 48. Revising newly redesignated paragraph (h)(4) introductory text.
■ 49. In newly redesignated paragraph (h)(4), redesignating *Examples 1* through *6* as paragraphs (h)(4)(i) through (vi).
■ 50. Revising newly designated paragraphs (h)(4)(ii) and (iii).
■ 51. Removing newly designated paragraphs (h)(4)(v) and (vi).
■ 52. In newly redesignated paragraph (j)(2)(iii), removing the language ‘‘, and ‘‘section 812(b)(3)’’ and adding in its place ‘‘section 172(b)(3)(C)’’.
■ 53. Removing newly redesignated paragraph (j)(2)(v).
■ 54. Redesignating newly redesignated paragraph (j)(2)(vi) as paragraph (j)(2)(v).
■ 55. Revising newly redesignated paragraph (j)(3).
■ 56. In newly redesignated paragraph (n)(3), removing the language ‘‘Effective/applicability date’’ and adding the language ‘‘Filing requirements effective dates’’ in its place.
■ 57. Adding paragraph (n)(4).
■ 58. Removing paragraphs (o) and (p).
■ 59. Redesignating paragraphs (q), (r), and (s) as paragraphs (k), (l), and (m), respectively.
■ 59. In the following table, for each section designated or redesignated under these proposed regulations (as indicated in the second column), removing the language in the third column and adding the language in the fourth column with the frequency indicated in the fifth column:

Paragraph	Redesignation	Remove	Add	Frequency
1.1502–47(a)(1)	N/A	section 802 or 821 (relating respectively to life insurance companies and to certain mutual insurance companies).	section 801 (relating to life insurance companies).	Once.
1.1502–47(a)(1)	N/A	life insurance companies and mutual insurance companies may.	life insurance companies may	Once.
1.1502–47(a)(1)	N/A	composition and its consolidated tax.	composition, its consolidated taxable income (or loss), and its consolidated tax.	Once.
1.1502–47(a)(4)	1.1502–47(a)(3)	§§ 1.1502–1 through 1.1502–80.	§§ 1.1502–0 through 1.1502–100.	Once.
1.1502–47(a)(4)	1.1502–47(a)(3)	844	848	Once.
1.1502–47(b)	1.1502–47(n)	Effective dates	Effective/applicability dates	Once.
1.1502–47(b)(1)	1.1502–47(n)(1)	paragraph (b)(2)	paragraph (n)(2) and (3)	Once.
1.1502–47(b)(2)(i)	1.1502–47(n)(2)(i)	Paragraph (d)(12)(v)	Paragraph (b)(11)(v)	Once.
1.1502–47(d)(12)(i)(A), (d)(12)(i)(C), (d)(12)(i)(D), (d)(12)(iii), (d)(12)(iv), (d)(12)(v), (d)(12)(v)(B), (d)(12)(v)(C), (d)(12)(v)(D), (d)(12)(vi), (d)(12)(vii), and (d)(12)(viii)(F).	1.1502–47(b)(11)(i)(A), (b)(11)(i)(C), (b)(11)(i)(D), (b)(11)(iii), (b)(11)(iv), (b)(11)(v), (b)(11)(v)(B), (b)(11)(v)(C), (b)(11)(v)(D), (b)(11)(vi), (b)(11)(vii), and (b)(11)(viii)(F), respectively.	(d)(12)	(b)(11)	Each place it appears.
1.1502–47(d)(12)(iii)	1.1502–47(b)(11)(iii)	subdivision (iii)	paragraph (b)(11)(iii)	Once.
1.1502–47(d)(12)(iv)	1.1502–47(b)(11)(iv)	subdivision (iv)	paragraph (b)(11)(iv)	Once.
1.1502–47(d)(12)(v)(B)	1.1502–47(b)(11)(v)(B)	*(i.e.,* sections 11, 802, 821, or 831).	(for example, section 11, section 801, or section 831).	Once.
1.1502–47(d)(12)(vi)	1.1502–47(b)(11)(vi)	subdivision (vi)	paragraph (b)(11)(vi)	Once.
1.1502–47(d)(12)(vii)	1.1502–47(b)(11)(vii)	return year and even	return year even	Once.
1.1502–47(d)(12)(viii)(A)	1.1502–47(b)(11)(viii)(A)	*(i.e.,* total reserves in section 801(c)).	(that is, total reserves in section 816(c), as modified by section 816(h)).	Once.
1.1502–47(d)(12)(viii)(D) and (F).	1.1502–47(b)(11)(viii)(D) and (F), respectively.	subdivision (viii)	paragraph (b)(11)(viii)	Once.
1.1502–47(d)(14)	1.1502–47(b)(13)	*Illustrations*	*Examples*	Once.
1.1502–47(d)(14)	1.1502–47(b)(13)	paragraph (d)	paragraph (b)	Once.
1.1502–47(d)(14), Example 1	1.1502–47(b)(13)(i)	1913	2012	Once.
1.1502–47(d)(14), Examples 2 through 4, 8, 10, and 12.	1.1502–47(b)(13)(ii) through (iv), (viii), (x), and (xii), respectively.	1974	2012	Each place it appears.
1.1502–47(d)(14), Examples 1 through 3.	1.1502–47(b)(13)(i) through (iii), respectively.	1980	2018	Each place it appears.
1.1502–47(d)(14), Examples 1 through 5 and 8 through 13.	1.1502–47(b)(13)(i) through (v) and (viii) through (xiii), respectively.	1982	2020	Each place it appears.
1.1502–47(d)(14), Examples 5 through 7 and 9.	1.1502–47(b)(13)(v) through (vii) and (ix), respectively.	1983	2021	Each place it appears.
1.1502–47(d)(14), Examples 2 through 5 and 8 through 12.	1.1502–47(b)(13)(ii) through (v) and (viii) through (xii), respectively.	(d)(12)	(b)(11)	Each place it appears.
1.1502–47(d)(14), Examples 2, 3, and 12.	1.1502–47(b)(13)(ii), (iii), and (xii), respectively.	stock casualty	nonlife insurance	Each place it appears.

Paragraph	Redesignation	Remove	Add	Frequency
1.1502–47(d)(14), Example 3	1.1502–47(b)(13)(iii)	subparagraph (d)(12)(v)(B) and (E).	paragraph (b)(11)(v)(B) and (D).	Once.
1.1502–47(d)(14), Example 3	1.1502–47(b)(13)(iii)	*e.g.*	for example	Once.
1.1502–47(d)(14), Example 5	1.1502–47(b)(13)(v)	*i.e.*	in other words	Once.
1.1502–47(d)(14), Example 12.	1.1502–47(b)(13)(xii)	casualty	nonlife insurance	Once.
1.1502–47(e)(1)	1.1502–47(c)(1)	life company or an ineligible mutual company.	life company	Once.
1.1502–47(e)(3)	1.1502–47(c)(3)	§ 1.1502–75(c) and paragraph (e)(4) of this section,.	§ 1.1502–75(c),	Once.
1.1502–47(f)(3)	1.1502–47(d)(3)	1981	2019	Each place it appears.
1.1502–47(f)(3)	1.1502–47(d)(3)	1982	2020	Each place it appears.
1.1502–47(f)(3)	1.1502–47(d)(3)	applying §§ 1.1502–13, 1.1502–18, and 1.1502–19.	applying §§ 1.1502–13 and 1.1502–19.	Once.
1.1502–47(f)(7)(i)	1.1502–47(d)(7)(i)	paragraph (g)	paragraph (e)	Once.
1.1502–47(f)(7)(i)	1.1502–47(d)(7)(i)	sections 802(a), 821(a), and 831(a).	sections 801(a) and 831(a)	Once.
1.1502–47(g)	1.1502–47(e)	three	two	Once.
1.1502–47(g)(1)	1.1502–47(e)(1)	paragraph (h)	paragraph (f)	Once.
1.1502–47(g)(1)	1.1502–47(e)(1)	paragraph (n)	paragraph (j)	Once.
1.1502–47(g)(1)	1.1502–47(e)(1)	paragraph (g)(1)	paragraph (e)(1)	Once.
1.1502–47(g)(2)	1.1502–47(e)(2)	paragraph (j)	paragraph (g)(1)	Once.
1.1502–47(g)(2)	1.1502–47(e)(2)	paragraph (m)	paragraph (h)	Once.
1.1502–47(g)(2)	1.1502–47(e)(2)	paragraph (g)(2)	paragraph (e)(2)	Once.
1.1502–47(h)(1)	1.1502–47(f)(1)	paragraph (h)	paragraph (f)	Once.
1.1502–47(h)(1)	1.1502–47(f)(1)	includes separate mutual insurance company taxable income (as defined in section 821(b)) and insurance company taxable income.	includes insurance company taxable income.	Once.
1.1502–47(h)(2)(i)	1.1502–47(f)(2)(i)	§§ 1.1502–21 or 1.1502–21A (as appropriate), the rules in this subparagraph (2).	§ 1.1502–21, the rules in this paragraph (f)(2).	Once.
1.1502–47(h)(2)(ii)	1.1502–47(f)(2)(ii)	§§ 1.1502–21(A)(f) or 1.1502–21(e) (as appropriate).	§ 1.1502–21(e)	Once.
1.1502–47(h)(2)(iv)	1.1502–47(f)(2)(iv)	year beginning after December 31, 1981, §§ 1.1502–21A or 1.1502–21 (as appropriate).	year, § 1.1502–21	Once.
1.1502–47(h)(2)(iv)	1.1502–47(f)(2)(iv)	nonlife loss	nonlife subgroup loss	Once.
1.1502–47(h)(2)(v)	1.1502–47(f)(2)(v)	subparagraph (2)	paragraph (f)(2)	Once.
1.1502–47(h)(4)(i)	1.1502–47(f)(3)(i)	§§ 1.1502–22 or 1.1502–22A (as appropriate).	§ 1.1502–22	Once.
1.1502–47(h)(4)(i)	1.1502–47(f)(3)(i)	subparagraph (4)	paragraph (f)(3)	Once.
1.1502–47(h)(4)(i)	1.1502–47(f)(3)(i)	§§ 1.1502–22 or 1.1502–22A(a) (as appropriate).	§ 1.1502–22	Once.
1.1502–47(h)(4)(iii)	1.1502–47(f)(3)(iii)	§§ 1.1502–22A(b)(1) or 1.1502–22(b).	§ 1.1502–22(b),	Once.
1.1502–47(h)(4)(iii)(A)	1.1502–47(f)(3)(iii)(A)	allowed under section 822(c)(6) or section 832(c)(5),.	allowed under section 832(c)(5),.	Once.
1.1502–47(k)(5)	1.1502–47(g)(3)(ii)	§ § 1.1502–22 or 1.1502–22A (as appropriate).	§ 1.1502–22	Once.
1.1502–47(k)(5)	1.1502–47(g)(3)(ii)	this subparagraph (5)	this paragraph (g)(3)(ii)	Once.
1.1502–47(k)(5)(ii)	1.1502–47(g)(3)(ii)(B)	paragraph (k)(5)	paragraph (g)(3)(ii)	Once.
1.1502–47(m)	1.1502–47(h)	paragraph (g)	paragraph (e)	Each place it appears.
1.1502–47(m)	1.1502–47(h)	paragraph (h)	paragraph (f)	Each place it appears.
1.1502–47(m)	1.1502–47(h)	paragraph (l)	paragraph (g)	Each place it appears.
1.1502–47(m)	1.1502–47(h)	paragraph (m)	paragraph (h)	Each place it appears.
1.1502–47(m)(2)(ii)	1.1502–47(h)(2)(ii)	§§ 1502–21 or 1.1502–21A (as appropriate).	§ 1.1502–21	Once.
1.1502–47(m)(2)(ii)	1.1502–47(h)(2)(ii)	§§ 1.1502–22 or 1.1502–22A (as appropriate).	§ 1.1502–22	Once.
1.1502–47(m)(3)(i)	1.1502–47(h)(3)(i)	But see subdivision (ix) of this paragraph (m)(3).	But see paragraph (h)(3)(ix) of this section.	Once.
1.1502–47(m)(3)(i)	1.1502–47(h)(3)(i)	arising in separate return years ending after December 31, 1980,.	arising in separate return years.	Once.

Paragraph	Redesignation	Remove	Add	Frequency
1.1502–47(m)(3)(i)	1.1502–47(h)(3)(i)	and 1.1502–22 (or §§ 1.1502–21A and 1.1502–22A, as appropriate)..	and 1.1502–22.	Once.
1.1502–47(m)(3)(iii)	1.1502–47(h)(3)(iii)	consolidated LO	life consolidated net operating loss.	Once.
1.1502–47(m)(3)(v)	1.1502–47(h)(3)(v)	GO or TII	taxable income	Once.
1.1502–47(m)(3)(v)	1.1502–47(h)(3)(v)	LICTI (as determined under paragraph (j) of this section) for any.	LICTI for any	Once.
1.1502–47(m)(3)(vi)(A)	1.1502–47(h)(3)(vi)(A)	subparagraph (3)	paragraph (h)(3)	Once.
1.1502–47(m)(3)(vii)(A)	1.1502–47(h)(3)(vii)(A)	notwithstanding § 1.1502–21A(b)(3)(ii) or 1.1502–21(b),.	notwithstanding § 1.1502–21(b),.	Once.
1.1502–47(m)(3)(vii)(A)	1.1502–47(h)(3)(vii)(A)	taxable income for that year.	taxable income for that year, subject to the limitation in section 172(a)..	Once.
1.1502–47(m)(3)(vii)(B)	1.1502–47(h)(3)(vii)(B)	(A) of this subdivision (vii)	paragraph (h)(3)(vii)(A) of this section.	Once.
1.1502–47(m)(3)(viii)	1.1502–47(h)(3)(viii)	section 172(b)(3)(C)	section 172(b)(3)	Once.
1.1502–47(m)(3)(ix)	1.1502–47(h)(3)(ix)	243(b)(2)	243(b)(3)	Once.
1.1502–47(m)(3)(ix)	1.1502–47(h)(3)(ix)	return year ending after December 31, 1980,.	return year,	Once.
1.1502–47(m)(3)(x)	1.1502–47(h)(3)(x)	LICTI (as defined in paragraph (j) of this section) in the particular.	LICTI in the particular	Once.
1.1502–47(m)(3)(xii)	1.1502–47(h)(3)(xii)	carryback of a consolidated LO.	carryback of a life consolidated net operating loss.	Once.
1.1502–47(m)(3)(xii)	1.1502–47(h)(3)(xii)	(2) or (4)	(2) or (3)	Once.
1.1502–47(m)(5), Examples 1 through 4.	1.1502–47(h)(4)(i) through (iv), respectively.	1982	2021	Each place it appears.
1.1502–47(m)(5), Examples 1 through 4.	1.1502–47(h)(4)(i) through (iv), respectively.	*i.e.*	that is	Each place it appears.
1.1502–47(m)(5), Example 1	1.1502–47(h)(4)(i)	paragraph (d)(13)	paragraph (b)(12)	Once.
1.1502–47(m)(5), Example 1	1.1502–47(h)(4)(i)	attributable to I (an ineligible member).	attributable to I (an ineligible member that is not a nonlife insurance company).	Once.
1.1502–47(m)(5), Example 1	1.1502–47(h)(4)(i)	of this section. The result would be.	of this section and section 172(a). The result would be.	Once.
1.1502–47(m)(5), Example 4	1.1502–47(h)(4)(iv)	of this section or under § 1.1502–15A..	of this section.	Once.
1.1502–47(m)(5), Example 4	1.1502–47(h)(4)(iv)	taxable income is $35	taxable income is $32.5	Once.
1.1502–47(m)(5), Example 4	1.1502–47(h)(4)(iv)	30%	35%	Once.
1.1502–47(m)(5), Example 4	1.1502–47(h)(4)(iv)	(15)	(17.5)	Once.
1.1502–47(m)(5), Example 4	1.1502–47(h)(4)(iv)	(65)	(67.5)	Once.
1.1502–47(m)(5), Example 4	1.1502–47(h)(4)(iv)	(85)	(82.5)	Once.
1.1502–47(n)	1.1502–47(j)	consolidated LO	life consolidated net operating loss and consolidated operations loss carryovers.	Each place it appears.
1.1502–47(n)(1)	1.1502–47(j)(1)	paragraph (g)(1)	paragraph (e)(1)	Once.
1.1502–47(n)(1)	1.1502–47(j)(1)	paragraph (n)(2) of this section.	paragraph (j)(2) of this section, subject to the rules and limitations in paragraph (j)(3) of this section.	Once.
1.1502–47(n)(1)	1.1502–47(j)(1)	consolidated net capital loss (as determined under paragraph (l)(4) of this section)..	consolidated net capital loss.	Once.
1.1502–47(n)(2)	1.1502–47(j)(2)	paragraph (h)	paragraph (f)	Once.
1.1502–47(n)(2)	1.1502–47(j)(2)	paragraphs (m)(2) and (3)	paragraphs (h)(2) and (3)	Once.
1.1502–47(n)(2)(ii)	1.1502–47(j)(2)(ii)	consolidated partial LICTI	consolidated LICTI	Once.
1.1502–47(n)(2)(iii)	1.1502–47(j)(2)(iii)	"paragraph (l)" or "paragraph (j)".	"paragraph (g)"	Once.
1.1502–47(n)(2)(iii)	1.1502–47(j)(2)(iii)	paragraph (h)	paragraph (f)	Once.
1.1502–47(n)(2)(iv)	1.1502–47(j)(2)(iv)	Paragraphs (m)(3)(vi), (vii), (x), and (xi).	Paragraphs (h)(3)(vi), (vii), (x), and (xi).	Once.
1.1502–47(q)	1.1502–47(k)	1.1502–80	1.1502–100	Once.
1.1502–47(q)	1.1502–47(k)	paragraph (m)(3)(vi)	paragraph (h)(3)(vi)	Once.
1.1502–47(q)	1.1502–47(k)	§§ 1.1502–21A(b)(3) and 1.1502–79A(a)(3) (or § 1.1502–21, as appropriate).	§ 1.1502–21	Once.
1.1502–47(r)	1.1502–47(l)	partial LICTI (or LO)	LICTI (or life consolidated net operating loss).	Once.
1.1502–47(r)	1.1502–47(l)	§§ 1.1502–0—1.1502–80	§§ 1.1502–0 through 1.1502–100.	Once.

Paragraph	Redesignation	Remove	Add	Frequency
1.1502–47(s)(1)(iii)	1.1502–47(m)(1)(iii)	paragraphs (g), (m), and (n)	paragraphs (e), (h), and (j)	Once.
1.1502–47(s)(1)(iv)	1.1502–47(m)(1)(iv)	paragraph (h)	paragraph (f)	Once.
1.1502–47(s)(1)(v)	1.1502–47(m)(1)(v)	consolidated partial Life	consolidated Life	Once.
1.1502–47(s)(1)(v)	1.1502–47(m)(1)(v)	(as defined by paragraph (d)(3) of this section), determined under paragraph (j) of this section,.	or life consolidated net operating loss.	Once.
1.1502–47(t)	1.1502–47(n)(3)	Paragraph (s)	Paragraph (m)	Once.
1.1502–47(t)	1.1502–47(n)(3)	paragraph (s)	paragraph (m)	Once.

The additions and revisions read as follows:

§ 1.1502–47 Consolidated returns by life-nonlife groups.

(a) * * *

(2) *General method of consolidation*—(i) *Subgroup method.* The regulations adopt a subgroup method to determine consolidated taxable income. One subgroup is the group's nonlife companies. The other subgroup is the group's life insurance companies. Initially, the nonlife subgroup computes nonlife consolidated taxable income and the life subgroup computes consolidated LICTI. A subgroup's income may in effect be reduced by a loss of the other subgroup, subject to the limitations in sections 172 and 1503(c). The life subgroup losses consist of life consolidated net operating loss, consolidated operations loss carryovers from taxable years beginning before January 1, 2018 (consolidated operations loss carryovers), and life consolidated net capital loss. The nonlife subgroup losses consist of nonlife consolidated net operating loss and nonlife consolidated net capital loss. Consolidated taxable income is therefore defined in pertinent part as the sum of nonlife consolidated taxable income and consolidated LICTI, reduced by life subgroup losses and/or nonlife subgroup losses.

(ii) *Subgroup loss.* A subgroup loss does not actually affect the computation of nonlife consolidated taxable income or consolidated LICTI. It merely constitutes a bottom-line adjustment in reaching consolidated taxable income. Furthermore, the amount of a subgroup's loss, if any, that is eligible to be carried back to a prior taxable year first must be carried back against income of the same subgroup before it may be used as a setoff against the other subgroup's income in the taxable year the loss arose. (See sections 172(b)(1) and 1503(c)(1); see also § 1.1502–21(b)). The carryback of losses from one subgroup may not be used to offset income of the other subgroup in the year to which the loss is to be carried. This carryback of one subgroup's loss may ''bump'' the other subgroup's loss that, in effect, previously reduced the income of the first subgroup. The subgroup's loss that is bumped in appropriate cases may, in effect, reduce a succeeding year's income of either subgroup. This approach gives the group the tax savings of the use of losses, but the bumping rule assures that, insofar as possible, life deductions will be matched against life income and nonlife deductions against nonlife income.

* * * * *

(b) * * *

(1) *Life company.* The term *life company* means a life insurance company as defined in section 816 and subject to tax under section 801. Section 816 applies to each company separately.

(2) *Life insurance company taxable income.* The term *life insurance company taxable income* or *LICTI* has the meaning provided in section 801(b).

(3) *Group.* The term *group* has the meaning provided in § 1.1502–1(a). Unless otherwise indicated in this section, a group's composition is determined without regard to section 1504(b)(2).

(4) *Member.* The term *member* has the meaning provided in § 1.1502–1(b). A life company is tentatively treated as a member for any taxable year for purposes of determining if it is an eligible corporation under paragraph (b)(10) of this section and, therefore, if it is an includible corporation under section 1504(c)(2). If such a company is eligible and includible (under section 1504(c)(2)), it will actually be treated as a member of the group.

* * * * *

(9) *Separate return year.* The term *separate return year* has the meaning provided in § 1.1502–1(e). For purposes of this paragraph (b)(9), the term *group* is defined with regard to section 1504(b)(2) for years in which an election under section 1504(c)(2) is not in effect. Thus, a separate return year includes a taxable year for which that election is not in effect.

(10) *Separate return limitation year.* Section 1.1502–1(f)(2) provides exceptions to the definition of the term separate return limitation year. For purposes of applying those exceptions to this section, the term *group* is defined without regard to section 1504(b)(2), and the definition in this paragraph (b)(10) applies separately to the nonlife subgroup in determining nonlife consolidated taxable income under paragraph (f) of this section and to the life subgroup in determining consolidated LICTI under paragraph (g) of this section. Paragraph (h)(3)(ix) of this section defines the term separate return limitation year for purposes of determining whether the losses of one subgroup may be used against the income of the other subgroup.

* * * * *

(12) *Ineligible corporation.* A corporation that is not an eligible corporation is ineligible. If a life company is ineligible, it is not treated under section 1504(c)(2) as an includible corporation. Losses of a nonlife member arising in years when it is ineligible may not be used under section 1503(c)(2) and paragraph (g) of this section to set off the income of a life member. If a life company is ineligible and is the common parent of the group (without regard to section 1504(b)(2)), the election under section 1504(c)(2) may not be made.

(13) * * *

(i) * * * S_2 must file its own separate return for 2020.

(ii) *Example 2.* Since 2012, L1 has been a life company owning all the stock of L2. In 2018, L1 transfers assets to S1, a new nonlife insurance company subject to taxation under section 831(a). For 2020, only L1 and L2 are eligible corporations. The tacking rule in paragraph (b)(11)(v) of this section does not apply in 2020 because the old corporation (L1) and the new corporation (S1) do not have the same tax character.

* * * * *

(d) * * *

* * * * *

(5) *Dividends received deduction*—(i) *Dividends received by insurance company.* Dividends received by an eligible member insurance company, taxed under either section 801 or section 831, from another eligible

member of the group are treated for Federal income tax purposes as if the group did not file a consolidated return. See sections 818(e)(2) and 805(a)(4) for rules regarding a member taxed under section 801, and see sections 832(g) and 832(b)(5)(B) through (E) for rules regarding a member taxed under section 831.

(ii) *Other dividends.* Dividends received from a life company member of the group that are not subject to paragraph (d)(5)(i) of this section are not included in gross income of the distributee member. See section 1504(c)(2)(B)(i). If the distributee corporation is a nonlife insurance company subject to tax under section 831, the rules of section 832(b)(5)(E) apply.

* * * * *

(7) * * *

(ii) Any taxes described in § 1.1502–2 (other than in § 1.1502–2(a)(1), (a)(6), and (a)(7)).

* * * * *

(f) * * *

(2) * * *

(iii) *Carrybacks.* The portion of the nonlife consolidated net operating loss for the nonlife subgroup described in paragraph (f)(2)(vi) of this section, if any, that is eligible to be carried back to prior taxable years under § 1.1502–21 is carried back to the appropriate years (whether consolidated or separate) before the nonlife consolidated net operating loss may be used as a nonlife subgroup loss under paragraphs (e)(2) and (h) of this section to set off consolidated LICTI in the year the loss arose. The election under section 172(b)(3) to relinquish the entire carryback period for the net operating loss of the nonlife subgroup may be made by the agent for the group within the meaning of § 1.1502–77.

(v) * * * For limitations on the use of nonlife carryovers to offset nonlife consolidated taxable income or consolidated LICTI, see § 1.1502–21(a).

(vi) *Portion of nonlife consolidated net operating loss that is carried back to prior taxable years.* The portion of the nonlife consolidated net operating loss that (absent an election to waive carrybacks) is carried back to the two preceding taxable years is the sum of the nonlife subgroup's farming loss (within the meaning of section 172(B)(1)(b)(ii)) and the amount of the subgroup's net operating loss that is attributable to nonlife insurance companies (as determined under § 1.1502–21). For rules governing the absorption of net operating loss carrybacks, including limitations on the amount of net operating loss carrybacks that may be absorbed in prior taxable years, see § 1.1502–21(b).

(vii) *Example.* P, a holding company that is not an insurance company, owns all of the stock of S, a nonlife insurance company, and L1, a life insurance company. L1 owns all of the stock of L2, a life insurance company. Both L1 and L2 satisfy the eligibility requirements of § 1.1502–47(b)(11). Each corporation uses the calendar year as its taxable year and none of P, S, L1 or L2 are engaged in a farming business (within the meaning of section 263A(e)(4)). For 2021, the group first files a consolidated return for which the election under section 1504(c)(2) is effective. P and S filed consolidated returns for 2019 and 2020. In 2021, the P–S group sustains a nonlife consolidated net operating loss that is attributable entirely to S (see § 1.1502–21(b)). The election in 2020 under section 1502(c)(2) does not result under paragraph (d)(1) of this section in the creation of a new group or the termination of the P–S group. The loss is carried back to the consolidated return years 2019 and 2020 of P and S. Pursuant to § 1.1502–21(b), the loss may be used to offset S's income in 2019 and 2020 without limitation, and the loss may be used to offset P's income in those years, subject to the limitation in section 172(a) (see § 1.1502–21(b)). The portion of the loss not absorbed in 2019 and 2020 may serve as a nonlife subgroup loss in 2021 that may set off the consolidated LICTI of L1 and L2 under paragraphs (e)(2) and (h) of this section.

(3) * * *

(ii) *Additional principles.* In applying § 1.1502–22 to nonlife consolidated net capital loss carryovers and carrybacks, the principles set forth in paragraph (f)(2)(iii) through (v) of this section for applying § 1.1502–21 to nonlife consolidated net operating loss carryovers and carrybacks also apply, without regard to the limitation in paragraph (f)(2)(vi) of this section.

* * * * *

(g) *Consolidated LICTI*—(1) *General rule.* Consolidated LICTI is the consolidated taxable income of the life subgroup, computed under § 1.1502–11 as modified by this paragraph (g).

(2) *Life consolidated net operating loss deduction*—(i) *In general.* In applying § 1.1502–21, the rules in this paragraph (g)(2) apply in determining for the life subgroup the life net operating loss and the portion of the life net operating loss carryovers and carrybacks to the taxable year.

(ii) *Life CNOL.* The life consolidated net operating loss is determined under § 1.1502–21(e) by treating the life subgroup as the group.

(iii) *Carrybacks*—(A) *General rule.* The portion of the life consolidated net operating loss for the life subgroup, if any, that is eligible to be carried back under § 1.1502–21 is carried back to the appropriate years (whether consolidated or separate) before the life consolidated net operating loss may be used as a life subgroup loss under paragraphs (e)(1) and (j) of this section to set off nonlife consolidated taxable income in the year the loss arose. The election under section 172(b)(3) to relinquish the entire carryback period for the consolidated net operating loss of the life subgroup may be made by the common parent of the group.

(B) *Special rule for life consolidated net operating losses arising in 2018, 2019, or 2020.* If a life consolidated net operating loss arising in a taxable year beginning after December 31, 2017, and before January 1, 2021, is carried back to a life insurance company taxable year beginning before January 1, 2018, then such life consolidated net operating loss is treated as an operations loss carryback (within the meaning of section 810, as in effect prior to its repeal) of such company to such taxable year.

(iv) *Subgroup rule.* In determining the portion of the life consolidated net operating loss that is absorbed when the loss is carried back to a consolidated return year, § 1.1502–21 is applied by treating the life subgroup as the group. Therefore, the absorption is determined without taking into account any nonlife subgroup losses that were previously reported on a consolidated return as setting off life consolidated taxable income for the year to which the life subgroup loss is carried back.

(v) *Carryovers.* The portion of the life consolidated net operating loss that is not absorbed in a prior year as a carryback, or as a life subgroup loss that set off nonlife consolidated taxable income for the year the loss arose, constitutes a life carryover under this paragraph (g)(2) to reduce consolidated LICTI before that portion may constitute a life subgroup loss that sets off nonlife consolidated taxable income for that particular year. For limitations on the use of nonlife carryovers to offset nonlife consolidated taxable income or consolidated LICTI, see § 1.1502–21(b).

(3) *Life consolidated capital gain net income or loss*—(i) [Reserved]

* * * * *

(h) * * *

(2) * * *

(ii) * * * Additionally, the amount of consolidated LICTI that may be offset by nonlife consolidated net operating loss

carryovers may be subject to limitation (see section 172 and § 1.1502–21(a)).

* * * * *

(3) * * *

(iv) * * * The amount of consolidated LICTI that may be offset by nonlife consolidated net operating loss carryovers may be subject to limitation (see section 172 and § 1.1502–21(a)).

* * * * *

(4) *Examples.* The following examples illustrate the principles of this paragraph (h). In the examples, L indicates a life company, S is a nonlife insurance company, another letter indicates a nonlife company that is not an insurance company, no company has farming losses (within the meaning of section 172(b)(1)(B)), and each corporation uses the calendar year as its taxable year.

* * * * *

(ii) *Example 2.* (A) The facts are the same as in paragraph (h)(4)(i) of this section, except that, for 2021, S's separate net operating loss is $200. Assume further that L's consolidated LICTI is $200. Under paragraph (h)(3)(vi) of this section, the offsettable nonlife consolidated net operating loss is $100 (the nonlife consolidated net operating loss computed under paragraph (f)(2)(ii) of this section ($200), reduced by the separate net operating loss of I ($100)). The offsettable nonlife consolidated net operating loss that may be set off against consolidated LICTI in 2021 is $35 (35 percent of the lesser of the offsettable $100 or consolidated LICTI of $200). See section 1503(c)(1) and paragraph (h)(3)(x) of this section. S carries over a loss of $65, and I carries over a loss of $100, to 2022 under paragraph (f)(2) of this section to be used against nonlife consolidated taxable income (consolidated net operating loss ($200) less amount used in 2020 ($35). Under paragraph (h)(2)(ii) of this section, the offsettable nonlife consolidated net operating loss that may be carried to 2022 is $65 ($100 minus $35). The facts and results are summarized in the following table.

TABLE 1 TO PARAGRAPH (h)(4)(ii)(A)

[Dollars omitted]

	Facts (a)	Offsettable (b)	Limit (c)	Unused loss (d)
1. P	100			
2. S	(200)	(100)		(65)
3. I	(100)			(100)
4. Nonlife Subgroup	(200)	(100)	(100)	(165)
5. L	200	200		
6. 35% of lower of line 4(c) or 5(c)			35	
7. Unused offsettable loss				(65)

(B) Accordingly, under paragraph (e) of this section, consolidated taxable income is $165 (line 5(a) minus line 6(c)).

(iii) *Example 3.* The facts are the same as in paragraph (h)(4)(ii) of this section, with the following additions for 2022. The nonlife subgroup has nonlife consolidated taxable income of $50 (all of which is attributable to I) before the nonlife consolidated net operating loss deduction under paragraph (f)(2) of this section. Consolidated LICTI is $100. Under paragraph (f)(2) of this section, $50 of the nonlife consolidated net operating loss carryover ($165) is used in 2022 and, under paragraph (h)(3)(vi) and (vii) of this section, the portion used in 2021 is attributable to I, the ineligible nonlife member. Accordingly, the offsettable nonlife consolidated net operating loss from 2021 under paragraph (h)(3)(ii) of this section is $65, the unused loss from 2020. The offsettable nonlife consolidated net operating loss in 2022 is $22.75 (35 percent of the lesser of the offsettable loss of $65 or consolidated LICTI of $100). Accordingly, under paragraph (e) of this section, consolidated taxable income is $77.25 (consolidated LICTI of $100 minus the offsettable loss of $22.75).

* * * * *

(j) * * *

(3) *Examples.* The following examples illustrate the principles of this paragraph (j). In the examples, L indicates a life company, S is a nonlife insurance company, another letter indicates a nonlife company that is not an insurance company, no company has farming losses (within the meaning of section 172(b)(1)(B)), and each corporation uses the calendar year as its taxable year.

(i) *Example 1.* P, S, L1 and L2 constitute a group that elects under section 1504(c)(2) to file a consolidated return for 2021. In 2021, the nonlife subgroup consolidated taxable income is $100 and there is $20 of nonlife consolidated net capital loss that cannot be carried back under paragraph (f) of this section to taxable years (whether consolidated or separate) preceding 2021. The nonlife subgroup has no carryover from years prior to 2021. The life consolidated net operating loss is $150, which under paragraph (g) of this section includes life consolidated capital gain net income of $25. Since life consolidated capital gain net income is zero for 2021, the nonlife capital loss offset is zero. However, $100 of life consolidated net operating loss sets off the $100 nonlife consolidated taxable income in 2021. The life subgroup carries under paragraph (g)(2) of this section to 2022 $50 of the life consolidated net operating loss ($150 minus $100). The $50 carryover will be used in 2022 (subject to the limitation in section 172(a)) against life subgroup income before it may be used in 2022 to setoff nonlife consolidated taxable income.

(ii) *Example 2.* The facts are the same as in paragraph (j)(3)(i) of this section, except that, for 2021, the nonlife consolidated taxable income is $150 (this amount is entirely attributable to S and includes nonlife consolidated capital gain net income of $50), consolidated LICTI is $200, and a life consolidated net capital loss is $50. Assume that the $50 life consolidated net capital loss sets off the $50 nonlife consolidated capital gain net income. Consolidated taxable income under paragraph (e) of this section is $300 (nonlife consolidated taxable income ($150) minus the setoff of the life consolidated net capital loss ($50), plus consolidated LICTI ($200)).

(iii) *Example 3.* The facts are the same as in paragraph (j)(3)(ii) of this section, except that, for 2022, the nonlife consolidated net operating loss is $150. This entire amount is attributable to S; thus, it is eligible to be carried back to 2021 against nonlife consolidated

taxable income under paragraph (f)(2) of this section and § 1.1502–21(b). If P, the common parent, does not elect to relinquish the carryback under section 172(b)(3), the entire $150 will be carried back, reducing 2021 nonlife consolidated taxable income to zero and nonlife consolidated capital gain net income to zero. Under paragraph (h)(3)(xii) of this section, the setoff in 2021 of the nonlife consolidated capital gain net income ($50) by the life consolidated net capital loss ($50) is restored. Accordingly, the 2021 life consolidated net capital loss may be carried over by the life subgroup to 2022. Under paragraph (e) of this section, after the carryback, consolidated taxable income for 2021 is $200 (nonlife consolidated taxable income ($0) plus consolidated LICTI ($200)).

(iv) *Example 4.* The facts are the same as in paragraph (j)(3)(iii) of this section, except that P elects under section 172(b)(3)to relinquish the carryback of $150 arising in 2022. The setoff in Example 2 is not restored. However, the offsettable nonlife consolidated net operating loss for 2022 (or that may be carried over from 2022) is zero. See paragraph (h)(3)(viii) of this section. Nevertheless, the $150 nonlife consolidated net operating loss may be carried over to be used by the nonlife group.

(v) *Example 5.* P owns all of the stock of S1 and of L1. On January 1, 2017, L1 purchases all of the stock of L2. For 2021, the group elects under section 1504(c)(2) to file a consolidated return. For 2021, L1 is an eligible corporation under paragraph (c)(11) of this section but L2 is ineligible. Thus, L1 but not L2 is a member for 2021. For 2021, L2 sustains a net operating loss, which cannot be carried back (see section 172(b)). For 2021, L2 is treated under paragraph (d)(6) of this section as a member of a controlled group of corporations under section 1563 with P, S, and L1. For 2022, L2 is eligible and is included on the group's consolidated return. L2's net operating loss for 2021 that may be carried to 2022 is not treated under paragraph (b)(10) of this section as having been sustained in a separate return limitation year for purposes of computing consolidated LICTI of the L1–L2 life subgroup for 2022. Furthermore, the portion of L2's net operating loss not used under paragraph (g)(2) of this section against life subgroup income in 2022 may be included in offsettable life consolidated net operating loss under paragraph (j)(2) and (h)(3)(i) of this section that reduces in 2022 nonlife consolidated taxable income (subject to the limitation in section 172(a)) because L2's loss in 2021 was not sustained in a separate return limitation year under paragraph (j)(2) and (h)(3)(ix)(A) of this section or in a separate return year (2021) when an election was not in effect under section 1504(c)(2) or section 243(b)(2).

* * * * *

(n) * * *

(4) The rules of paragraphs (a)(2)(i), (a)(2)(ii), (b)(1) through (b)(4), (b)(9), (b)(10), (b)(12), (b)(13)(ii), (d)(5)(i), (d)(5)(ii), (d)(7)(ii), (f)(2)(iii), (f)(2)(vi), (f)(2)(vii), (f)(3)(ii), (g), (h)(4)(ii), (h)(4)(iii), and (j)(3) of this section apply to taxable years beginning after [EFFECTIVE DATE OF FINAL RULE].

Douglas W. O'Donnell,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. 2020–14427 Filed 7–2–20; 4:15 pm]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2018–0856; FRL–10011–09–Region 6]

Air Plan Approval; New Mexico; Repeal of State Regulations for Particulate Matter for Lime Manufacturing Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve a New Mexico State Implementation Plan (SIP) revision for the repeal of State regulations titled 20.2.20 NMAC (Title 20: *Environmental Protection,* Chapter 2: *Air Quality (Statewide),* Part 20: *Lime Manufacturing Plants—Particulate Matter* of the New Mexico Administrative Code) that cover particulate matter emission standards for lime manufacturing plants and lime hydrators in the State of New Mexico. EPA is proposing to approve the repeal of the regulations based on the CAA section 110(l) demonstration contained in the New Mexico submittal, which provides that the SIP revision will not interfere with attainment and maintenance of the NAAQS or any other CAA requirement.

DATES: Written comments must be received on or before August 7, 2020.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2018–0856, at *https://www.regulations.gov* or via email to *ruan-lei.karolina@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Ms. Karolina Ruan Lei, (214) 665–7346, *ruan-lei.karolina@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov.* While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Ms. Karolina Ruan Lei, (214) 665–7346, *ruan-lei.karolina@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID–19. We encourage the public to submit comments via *https://www.regulations.gov,* as there will be a delay in processing mail and no courier or hand deliveries will be accepted. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

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I. Background

A. Clean Air Act Section 110(l)

Section 110(l) of the Clean Air Act (CAA) provides that ''. . . The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in [CAA section 171]) or any other applicable requirement of [the CAA].'' 42 U.S.C. 7410(*l*). Section 110(l) applies to all requirements of the CAA and to all areas of the country, whether attainment, nonattainment, unclassifiable or maintenance for one or more of the six criteria pollutants. Section 110(l) applies to all NAAQS that are in effect, including those for which SIP submissions have not been made and addresses any interference with CAA requirements that would occur as a result from a SIP revision. In general, the level of rigor needed for any CAA section 110(l) demonstration will vary depending on the nature of the revision.

Additionally, a state may substitute equivalent emissions reductions to compensate for any change to a plan to ensure actual emissions to the air are not increased and thus preserve status quo air quality. ''Equivalent'' emissions reductions are reductions that are equal to or greater than those reductions achieved by the control measure approved into the plan. To show that compensating emissions reductions are equivalent, adequate justification must be provided. The compensating, equivalent reductions should represent actual emissions reductions achieved in a contemporaneous time frame to the change of the existing control measure in order to preserve the status quo air quality. If the status quo is preserved, noninterference is demonstrated. In addition to being contemporaneous, the equivalent emissions reductions should also be permanent, enforceable, quantifiable, and surplus.

Each noninterference demonstration submitted by a state requesting a SIP revision is evaluated on a case-by-case basis, considering the circumstances of the revision. EPA may approve a noninterference demonstration based on an evaluation of the SIP revision on air quality and/or the information provided in the noninterference demonstration.

Some control measures may not be removed from a SIP even if doing so would not interfere with the CAA's air quality goals. These measures are often referred to as ''mandatory'' measures because the CAA requires that they be included in the SIP for an area based on the area's designation status and classification. Measures not tied to an area's classification and not mandated by the CAA are often referred to as ''discretionary'' measures. States can remove discretionary measures from an attainment, nonattainment or maintenance plan. However, a section 110(l) demonstration of noninterference would still be required.

B. State Implementation Plans (SIPs)

A SIP is a set of statutes, air pollution regulations, control strategies, other means or techniques, and technical analyses developed by the state to ensure that the state meets the NAAQS. The SIP is required by section 110 and other provisions of the CAA. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emissions inventories, monitoring networks, and modeling demonstrations. Each state must submit these regulations and control strategies to EPA for approval and incorporation into the federally enforceable SIP. Each federally approved SIP protects air quality primarily by addressing air pollution at its point of origin.

C. The National Ambient Air Quality Standards (NAAQS)

Section 108 of the CAA requires EPA to establish NAAQS for pollutants that ''may reasonably be anticipated to endanger public health and welfare,'' and to develop a primary and secondary standard for each NAAQS. The primary standard is designed to protect human health with an adequate margin of safety, and the secondary standard is designed to protect public welfare and the environment. EPA has set NAAQS for six common air pollutants, referred to as criteria pollutants. These pollutants are: Carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. These standards present state and local governments with the minimum air quality levels they must meet to comply with the CAA. Additionally, these standards provide information to residents of the United States about the quality of the air in their communities.

D. History of Reviews of the NAAQS for Particulate Matter

Section 109 of the CAA requires EPA to complete a thorough review of the NAAQS every five years and make such revisions in such criteria and standards as may be appropriate. On April 30, 1971, EPA promulgated the first NAAQS for particulate matter with the indicator set to total suspended particulate (TSP) (36 FR 8186). TSP was measured by the EPA reference method in 40 CFR part 50, Appendix B. The primary TSP standards were set at 260 micrograms per cubic meter of air (μg/m^3) averaged over a 24-hour period, not to be exceeded more than once per year, and 75 μg/m^3 annual geometric mean, while the secondary TSP standards were set to 150 μg/m^3 for the 24-hour average and 60 μg/m^3 for the annual mean.

On July 1, 1987, the EPA published revisions to the NAAQS for particulate matter (52 FR 24634). The principle revisions to the 1971 NAAQS included replacing TSP as the indicator for the ambient standards with a new indicator that includes particles with an aerodynamic diameter less than or equal to a nominal 10 μm (PM_{10}, or coarse particulate matter), replacing the 24-hour primary TSP standard with a 24-hour PM_{10} standard of 150 μg/m^3, replacing the annual primary TSP standard with an annual PM_{10} standard of 50 μg/m^3, and replacing the secondary TSP standard with 24-hour and annual PM_{10} standards identical in all respects to the primary standards.

On July 18, 1997, the EPA promulgated a new NAAQS for fine particulate matter ($PM_{2.5}$), which were defined as particles with an aerodynamic diameter less than or equal to a nominal 2.5 μm (62 FR 38652). EPA promulgated a 24-hour and an annual standard for $PM_{2.5}$. For the 1997 particulate matter NAAQS, the annual $PM_{2.5}$ standard was set to 15 μg/m^3 and the 24-hour standard was set to 65 μg/m^3. On October 17, 2006, EPA published revised standards for particulate matter (71 FR 61144). For $PM_{2.5}$, the annual standard of 15 μg/m^3 was retained, and the 24-hour standard was revised to 35 μg/m^3. For PM_{10}, the annual standard of 50 μg/m^3 was revoked, while the 24-hour standard of 150 μg/m^3 was retained. On January 15, 2013, EPA promulgated a new NAAQS for $PM_{2.5}$ (78 FR 3086). The newly promulgated primary annual $PM_{2.5}$ standard was set to 12 μg/m^3, while the remainder of the standards were retained. The secondary annual $PM_{2.5}$ standard was retained at 15 μg/m^3, the primary and secondary 24-hour standards were retained at 35 μg/m^3, the

PM_{10} primary and secondary 24-hour standards were retained at 150 μg/m³.[1]

II. New Mexico's Submittal

On February 13, 2019, the New Mexico Environment Department (NMED) submitted a SIP revision for the repeal of 20.2.20 NMAC, certifying that the State of New Mexico has evaluated its air programs and the New Mexico SIP and found that the current federal and state regulations are sufficient to meet CAA requirements after the repeal of 20.2.20 NMAC. The submittal includes a noninterference demonstration, which contains information regarding allowable emissions and a modeling demonstration showing that the repeal will not interfere with attainment or maintenance of the NAAQS or any other applicable requirement of the Act. EPA has evaluated NMED's noninterference demonstration and proposes to conclude that approval of the revision will not interfere with attainment or maintenance of the NAAQS or any other applicable CAA requirement. The Technical Support Document (TSD), found in the docket for this action, provides additional details of certain aspects of the section 110(l) noninterference demonstration and EPA's evaluation that are not included in this notice.

A. The Regulation Proposed for Repeal

The regulation proposed for repeal in New Mexico's February 13, 2019, submittal is Title 20, Chapter 2, Part 20, of the NMAC (20.2.20 NMAC, *Lime Manufacturing Plants—Particulate Matter* or Part 20), which covers particulate matter emissions from lime manufacturing plants and lime hydrators in New Mexico, excluding Albuquerque-Bernalillo County. Part 20 of 20.2 NMAC was first adopted by the New Mexico Environmental Improvement Board (EIB) as the Air Quality Control Regulation 509 on November 15, 1978, and was approved by EPA and adopted into the New Mexico SIP on April 10, 1980 (45 FR 24460). Since its promulgation, Part 20 has been reformatted twice, but no substantive changes were made (62 FR 50514, September 26, 1997).

Part 20 was adopted to establish control measures to address potential exceedances of the TSP NAAQS in an area near Hurley, New Mexico, located in Grant County. That portion of Grant County was designated as a nonattainment area for TSP, and the State was required to submit a plan to meet CAA Part D requirements for the attainment and maintenance of the 1971 TSP NAAQS (43 FR 8962, March 3, 1978). Part 20 incorporated the provisions of 40 CFR part 60, subpart HH, *Standards of Performance for Lime Manufacturing Plants* (NSPS Subpart HH), promulgated by the EPA on March 7, 1978, (43 FR 9452). The TSP NAAQS and the TSP area designations are no longer in place (61 FR 53639, October 15, 1996). As discussed in a previous section, the TSP NAAQS were replaced by the PM_{10} NAAQS. NSPS Subpart HH was also revised on April 26, 1984, with the particulate matter emission standards becoming less stringent (49 FR 18076), but New Mexico did not revise its SIP to incorporate these changes. The 1984 revision of NSPS Subpart HH eliminated the performance standards for lime hydrators that were in the original rule. Part 20 continues to be based on the 1978 version of the NSPS Subpart HH.

B. Particulate Matter Designated Areas in New Mexico

New Mexico has one particulate matter nonattainment area in Doña Ana County. The City of Anthony, New Mexico in Doña Ana County was designated a ''moderate'' nonattainment area for the 1987 PM_{10} NAAQS (56 FR 56694, November 6, 1991). NMED determined that all point and area sources of PM_{10} in or affecting the area to be de minimis, except for unpaved roads, unvegetated and sparsely vegetated areas, and range lands. The paving of roads was determined to be economically infeasible, the enhancement of ground cover in the region to be technologically infeasible, and emissions from range lands to be nonanthropogenic (58 FR 18190, April 8, 1993).[2] This area is still impacted by blowing dust from high winds, and NMED is developing a dust mitigation plan for both Doña Ana and Luna counties, as required by EPA's national Exceptional Events Rule codified at 40 CFR 50.14 (81 FR 68216, October 3, 2016). In addition to the dust mitigation plan, NMED is developing a fugitive dust rule that will be applicable in areas of the state requiring a mitigation plan in accordance with 40 CFR 51.930. The rest of the State of New Mexico is designated attainment/unclassifiable for PM_{10}, and there are no areas designated nonattainment under the $PM_{2.5}$ NAAQS (40 CFR 81.332).

As mentioned in the previous section, there was a TSP nonattainment area based on the 1971 TSP NAAQS within Grant County, which covered a 4.5-mile radius around the Kennecott Copper Smelter, located near the town of Hurley, New Mexico (44 FR 46895, August 9, 1979). Since then, the federal TSP standard has been revoked and the smelter has been closed.

C. Affected Facilities

There is only one lime facility (Lhoist North America) in New Mexico, operating with a lime hydrator and no lime kiln, located in the City of Belen in Valencia County that is subject to Part 20. See Figure 1 in the TSD for a map of New Mexico which portrays the locations of the Lhoist North America facility and the particulate matter nonattainment area. The Lhoist North America facility (''Lhoist Belen Chemical Lime Plant'') in Valencia County is shown to be a long distance (287 kilometers [km]) away from the only particulate matter nonattainment area in New Mexico, which is the PM_{10} nonattainment area in Anthony, Doña Ana County. Lhoist impacts are negligible on the distant Anthony nonattainment area, and, as a point of reference, AERMOD[3] (dispersion model typically used in PM_{10} modeling) is only used to model out to 50 km from the source. Likewise, because of the location of Lhoist in central New Mexico, Lhoist impacts on air quality in other states are negligible.

III. The EPA's Evaluation of the State's Submittal and Noninterference Demonstration

The repeal of Part 20 eliminates measures for the control of particulate matter from lime manufacturing plants. While the rule was instituted to reduce TSP, we must consider the repeal's potential impact on attainment or maintenance of the current NAAQS for PM_{10} and $PM_{2.5}$. The repeal will only potentially impact particulate matter emissions. Based upon evaluation of the permit, no increases in potential to emit of other criteria pollutants at the Lhoist facility are expected from the repeal of Part 20. The rule is considered a discretionary measure, as this term was discussed previously, because TSP

[1] *See https://www3.epa.gov/ttn/naaqs/standards/pm/s_pm_history.html* for a table of the history of the particulate matter NAAQS. The particulate matter NAAQS can also be found at 40 CFR part 50.

[2] On September 9, 1993, the EPA granted approval of the Anthony, New Mexico, moderate nonattainment area PM_{10} SIP, submitted November 8, 1991, including the waiver of the moderate area attainment date for Anthony, New Mexico (58 FR 47383).

[3] AERMOD is the air quality dispersion model developed by Environmental Protection Agency (EPA), in conjunction with American Meteorological Society (AMS) to be used as the AMS/EPA Regulatory Model (AERMOD) promulgated by EPA in 2005 as the preferred regulatory dispersion model for predicting near-surface pollutant concentrations within 50 km of an emission source.

measures included in Part 20 are no longer tied to an area's classification and no longer mandated by the CAA, and therefore the control of lime manufacturing is not required to be included in the New Mexico SIP. Therefore, the rule may be repealed so long as a demonstration of non-interference is made.

Section 110(l) prohibits EPA from approving a revision to the SIP if it would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the Act. The repeal of this rule will not impact any other applicable requirement. For example, this measure was not part of New Mexico's SIP to address Regional Haze (77 FR 70693, November 27, 2012; 79 FR 60985, October 9, 2014). In the following sections, we will address the repeal's potential impact on CAA requirements, including the attainment of the PM_{10} and $PM_{2.5}$ NAAQS.

A. Potential Impact on Emissions

While this rule was initially adopted to address multiple facilities, there is currently only one facility subject to Part 20 in the State of New Mexico. The one subject facility is owned by Lhoist North America of Arizona (Lhoist) and is located in the City of Belen, in Valencia County. Lhoist's Belen Chemical Lime Plant does not operate a lime kiln and only operates a lime hydrator. The facility receives quick lime (calcium oxide) and converts it to hydrated lime (calcium hydroxide) and is an emission source for PM_{10} and $PM_{2.5}$. The Lhoist lime plant has a New Source Review permit with the State of New Mexico (Permit No. 1652 M2–R7) issued under the state's SIP-approved permitting program. NSPS Subpart HH and NESHAP Subpart AAAAA do not cover the Lhoist facility, as the facility does not operate a lime kiln. Permit provisions for the Lhoist facility, which include numerical emissions limitations reflected in pounds per hour (lbs/hr), will remain unchanged if Part 20 is repealed from the State SIP. These lbs/hr limits are consistent with the limit in Part 20, which is a rate-based limit of 0.15 lbs/ton. NMED provided modeling based on the allowable emissions in the permit to show that the particulate matter NAAQS would remain protected. This modeling demonstration is discussed in a later section.

The Lhoist facility has a minor New Source Review permit. State regulations at 20.2.72 NMAC, *Construction Permits,* (Part 72) have been incorporated into the New Mexico SIP and was most recently approved on March 11, 2013 (78 FR 15296). Under the SIP permitting rules, regardless of the repeal of Part 20, a permit is still required for the facility, as the particulate matter emissions from the lime hydrator are estimated to be greater than the 10 lbs/hr or 25 tons/year permitting thresholds prescribed under Part 72 for minor New Source Review. Additionally, a permit is required to limit emissions for quick lime and hydrated lime as those are considered toxic air pollutants that need to be specifically controlled as required under Part 72 (20.2.72.200.A.(4), 400, 402, and 502 NMAC). If Lhoist decides to apply for a permit revision to remove the Part 20 requirements, Lhoist North America would have to show that their facility would still be able to comply with the NAAQS as required by their permit and Part 72. Permit Condition #l(f) of the Lhoist permit states that: ''Changes in plans, specifications, and other representations stated in the application documents shall not be made if they cause a change in the method of control of emissions or in the character of emissions, or will increase the discharge of emissions. Any such proposed changes shall be submitted as a revision or modification . . . of this permit.'' NMED stated in the submittal that should Lhoist apply for a permit revision in response to the repeal of Part 20 (*e.g.* to remove Permit Condition #l(e) which cites to Part 20), Part 72 still requires the applicant to show compliance with the NAAQS through modeling.

Please see the State's submittal for this action for the complete text of the regulation proposed for repeal. Table 1 of the TSD provides a description and citations of the individual sections of Part 20, as well as applicable portions of the State and federal regulations for comparison purposes.

The New Mexico rules at Part 20 cover both facilities with lime kilns and those with lime hydrators. Currently, there are no lime manufacturing facilities that operate lime kilns in New Mexico. New lime manufacturing facilities in New Mexico subject to the applicable requirements would be required to apply for a permit with enforceable emissions limits, pursuant to Part 72. Currently, the only facility subject to Part 20 is Lhoist North America, which operates a lime hydrator, but does not operate a lime kiln. Even with the repeal of Part 20, Lhoist North America will still be subject to Part 72.

B. Air Quality Modeling Demonstration for Lhoist North America

As part of its noninterference demonstration, NMED submitted a modeling demonstration showing how the only lime facility in New Mexico subject to Part 20, Lhoist North America's Belen Chemical Lime Plant, does not interfere with attainment of the NAAQS at its full potential to emit. The facility is a baseline source for both PM_{10} and $PM_{2.5}$ prevention of significant deterioration (PSD) increment.[4] Therefore, most of the facility emissions do not consume increment (just emissions above the baseline emission rate), and the facility has minimal impacts on both Class I and Class II increment consumption.[5] We are providing a brief summary of our analysis of New Mexico's modeling supporting this proposal; please see the TSD for this notice for our more detailed analysis and review.

The modeling included in the SIP submittal for this action was performed in 2017. In the modeling, NMED used the most current version of AERMOD at the time (AERMOD version 16216) and modeled using meteorological data from 2013. NMED's modeled values are based on permitted allowable emissions for Lhoist so they represent the highest possible emissions allowed by their existing permit. Recent actual emissions are lower. NMED also included surrounding sources within 35 km and used monitoring data to represent background concentrations which was added to the maximum design value model values. NMED's modeling indicated that the maximum modeled design values (with background

[4] PSD increment consumption occurs when emissions increases occur after the major source baseline date for major sources (PSD sources) and after the minor source baseline date for minor sources. The Lhoist facility is a minor source (for PSD purposes) in Air Quality Control Region 152. Lhoist's facility was in place (constructed in 1995) and had emissions prior to the minor source baseline date for PM_{10} (March 26, 1997) and $PM_{2.5}$ (February 11, 2013). Since the Lhoist facility emissions were in existence prior to the minor source baseline dates, only increases in Lhoist facility emissions above the emissions that were emitted at the time of the minor source baseline date would consume increment.

[5] Given the relatively small permitted emission rates and relatively low maximum modeled values (30–35% of the NAAQS for the permitted emission rates), small changes over baseline emission rates would not create increment consumption issues since the increment for PM_{10} (30 μg/m^3) is 20% of the PM_{10} NAAQS, the increment for 24-hour $PM_{2.5}$ (9 μg/m^3) is 26% of the 24-hour $PM_{2.5}$ NAAQS and increment for annual $PM_{2.5}$ (4 μg/m^3) is 33% of the annual $PM_{2.5}$ NAAQS. As can be seen in Table 1 of this **Federal Register** action, Lhoist's maximum impacts from all permitted emissions are below the increment levels, so any smaller emission changes from the baseline emissions would be even lower and would not be near PSD increment levels.

concentrations added) were below the NAAQS (see Table 1).

Table 1: NMED Modeling Results

Pollutant	Period	Maximum Lhoist Facility concentration ($\mu g/m^3$) *	Maximum Cumulative Concentration ($\mu g/m^3$)	Background Concentration ($\mu g/m^3$)	Cumulative plus background Concentration ($\mu g/m^3$)	Standard	Value of Standard ($\mu g/m^3$)	Percent of Standard
PM_{10}	24-hour	20.6	47.4	21.0	68.4	NAAQS	150	45.6
$PM_{2.5}$	24-hour	8.4	11.4	12.6 **	24.3	NAAQS	35	69.1
$PM_{2.5}$	Annual	2.4	4.6	5.6	10.2	NAAQS	12	85.2

* This is the maximum Lhoist Facility concentration at any receptor and is not necessarily the same receptor as the Maximum Cumulative Concentration.

** Note NMED's analysis indicated the 2013-2015 24-hour design value at Las Cruces monitor (AQS #35-013-0025) was 12.8 $\mu g/m^3$. EPA's Air Quality System indicates the design value is 12.6 $\mu g/m^3$.

EPA has performed additional modeling as part of the review of the submitted SIP revision. We utilized the most recent version of AERMOD (version 19191 issued in 2019). NMED used one year of meteorology for their modeling analysis and the 2016 AERMOD version (which was the current AERMOD version when New Mexico performed the modeling in 2017). EPA performed additional modeling with the 2019 AERMOD (which is the current version) and five years of meteorological data to confirm NMED's conclusion that removal of the New Mexico lime regulations in Part 20 would not interfere with NAAQS and PSD increments. EPA's Guideline on Air Quality Models (40 CFR part 51, Appendix W) indicates that, when available, five consecutive years of meteorology should be utilized when performing AERMOD modeling. Using the same background monitoring data that NMED used in its submitted modeling demonstration, EPA's 5-year modeling results (see Table 2) resulted in similar values to NMED's 1-year modeling results. Specifically, EPA's modeling indicated that the maximum cumulative concentrations (from Lhoist and other modeled sources within 35 km) with monitored background concentrations added for the 24-hour PM_{10} concentration is 58.9 $\mu g/m^3$ which is 39.3% of the PM_{10} 24-hour NAAQS of 150 $\mu g/m^3$; the maximum cumulative with monitored background added for $PM_{2.5}$ 24-hour is 23.3 $\mu g/m^3$ which is 66.6% of the $PM_{2.5}$ 24-hour NAAQS of 35 $\mu g/m^3$; and the maximum cumulative with monitored background added for $PM_{2.5}$ Annual is 10.5 $\mu g/m^3$ which is 87.5% of the Annual $PM_{2.5}$ NAAQS of 12 $\mu g/m^3$. EPA's modeling demonstrated that Lhoist contributions, using linear scaling, would allow for more than a 55% increase in emissions and still be below the annual and 24-hour $PM_{2.5}$ NAAQS and 24-hour PM_{10} NAAQS. Even with the potential changes in emissions from the Lhoist facility that could occur below permitting thresholds, the changes would not be expected to exceed the 24-hour PM_{10} and $PM_{2.5}$ NAAQS (annual and 24-hour). In addition, small changes in emissions would also trigger review pursuant to the existing permit limit discussed previously (Permit Condition #1(f)). Larger emission changes would require additional permitting including modeling to confirm that the NAAQS and PSD increments are not exceeded and the change in emissions would not interfere with NAAQS or PSD increments.

Table 2: EPA Maximum Modeling Results (2011-2015)

Pollutant	Period	Maximum Lhoist Facility concentration ($\mu g/m^3$) *	Maximum Cumulative Concentration ($\mu g/m^3$)	Background Concentration ($\mu g/m^3$)	Cumulative plus background Concentration ($\mu g/m^3$)	Standard	Value of Standard ($\mu g/m^3$)	Percent of Standard
PM_{10}	24-hour	20.7	37.9	21.0	58.9	NAAQS	150	39.3
$PM_{2.5}$	24-hour	8.4	10.7	12.6 **	23.3	NAAQS	35	66.6
$PM_{2.5}$	Annual	2.69	4.9	5.6	10.5	NAAQS	12	87.5

* This is the maximum Lhoist Facility concentration at any receptor and is not necessarily the same receptor as the Maximum Cumulative Concentration.

** Note NMED's analysis indicated the 2013-2015 24-hour design value at Las Cruces monitor was 12.8 $\mu g/m^3$. EPA's Air Quality System indicates the design value is 12.6 $\mu g/m^3$.

EPA's modeling results, like NMED's modeling results,[6] demonstrate that: (1) Maximum impact levels near the Lhoist facility are below the NAAQS, and (2) the higher impacts from the facility are near the facility and quickly drop off to less than 50% of the maximum impact levels at a range of 300 meters or less from the facility. New Mexico modeled Lhoist's emissions with a 4 km square grid centered around Lhoist to determine the maximum distance from the Lhoist fenceline that Lhoist has a significant impact to confirm that the receptor grid captured all the area that Lhoist's emissions had a significant impact (the area where the Lhoist emissions model to be above the PSD Significant Impact Level [PSD SIL] and potentially have a significant impact on the 24-hour PM_{10}, 24-hour $PM_{2.5}$, or annual $PM_{2.5}$ NAAQS). NMED and EPA then evaluated the modeling of the Lhoist facility and all other particulate matter sources within 35 km from Lhoist, added background monitoring values, and compared the results to the NAAQS and PSD increment. No areas within the modeled area (4 km square grid centered on Lhoist) were identified in this analysis that were above the PSD increment or that were near or above the NAAQS, including where Lhoist emissions contributed significantly to the maximum modeled design values near the Lhoist facility. Therefore, Lhoist emissions will not interfere with continued attainment of the NAAQS nor with PSD increment.

C. Air Monitoring Data for New Mexico

NMED and EPA have reviewed monitoring data to consider whether the repeal of the Part 20 rules could cause potential NAAQS attainment issues based on measured data. New Mexico's Statewide Air Quality Surveillance Network was approved into the New Mexico SIP by EPA on August 6, 1981 (46 FR 40005). New Mexico's air quality surveillance network undergoes recurrent annual review by EPA, as required by 40 CFR 58.10. On July 9, 2019, NMED submitted its 2019 Annual Air Monitoring Network Plan (AMNP) that included plans for the particulate matter NAAQS. In our letter to the NMED dated October 31, 2019, we approved the 2019 New Mexico AMNP with comments, and in our comments, we stated that the NMED is currently meeting the network design requirements for ambient air quality monitoring for particulate matter. The NMED operates a network of six sites with PM_{10} State or Local Air Monitoring Stations (SLAMS) monitors, one site with a PM_{10} Special Purpose Monitor station, and seven sites with a total of nine $PM_{2.5}$ SLAMS monitors.

NMED stated in its submittal that past monitoring data for New Mexico for years 2010–2015 show that all counties are well below the $PM_{2.5}$ NAAQS, and except for Doña Ana County, are below the NAAQS for PM_{10} as well. Exceedances measured for this period for PM_{10} in Doña Ana, Luna and San Juan counties were all flagged by NMED in the EPA's Air Quality System as exceptional events (high winds or wildfire). As stated earlier in the notice, Anthony, New Mexico in Doña Ana County was designated nonattainment for the 1987 $p.m._{10}$ NAAQS. NMED concluded that since elevated PM_{10} levels in Doña Ana County are nonanthropogenic and not due to lime manufacturing or lime hydrators, they would be unaffected by the repeal of Part 20. We agree with NMED that the repeal of Part 20 will not affect ongoing efforts to reduce PM_{10} levels in Anthony, New Mexico.

Since the SIP submission, additional monitoring data is available. In the following paragraphs, EPA evaluates the most recent monitoring data for New Mexico.

Quality-assured and certified particulate matter monitoring data for years 2016–2018 contained the following design values for $PM_{2.5}$ and PM_{10}, shown in Table 3.[7] Additional

[6] See TSD for EPA's detailed analysis of NMED's modeling and modeling results.

[7] *See* docket for the 2016–2018 monitoring data containing the design values for New Mexico that has been retrieved from EPA's Air Quality System and has been quality-assured and certified by the EPA. The information taken from these reports and in these tables is intended for informational use only and does not constitute a regulatory

information on the monitors is provided in the TSD.

TABLE 3—2016–2018 PARTICULATE MATTER DESIGN VALUE CONCENTRATIONS FOR NEW MEXICO

Location (county)	$PM_{2.5}$ design value (annual, μg/m³) [8]	$PM_{2.5}$ design value (24-hour, μg/m³) [9]	PM_{10} design value (average estimated exceedances) [10]
Bernalillo	7.8	20	0.7
Doña Ana	8.3	27	2.1
Lea	7.6	16	
Luna			1

Monitoring data for $PM_{2.5}$ show that all of the listed New Mexico counties with monitors have design values well below the annual and 24-hour $PM_{2.5}$ NAAQS for the years 2016–2018. Monitoring data for PM_{10} show that Bernalillo County and Luna County were at or below the annual PM_{10} NAAQS for the 2018 design values for years 2016–2018. As a result, measured values of particulate matter indicate that repeal of Part 20 will not interfere with attainment of the NAAQS.

D. Summary of EPA's Evaluation

The requirements of 20.2.20 NMAC are a discretionary requirement of the New Mexico SIP and not required to be included in the SIP. After evaluating the State's submittal, we propose to find that the removal of 20.2.20 NMAC from the New Mexico SIP will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. We base our finding on the following:

- This rule, while originally intended to apply to multiple sources, now only applies to one source.
- The one source is also governed by a permit issued under the SIP-approved permitting requirements of Part 72 that requires compliance with CAA requirements, including the NAAQS.
- Modeling that shows that this one source at its full potential to emit emissions will not cause an exceedance of the NAAQS or PSD increment.
- The nearest particulate matter nonattainment area is 287 km away from this source, and its nonattainment issues are primarily caused by nonanthropogenic sources. Therefore, the one subject source will not have an impact on that area.
- Likewise, the one source is located centrally in New Mexico and will therefore have a negligible impact on any surrounding state's air quality.
- Finally, review of recent monitoring data does not indicate particulate matter nonattainment problems to which the source might contribute.
- There are no other applicable requirements, such as the New Mexico Regional Haze Plan, with which emissions from the source could interfere.

If new sources or modification at the existing source occur, these changes will have to be approved under NMED's SIP-approved permitting program to ensure that the changes will not interfere with attainment and maintenance of the NAAQS.

IV. Proposed Action

We are proposing to approve New Mexico's February 13, 2019, SIP submittal that provides modifications to State regulations and update the federally approved New Mexico SIP accordingly. The SIP revision, if approved by EPA, will remove 20.2.20 NMAC, *Lime Manufacturing Plants—Particulate Matter,* from the New Mexico SIP, codified at 40 CFR part 52, subpart GG, 52.1620, and we propose to find that such a revision will not adversely affect the attainment of applicable CAA requirements.

V. Incorporation by Reference

In this document, the EPA is proposing to amend regulatory text that includes incorporation by reference. As described in the Proposed Action section above, the EPA is proposing to remove 20.2.20 NMAC from the New Mexico SIP, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

determination by EPA as whether an area has attained a NAAQS.

[8] The level of the 2012 annual NAAQS for $PM_{2.5}$ is 12.0 μg/m³. The design value for the annual $PM_{2.5}$ NAAQS is the 3-year average annual mean concentration.

[9] The level of the 2006 24-hour NAAQS for $PM_{2.5}$ is 35 μg/m³. The design value for the 24-hour $PM_{2.5}$ NAAQS is the 3-year average 98th percentile concentration.

[10] The level of the 1987 24-hour NAAQS for PM_{10} is 150 μg/m³. The NAAQS metric for the PM_{10} NAAQS is the 3-year average expected number of exceedances. The standards are attained when the expected number of days per calendar year with a 24-hour average concentration above 150 μg/m³ is equal to or less than one.

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

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

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

Dated: June 29, 2020.

Kenley McQueen,

Regional Administrator, Region 6.

[FR Doc. 2020–14360 Filed 7–7–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1990–0010; FRL–10011–60–Region 5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the DuPage County Landfill/ Blackwell Forest Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notification of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 5 is issuing a Notice of Intent to Delete the DuPage County Landfill/Blackwell Forest Superfund Site (DuPage County Landfill Site) located in Warrenville, Illinois, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Illinois, through the Illinois Environmental Protection Agency (IEPA), have determined that all appropriate response actions under CERCLA, other than operation and maintenance, monitoring and five-year reviews, have been completed at the DuPage County Landfill Site. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by August 7, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1990–0010, by one of the following methods:

https://www.regulations.gov (our preferred method). Follow the instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Email: Deletions@usepa.onmicrosoft.com.

Phone: Public comment by phone may be made by calling (312) 353–6288 and following the directions provided for public comment.

Written comments submitted by mail are temporarily suspended and no hand deliveries will be accepted. We encourage the public to submit comments via email or at *https://www.regulations.gov.*

Instructions: Direct your comments to Docket ID No. EPA–HQ–SFUND–1990–0010. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov* or email. The *https://www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *https://www.regulations.gov* index, Docket ID No. EPA–HQ–SFUND–1990–0010. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *https://www.regulations.gov,* Docket ID No. EPA–HQ–SFUND–1990–0010 and at *https://www.epa.gov/superfund/dupage-county-landfill* or you may contact the person in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

The EPA is temporarily suspending its Docket Center and Regional Records Centers for public visitors to reduce the risk of transmitting COVID–19. In addition, many site information repositories are closed and information in these repositories, including the deletion docket, has not been updated with hardcopy or electronic media. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

The EPA continues to carefully and continuously monitor information from

the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

FOR FURTHER INFORMATION CONTACT: Karen Cibulskis, NPL Deletion Coordinator, U.S. Environmental Protection Agency Region 5 at (312) 886–1843 or via email at *cibulskis.karen@epa.gov.*

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' Section of this **Federal Register**, we are publishing a direct final Notice of Deletion of the DuPage County Landfill Site without prior Notice of Intent to Delete because EPA views this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final Notice of Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this deletion action, we will not take further action on this Notice of Intent to Delete. If we receive adverse comment(s), we will withdraw the direct final Notice of Deletion, and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Deletion based on this Notice of Intent to Delete. We will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Deletion which is located in the *Rules* section of this **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1251 *et seq.;* 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: June 30, 2020.

Kurt Thiede,

Regional Administrator, Region 5.

[FR Doc. 2020–14586 Filed 7–7–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2008–0577; FRL–10011–55–Region 5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the U.S. Smelter and Lead Refinery, Inc. Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notification of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 5 is issuing a Notice of Intent to Delete 671 properties located in Zones 2 and 3 of Operable Unit 1 (OU1) of the U.S. Smelter and Lead Refinery, Inc. Superfund Site (USS Lead Site or Site) in East Chicago, Indiana, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Indiana, through the Indiana Department of Environmental Management (IDEM), have determined that all appropriate response actions under CERCLA have been completed for the identified properties. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by August 7, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–2008–0577, by one of the following methods: *https://www.regulations.gov.* Follow the on-line instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Email: Deletions@usepa.onmicrosoft.com.

Phone: Public comment by phone may be made by calling (312) 353–6284 and following the directions provided for public comment.

Written comments submitted by mail are temporarily suspended and no hand deliveries will be accepted. We encourage the public to submit comments via email or at *https://www.regulations.gov.*

Instructions: Direct your comments to Docket ID No. EPA–HQ–SFUND–2008–0577. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov* or email. The *https://www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *https://www.regulations.gov* index, Docket ID No. EPA–HQ–SFUND–2008–0577. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as

copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *https://www.regulations.gov,* Docket ID No. EPA–HQ–SFUND–2008–0577 and at *https://www.epa.gov/uss-lead-superfund-site* or you may contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

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The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

FOR FURTHER INFORMATION CONTACT: Karen Cibulskis, NPL Deletion Coordinator, U.S. Environmental Protection Agency Region 5, at (312) 886–1843 or via email at *cibulskis.karen@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Partial Site Deletion

I. Introduction

EPA Region 5 announces its intent to delete 671 properties located in Zones 2 and 3 of OU1 of the USS Lead Site from the NPL and requests public comment on this proposed action. The properties proposed for deletion are listed in Attachment B of the report: Site-Specific Justification for the Deletion of 671 Properties in Zones 2 and 3 of Operable Unit 1 of the U.S. Smelter and Lead Refinery, Inc. Superfund Site from the National Priorities List, East Chicago, Indiana (Site-Specific Justification Report). A copy of the Site-Specific Justification Report is available in the deletion docket for the Site.

The other portions of the USS Lead Site, including Zone 1 of OU1, the other properties in Zones 2 and 3 of OU1 not listed in Attachment B of the Site-Specific Justification Report, and Operable Unit 2, are not being considered for deletion as part of this action and will remain on the NPL.

The NPL constitutes Appendix B of 40 CFR part 300, which is the NCP, which EPA promulgated pursuant to Section 105 of CERCLA of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

EPA will accept comments on its proposal to delete these 671 properties from the NPL for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III of this document discusses the procedures that EPA is using for this proposed action. Section IV of this document discusses where to access and review information that demonstrates how the deletion criteria have been met for the 671 properties in Zones 2 and 3 of OU1 of the USS Lead Site proposed for deletion.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites, or portions thereof, may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA Section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site or a portion of a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the 671 properties in Zones 2 and 3 of OU1 of the USS Lead from the NPL:

(1) EPA consulted with the State of Indiana prior to developing this Notice of Intent for Partial Deletion.

(2) EPA has provided the State thirty (30) working days for review of this notice prior to publication of it today.

(3) In accordance with the criteria discussed above, EPA has determined that no further response is appropriate for the 671 properties in Zones 2 and 3 of OU1 of the USS Lead Site proposed for deletion.

(4) The State of Indiana, through the IDEM, concurred with deletion of these 671 properties in Zones 2 and 3 of OU1 of the USS Lead Site from the NPL on June 10, 2020.

(5) Concurrently with the publication of this Notice of Intent for Partial Deletion in the **Federal Register**, an announcement of the availability of the Notice of Intent for Partial Deletion is being published in a major local newspaper, the Northwest Indiana Times. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent for Partial Deletion of the USS Lead Site from the NPL.

(6) EPA placed copies of documents supporting the proposed partial deletion in the deletion docket and made these items available for public inspection and copying at *https://www.regulations.gov,* Docket ID No. EPA–HQ–SFUND–2008–0577 and at *https://www.epa.gov/uss-lead-superfund-site.*

If comments are received within the 30-day public comment period on this proposed action, EPA will evaluate and respond appropriately to the comments before making a final decision to delete these 671 properties in Zones 2 and 3 of OU1 of the USS Lead Site from the NPL. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if EPA determines it is still appropriate to delete these 671 properties in Zones 2 and 3 of OU1 of the USS Lead Site from the NPL, the EPA will publish a final Notice of Partial Deletion in the **Federal Register**. Public notices, public submissions, and copies of the Responsiveness Summary,

if prepared, will be made available to interested parties and in the docket listed above.

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a portion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site or a portion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Partial Site Deletion

The EPA placed copies of a Site-Specific Justification Report and other documents supporting the proposed partial deletion in the deletion docket. The material provides explanation of EPA's rationale for the partial deletion and demonstrates how the 671 properties in Zones 2 and 3 of OU1 of the USS Lead Site proposed for deletion meet the deletion criteria. This information is made available for public inspection in the deletion docket at the locations identified above.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: June 29, 2020.

Kurt Thiede,

Regional Administrator, Region 5.

[FR Doc. 2020–14476 Filed 7–7–20; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 85, No. 131

Wednesday, July 8, 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

Information Collection; Generic Clearance for Non-Timber Forest Products

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the renewal of our information collection, *Non-Timber Forest Products.*

DATES: Comments must be received in writing on or before September 8, 2020 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Kenli Kim, National Program Leader for Social Science, Forest Service Research and Development, at *kenli.kim@usda.gov.* Comments submitted in response to this notice may be made available to the public through relevant websites and upon request. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

The public may inspect the draft supporting statement and/or comments received at USDA Forest Service, Washington Office—Yates Building during normal business hours. Please email ahead of time to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Kenli Kim, National Program Leader, by email at *kenli.kim@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Non-Timber Forest Products.

OMB Number: 0596–0243.

Type of Request: Renewal.

Abstract: Non-timber forest products are plants, mushrooms, and plant-or tree derived goods like nuts, boughs, sap, and leaves that are harvested for food, medicine, arts and crafts, religious and cultural rituals, and other purposes. Some non-timber forest product gathering is formal, meaning it's planned and systematic, while much of it is informal, meaning it's unplanned, opportunistic, and/or incidental to other outdoor recreation activities. For some people, harvested wild plants and mushrooms make up a substantial or nutritionally important part of their diet. In other cases, non-timber forest products are locally or regionally important products for businesses.

Many opportunities exist to manage forests and other natural areas to enhance the supply of non-timber forest products and increase the benefits they provide to society and to maintain populations of important non-timber forest products. Potential public benefits include improved public health outcomes from outdoor activity and access to socially, culturally, and economically significant products. Harvesting and consuming non-timber forest products also may help supplement food sources for people with limited access to fresh, affordable food.

Many laws and policies direct the USDA Forest Service to consider and manage for non-timber forest products for the benefit of the American public. The Forest Service must also meet trust responsibilities to American Indians and Alaskan Natives on federal and tribal lands. Managing forests and other natural areas to provide non-timber forest products in a sustainable way requires more detailed, science-based information. Gaining new information can help us understand how uses of non-timber forest products have changed over time in response to management, socio-cultural circumstances, economic conditions, and environmental change.

The USDA Forest Service is seeking OMB approval to renew an existing information collection that enables us to better understand non-timber forest products by asking questions of people who harvest non-timber forest products and of people who manage, make policies for, or have a stake in the management of lands where non-timber forest products may be harvested.

Affected Public: Individuals and Households, Businesses and Non-Profit Organizations, and/or State, Local or Tribal Government.

Estimate of Burden per Response: 25 minutes for survey; 60 minutes for interview; 90 minutes for focus group.

Estimated Annual Number of Respondents: 1300.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 276 hours.

Comment is Invited:

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Forest Service, including whether the information will have practical or scientific utility; (2) the accuracy of the Forest Service's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Alexander Friend,

Deputy Chief, Research & Development.

[FR Doc. 2020–14703 Filed 7–7–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Settlement Pursuant to CERCLA; Administrative Settlement Agreement and Order on Consent for the Ross Adams Mine Site Cleanup

AGENCY: Forest Service, USDA.

ACTION: Notice of settlement; comment request.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), notice is hereby given that the USDA Forest Service is seeking comments on the Administrative Settlement Agreement and Order on Consent for Removal Action (''ASAOC'') for the Ross Adams Mine Site (''the Site''). On January 17, 2020, the United States Department of Agriculture (USDA), Forest Service, Region 10 entered into an ASAOC with Newmont USA Limited (''Newmont'') and Dawn Mining Company, LLC (''Dawn''). The ASAOC provides for a comprehensive cleanup of the Ross Adams Mine Site in southeastern Alaska.

DATES: Comments must be received, in writing, on or before August 7, 2020.

ADDRESSES: Written comments concerning this notice should be addressed to Linda Riddle, Alaska On-Scene Coordinator, at USDA, Forest Service, Alaska Regional Office, P.O. Box 21628, Juneau, AK 99802. Comments may also be sent via email to *linda.riddle@USDA.gov,* or via facsimile to Linda Riddle at 907–586–7555. The ASAOC may be viewed at: *https://www.fs.usda.gov/detail/tongass/landmanagement/projects/?cid=fseprd574452.*

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: *https://www.fs.usda.gov/detail/tongass/landmanagement/projects/?cid=fseprd574452.* Both the ASAOC and comments can be viewed and copied at the Federal Building, 709 W 9th Street, Juneau, AK 99801. Visitors are encouraged to call ahead to Linda Riddle at 907–586–9379 to facilitate entry to the building. The ASAOC and comments may also be viewed and copied at Tongass National Forest, 648 Mission Street, Federal Building, Ketchikan, AK 99901–6591; Craig Ranger District, 504 9th Street, P.O. Box 705, Craig, AK 99921–9998; and to Thorne Bay Ranger District, 1312 Federal Way, P.O. Box 19001, Thorne Bay, AK 99919–0001. Due to uncertainties caused by COVID–19, office hours and staffing may vary and visitors are encouraged to call ahead to the front desks of these offices. In Ketchikan the number is 907–225–3101; in Craig the number is 907–826–3271; and in Thorne Bay the number is 907–828–3304. The front desk receptionist at each location will assist callers.

The Forest Service will consider all comments received on the ASAOC and may modify or withdraw its consent to the ASAOC if comments received disclose facts or considerations that indicate that the settlement is inappropriate, improper, or inadequate.

FOR FURTHER INFORMATION CONTACT: Additional information concerning this project may be obtained on the Tongass National Forest website at: *https://www.fs.usda.gov/detail/tongass/landmanagement/projects/?cid=fseprd574452.*

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: Beginning in the 1950s, various mining companies began extracting uranium ore at the Ross Adams Mine. In recent decades, the mine was abandoned and has been releasing hazardous substances, including radionuclides, into the environment. For over a decade, the Forest Service has conducted a comprehensive investigation at the Site, in cooperation with Newmont and Dawn, pursuant to the Forest Service's authority under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601. For several years, the Forest Service, Newmont, and Dawn have been negotiating the terms of a mutually acceptable cleanup process at the Site.

The ASAOC requires Newmont and Dawn to perform a comprehensive cleanup on site addressing all significant environmental contamination at an estimated cost of $7.2 million. The proposed ASAOC will resolve all CERCLA claims alleged by the Forest Service against Newmont and Dawn.

Allen Rowley,

Associate Deputy Chief, National Forest System.

[FR Doc. 2020–14641 Filed 7–7–20; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the California Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the California Advisory Committee (Committee) to the Commission will be held from 1:00 p.m.–3:00 p.m. (Pacific) Thursday, July 9, 2020. The purpose of the meeting will be to review the Committee's report on immigration enforcement.

DATES: The meeting will be held on Thursday, July 9, 2020 from 1:00 p.m.–3:00 p.m. PT

Public Call Information:
Dial: 800–437–2398
Conference ID: 6763352

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes, Designated Federal Officer (DFO) at *afortes@usccr.gov* or (202) 681–0857.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 800–437–2398, conference ID number: 6763352. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012 or email Ana Victoria Fortes at *afortes@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (202) 681–0857.

Records and documents discussed during the meeting will be available for

public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkUAAQ.*

Please click on ''Committee Meetings'' tab. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome
II. Review Report
III. Public Comment
IV. Next Steps
V. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the COVID crisis and DFO availability.

Dated: July 1, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–14636 Filed 7–7–20; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the California Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the California Advisory Committee (Committee) to the Commission will be held from 1:00 p.m.–3:00 p.m. (Pacific) Thursday, July 30, 2020. The purpose of the meeting will be to review the Committee's report on immigration enforcement.

DATES: The meeting will be held on Thursday, July 30, 2020 from 1:00 p.m.–3:00 p.m. PT.

Public Call Information:
Dial: 800–437–2398
Conference ID: 6763352

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes, Designated Federal Officer (DFO) at *afortes@usccr.gov* or (202) 681–0857.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 800–437–2398, conference ID number: 6763352. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012 or email Ana Victoria Fortes at *afortes@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (202) 681–0857.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https:/www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkUAAQ.*Please click on ''Committee Meetings'' tab. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov*, or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome
II. Review Report
III. Public Comment
VI. Next Steps
V. Adjournment

Dated: July 1, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–14637 Filed 7–7–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the New York Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice 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 New York Advisory Committee (Committee) will hold a meeting on Friday, July 17, 2020, from 1:00–2:00 p.m. EST for the purpose of discussing the committee's civil rights project.

DATES: The meeting will be held on Friday, July 17, 2020, from 1:00–2:00 p.m. EST.

Public Call Information: Dial: (800) 367–2403; Conference ID: 7109728.

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg, DFO, at *mtrachtenberg@usccr.gov* or 202–809–9618.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference operator will ask callers to identify themselves, the organizations they are affiliated with (if any), and an email address prior to placing callers into the conference call. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Mallory Trachtenberg at *mtrachtenberg@usccr.gov* in the Regional Programs Unit Office/Advisory Committee Management Unit. Persons who desire additional information may contact the Regional Program Unit at 202–809–9618.

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 *https://www.facadatabase.gov/FACA/apex/FACAPublicCommittee?id=a10t0000001gzmAAAQ* under the Commission on Civil Rights, New York Advisory Committee link. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email or phone number.

Agenda

I. Welcome and Roll Call
II. Discuss Civil Rights Topics
III. Public Comment
IV. Discuss Next Steps
V. Adjournment

Dated: July 1, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–14635 Filed 7–7–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Florida 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 Florida Advisory Committee (Committee) will hold a meeting via teleconference on Tuesday, August 4, 2020, at 3:30 p.m. Eastern Time, the purpose is to review testimony received on voting rights in Florida and discuss findings and recommendations to be issued in a report to the Commission.

DATES: The meeting will be held on Tuesday, August 4, 2020 at 3:30 p.m. Eastern Time

Public Call Information: Dial: 800–367–2403, Confirmation Code: 5057916.

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.* 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 *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzl4AAA* under the Commission on Civil Rights, Florida Advisory Committee link. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email or street address.

Agenda

Welcome and Roll Call

Discussion: Voting Rights in Florida

Public Comment

Adjournment

Dated: July 1, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–14634 Filed 7–7–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Generic Clearance for Challenge and Prize Competition Solicitations

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on March 24, 2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: Office of the Secretary, Department of Commerce.

Title: Generic Clearance for Challenge and Prize Competition Solicitations.

OMB Control Number: 0690–0031.

Form Number(s): None.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 1,560

Average Hours per Response: 10–30 minutes.

Burden Hours: 260.

Needs and Uses: In 2011, Federal agencies including DOC were given prize authority for administering challenges and competitions. Section 105(a) of the America Competes Act adds Section 24 to the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 *et seq.*) that addresses provisions for challenges and competitions with prizes conducted by Federal agencies. Challenges and competitions enable DOC to tap into the expertise and creativity of the public in new ways. DOC has sponsored challenges and competitions in a wide variety of areas to increase public participation and solicit new ideas on a wide array of topics important to the agency's mission. DOC's goal is to engage a broader number of stakeholders who are inspired to work on some of our most pressing issues.

The information collected will be used to understand whether the participant has met the technical requirements for the challenge, assist in the technical review and judging of the

solutions that are provided, and understand the impact and consequences of administering the competition and developing solutions for submission. Information may be collected during the competition or after its completion. The submissions are evaluated by the submitting agency and typically prizes (monetary and non-monetary) are awarded to the winning entries.

This clearance applies to challenges posted on *Challenge.gov,* which uses a common platform for the solicitation of challenges from the public. Each agency designs the criteria for its solicitations based on the goals of the challenge and the specific needs of the agency. There is no standard submission format for solution providers to follow.

We anticipate that approximately 250 challenges would be issued each year by DOC. It is expected that other federal agencies will issue a similar number of challenges. There is no set schedule for the issuance of challenges; they are developed and issued on an ''as needs'' basis in response to issues the federal agency wishes to solve. The respondents to the challenges, who are participating voluntarily, are unlikely to reply to more than one or several of the challenges.

Although in previous memoranda the GSA and Office of Management and Budget (OMB) described circumstances whereby OMB approval of a PRA request is not needed, program officials at DOC have identified several sets of information that will typically need to be requested of solution providers to enable the solutions to be adequately evaluated by the program office issuing the challenge. These requests for additional information have been suggested to require a PRA review as they represent structured data requests.

There are three types of additional data that may routinely be requested. These include the following:

Title and/or Subject of the submission. Due to the nature of the submission and evaluation processes, it is important that a title and/or subject be requested and submitted for each submission to ensure the solution is correctly identified with its provider.

Identification of data resources. In many cases, the solution to a problem will require the solution provider to use data resources. Often, the nature of the data sets will be derived from Federal data resources, such as *data.gov.* Evaluations of solutions will often depend on the understanding of the selection of the data resource(s) used in the solution.

Description of methodology. For effective judging and evaluation, a description of the development methods for the solution to the challenge will be requested. For instance, a prize may be awarded to the solution of a challenge to develop an algorithm that enables reliable prediction of a certain event. A responder could submit the correct algorithm, but without the methodology, the evaluation process could not be adequately performed.

Affected Public: Individuals or households; Business or other for-profit organizations; Not-for-profit institutions; State, Local, or Tribal government; Federal government.

Frequency: As needed.

Respondent's Obligation: Voluntary.

Legal Authority: 15 U.S.C. 3701 *et seq.*

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0690–0031.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–14644 Filed 7–7–20; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Mahin Mojtahedzadeh a.k.a. Mahin Toussi, Mojtahedzadeh a.k.a. Mahin Mojtahedzadeh Toussi No 63, Aghaghia 3, Milad 16, Sajjad BLVD, Mashhad. Iran; Order Denying Export Privileges

On January 30, 2020, in the U.S. District Court for the Northern District of New York, Mahin Mojtahedzadeh, a.k.a. Mahin Toussi Mojtahedzadeh, a.k.a. Mahin Mojtahedzadeh Toussi (''Mojtahedzadeh''), was convicted of violating the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.* (2012)) (''IEEPA''). Specifically, Mojtahedzadeh was convicted of violating IEEPA by conspiring to unlawfully export gas turbine parts from the United States to Iran without having first obtained the required U.S. Government authorization. Mojtahedzadeh was sentenced to time served, a $100 special assessment and a fine of $5,000.

Pursuant to Section 1760(e) of the Export Control Reform Act (''ECRA''),[2] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, IEEPA, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e) (Prior Convictions). In addition, any BIS licenses or other authorizations issued under ECRA in which the person had an interest at the time of the conviction may be revoked. *Id.*

BIS received notice of Mojtahedzadeh's conviction for violating IEEPA, and has provided notice and opportunity for Mojtahedzadeh to make a written submission to BIS, as provided in Section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''). 15 CFR 766.25.[3] BIS has not received a written submission from Mojtahedzadeh.

Based upon my review of the record and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Mojtahedzadeh's export privileges under the Regulations for a period of 10 years from the date of Mojtahedzadeh's conviction. I have also decided to revoke any BIS-issued licenses in which Mojtahedzadeh had an interest at the time of her conviction.

Accordingly, it is hereby *ordered:*

First, from the date of this Order until January 30, 2030, Mahin Mojtahedzadeh, a.k.a. Mahin Toussi Mojtahedzadeh, a.k.a. Mahin Mojtahedzadeh Toussi, with a last known address of No 63, Aghaghia 3,

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[2] ECRA was enacted as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852. Mojtahedzadeh's conviction post-dates ECRA's enactment on August 13, 2018.

[3] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR Parts 730–774 (2020). The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. 4601–4623 (Supp. III 2015) (''EAA''), which lapsed on August 21, 2001. The President, through Executive Order 13,222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which was extended by successive Presidential Notices, continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. 1701, *et seq.* (2012) (''IEEPA''). Section 1768 of ECRA, 50 U.S.C. 4826, provides in pertinent part that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. *See* note 1, *supra.*

Milad 16, Sajjad BLVD, Mashhad. Iran, and when acting for or on her behalf, her successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to Section 1760(e) of the Export Control Reform Act (50 U.S.C. 4819(e) and Sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Mojtahedzadeh by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Mojtahedzadeh may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Mojtahedzadeh and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until January 30, 2030.

Issued this 1st day of July, 2020.

Karen H. Nies-Vogel,

Director, Office of Exporter Services.

[FR Doc. 2020–14597 Filed 7–7–20; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–985]

Xanthan Gum From the People's Republic of China: Notice of Third Amended Final Determination Pursuant to Court Decision

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

SUMMARY: On February 10, 2020, the Court of Appeals for the Federal Circuit (CAFC) reversed the Court of International Trade's (CIT) decision sustaining the Department of Commerce's (Commerce) use of Thai Fermentation Industry Ltd.'s (Thai Fermentation) financial statements to calculate surrogate financial ratios and reinstated Commerce's prior determination to use Ajinomoto (Thailand) Co., Ltd.'s (Thai Ajinomoto) financial statements to calculate financial ratios. Accordingly, Commerce is issuing a third amended final determination for the less-than-fair-value (LTFV) investigation of xanthan gum from the People's Republic of China (China), and including Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.) and Shandong Fufeng Fermentation, Co., Ltd. (collectively, Fufeng) as subject to the order.

DATES: Applicable February 20, 2020.

FOR FURTHER INFORMATION CONTACT: Thomas Hanna, AD/CVD Operations, Office IV, Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0835.

SUPPLEMENTARY INFORMATION:

Background

The litigation in this case relates to Commerce's final determination in the LTFV investigation of xanthan gum from China,[1] which was later amended.[2] In its *Amended Final Determination and Order,* Commerce reached affirmative determinations for mandatory respondents, Fufeng and Deosen Biochemical Ltd. (Deosen).[3] CP Kelco U.S., Inc. (CP Kelco U.S.), the petitioner, and Fufeng appealed the *Amended Final Determination and Order* to the CIT, and on March 31, 2015, the CIT sustained, in part, and remanded, in part, Commerce's *Final Determination,* as modified by the *Amended Final Determination.*[4] Specifically, the CIT remanded, for reevaluation, Commerce's conclusion that the Thai Ajinomoto financial statements constituted a better source for calculating surrogate financial ratios than the Thai Fermentation statements, and granted Commerce's request for a voluntary remand to reconsider its allocation of energy consumed at Fufeng's Neimenggu plant between the production of subject and non-subject merchandise.[5]

Pursuant to a series of remand orders issued by the CIT that resulted in four remand redeterminations, Commerce adjusted its allocation of energy consumed at Fufeng's Neimenggu plant

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[1] *See Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 78 FR 33351 (June 4, 2013) (*Final Determination*) and accompanying Issues and Decision Memorandum.

[2] *See Xanthan Gum from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 78 FR 43143 (July 19, 2013) (*Amended Final Determination and Order*).

[3] *Id.,* 78 FR at 43144.

[4] *See CP Kelco US, Inc.* v. *United States,* Ct. No. 13–00288, Slip Op. 15–27 (CIT Mar. 31, 2015) (*CP Kelco I*).

[5] *Id.* at 2–3, 11–15, 32–34.

and revised Fufeng's weighted-average dumping margin by using Thai Fermentation's financial statements to derive the surrogate financial ratios.[6] After using Thai Fermentation's financial statements to calculate surrogate financial ratios, Commerce calculated a weighted-average dumping margin of 0.00 percent for Fufeng.[7] On September 17, 2018, the CIT sustained Commerce's fourth remand redetermination.[8] Pursuant to the CIT's final judgment, Commerce amended the *Final Determination* and *Amended Final Determination and Order* and excluded merchandise produced and exported by Fufeng from the order.[9]

CP Kelco U.S. appealed the CIT's decision upholding Commerce's treatment of *Xanthomonas Campestris* (*X. Campestris*) as an asset in its final determination, rather than a direct material input, and Commerce's use, in its remand redetermination, of Thai Fermentation's financial statements to calculate surrogate financial ratios rather than Thai Ajinomoto's financial statements.[10] On February 10, 2020, the CAFC issued an opinion: (1) Affirming the CIT's decision sustaining Commerce's treatment of *X. Campestris* as an asset; and (2) reversing the CIT's decision regarding Commerce's use of Thai Fermentation's financial statements to calculate surrogate financial ratios and reinstating Commerce's original determination to use Thai Ajinomoto's financial statements in calculating those ratios.

On May 8, 2020, in compliance with the order issued by the CAFC, the CIT affirmed Commerce's third remand redetermination, wherein we ''calculated a dumping margin of 8.69% for Fufeng by treating *X. campestris* as an asset, and by using data in Thai Ajinomoto financial statements'' to calculate surrogate financial ratios.[11] The CIT found that Commerce's third remand redetermination ''comports with the {CAFC's} decision in its entirety.''[12]

Third Amended Final Determination

Because there is now a final and conclusive court decision, Commerce is amending the *Final Determination* and *Amended Final Determination and Order* with respect to Fufeng. The revised weighted-average dumping margin for Fufeng for the period October 1, 2011 through March 31, 2012 is as follows:

Exporter	Producer	Weighted-average dumping margin (percent)
Neimenggu Fufeng Biotechnologies, Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.)/Shandong Fufeng Fermentation Co., Ltd.	Neimenggu Fufeng Biotechnologies, Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.)/Shandong Fufeng Fermentation Co., Ltd.	8.69

As a result of this amended final determination, in which Commerce has calculated an estimated weighted-average dumping margin of 8.69 percent for Fufeng, merchandise from the producer-exporter combination above will be subject to the antidumping duty (AD) order on xanthan gum from China. Additionally, we will instruct United States Customs and Border Protection (CBP) to suspend liquidation of, and to require a cash deposit of 0.00 percent[13] for, all unliquidated entries of subject merchandise from the producer-exporter combination referenced above which were entered, or withdrawn from warehouse, for consumption after February 20, 2020, which is 10 days after the CAFC's final decision, in accordance with section 516A of the Act.

Results of Discontinued Antidumping Duty Administrative Reviews for Fufeng

In the *Timken Notice,* Commerce amended the final determination in this proceeding and stated that ''{a}s a result of this amended final determination, in which Commerce has calculated an estimated weighted-average dumping margin of 0.00 percent for Fufeng, Commerce is hereby excluding merchandise from the above producer-exporter combination from the antidumping duty order.''[14] Commerce explained in the *Timken Notice* that:

{a}s a result of the exclusion, Commerce (1) is discontinuing the ongoing fourth and fifth administrative reviews, in part, with respect to Fufeng's entries during those periods of review; and (2) will not initiate any new administrative reviews of Fufeng's entries pursuant to the antidumping order.[15]

When Commerce published the final results of the fourth and fifth administrative reviews of the AD order on xanthan gum from China, merchandise from the above-referenced producer-exporter combination was no longer subject to that order due to the CIT's decision, and the CAFC had not reversed the CIT's decision.[16] However, subsequent to Commerce issuing those final results of reviews, the CAFC reversed the CIT's decision. Based on the CAFC's decision, Fufeng is subject to the AD order on xanthan gum from China. Therefore, we will resume the fourth and fifth administrative reviews of that order with specific regard to Fufeng.[17] We will not revisit these reviews for any company other than

[6] *Id.; see also CP Kelco US, Inc.* v. *United States,* Ct. No. 13–00288, Slip Op. 16–36 (CIT Apr. 8, 2016) (*CP Kelco II*); *CP Kelco US, Inc.* v. *United States,* 211 F. Supp. 3d 1338 (CIT 2017) (*CP Kelco III*); and *CP Kelco US, Inc.* v. *United States,* Ct. No. 13–00288, Slip Op. 18–36 (CIT Apr. 5, 2018) (*CP Kelco IV*).

[7] *See* Final Results of Fourth Redetermination Pursuant to Court Order, dated July 5, 2018, at 12.

[8] *See CP Kelco US, Inc.* v. *United States,* Ct. No. 13–00288, Slip Op. 18–120 (CIT Sept. 17, 2018) (*CP Kelco V*).

[9] *See Xanthan Gum From the People's Republic of China: Notice of Court Decision Not in Harmony With Amended Final Determination in Less Than Fair Value Investigation; Notice of Amended Final Determination Pursuant to Court Decision; Notice of Revocation of Antidumping Duty Order in Part; and Discontinuation of Fourth and Fifth Antidumping Duty Administrative Reviews in Part,* 83 FR 52205 (October 16, 2018) (*Timken Notice*).

[10] *See CP Kelco US, Inc.* v. *United States,* 949 F.3d 1348 (Fed. Cir. 2020).

[11] *See CP Kelco US, Inc.* v. *United States,* Ct. No. 13–00288, Slip Op. 20–62 (CIT May 8, 2020).

[12] *Id.* at *4.

[13] This is the cash deposit rate determined for Fufeng in the 2015–2016 AD administrative review of xanthan gum from China. *See Xanthan Gum From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015–2016;* 83 FR 6513, 6514 (February 14, 2018).

[14] *Timken Notice,* 83 FR at 52206.

[15] *Id.*

[16] *See Xanthan Gum from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; Final Determination of No Shipments, Partial Discontinuation of Antidumping Duty Administrative Review; 2016–2017,* 83 FR 65143 (December 19, 2018); *Xanthan Gum From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017–2018;* 84 FR 64831 (November 25, 2019).

[17] The fourth review covers the period July 1, 2016 through June 30, 2017. The fifth review covers the period July 1, 2017 through June 30, 2018.

Fufeng.[18] For the fourth review, because we already issued preliminary results covering Fufeng and case briefs regarding those results were filed, we will consider the case briefs as they pertain to Fufeng and issue the final results of review with respect to Fufeng. For the fifth review, because we already selected mandatory respondents, other than Fufeng, and issued final results with respect to those respondents, we will analyze Fufeng's separate rate certification and issue preliminary results regarding Fufeng's separate rate status. We will set a briefing period to allow interested parties to comment on our separate rates determination for Fufeng before issuing the final results of review with respect to Fufeng.

At this time, Commerce remains enjoined by Court order from liquidating entries of subject merchandise that: (1) Was produced and exported by Fufeng, and entered, or withdrawn from warehouse, for consumption during the period July 19, 2013 through June 30, 2014 (with the exception of such merchandise entered by the company named in CBP message number 7352304, dated December 18, 2017); (2) was produced and exported by Fufeng, and entered, or withdrawn from warehouse, for consumption during the period July 1, 2014 through June 30, 2015, by East West Technologies Inc.; and (3) was produced and exported by Fufeng, and entered, or withdrawn from warehouse, for consumption during the period July 1, 2014 through June 30, 2015, by LABH Inc., designated as Entry No. 22703189153, with an entry date of July 7, 2014, and Fufeng's Invoice No. MEU14088. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

Notification to Interested Parties

This notice is issued and published in accordance with section 516A(c)(1) and (e) of the Tariff Act of 1930, as amended.

Dated: June 29, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–14678 Filed 7–7–20; 8:45 am]

BILLING CODE 3510–DS–P

[18] Fufeng refers to the collapsed entity Inner Mongolia Fufeng Biotechnologies Co., Ltd./Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd)/Shandong Fufeng Fermentation Co., Ltd./Xinjiang Fufeng Biotechnologies Co., Ltd.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–887]

Tetrahydrofurfuryl Alcohol From the People's Republic of China: Final Results of the Expedited Third Sunset Review of the Antidumping Duty Order

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

SUMMARY: As a result of this sunset review, the Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on tetrahydrofurfuryl alcohol (THFA) from the People's Republic of China (China) would be likely to lead to the continuation or recurrence of dumping at the levels indicated in the ''Final Results of Review'' section of this notice.

DATES: Applicable July 8, 2020.

FOR FURTHER INFORMATION CONTACT: Kate Sliney, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2437.

SUPPLEMENTARY INFORMATION:

Background

On March 2, 2020, Commerce published the notice of initiation of the third sunset review of the *Order*[1] on tetrahydrofurfuryl alcohol from China, pursuant to section 751(c)(2) of the Tariff Act of 1930, as amended (the Act).[2] On March 20, 2020, Commerce received a notice of intent to participate from Penn A Kem LLC (formerly, Penn Specialty Chemicals), a domestic interested party, within the deadline specified in 19 CFR 351.218(d)(1)(i).[3]

On March 30, 2020, Commerce received a complete substantive response from the domestic interested party within the 30-day deadline specified in 19 CFR 351.218(d)(3).[4] No respondent interested party submitted a substantive response within the 50-day deadline. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce is conducting an expedited (120-day) sunset review of the *Order.*

Scope of the Order

The product covered by this *Order* is tetrahydrofurfuryl alcohol (THFA) from China; a primary alcohol, THFA is a clear, water white to pale yellow liquid. THFA is a member of the heterocyclic compounds known as furans and is miscible with water and soluble in many common organic solvents. THFA is currently classifiable in the Harmonized Tariff Schedules of the United States (HTSUS) under subheading 2932.13.00.00. Although the HTSUS subheadings are provided for convenience and for customs purposes, Commerce's written description of the merchandise subject to the *Order* is dispositive.

Analysis of Comments Received

All issues raised in this sunset review are addressed in the accompanying Issues and Decision Memorandum, which is hereby adopted by this notice.[5] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* A list of topics discussed in the Issues and Decision Memorandum is included as an appendix to this notice. A complete version of the Issues and Decision Memorandum can be accessed at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Final Results of Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the antidumping duty order on THFA from China would be likely to lead to the continuation or recurrence of dumping, and that the magnitude of the margin likely to prevail is up to 136.86 percent.

[1] *See Antidumping Duty Order: Tetrahydrofurfuryl Alcohol from The People's Republic of China,* 69 FR 47911 (August 6, 2004) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 85 FR 12253 (March 2, 2020).

[3] *See* Penn A Kem LLC's Letter, ''Sunset Review (3rd Review) of the Antidumping Duty Order on Tetrahydrofurfuryl Alcohol from the People's Republic of China: Domestic Interested Party Notification of Intent to Participate,'' dated March 20, 2020.

[4] *See* Penn A Kem LLC's Letter, ''Sunset Review (3rd Review) of the Antidumping Duty Order on Tetrahydrofurfuryl Alcohol from the People's Republic of China: Domestic Interested Party Substantive Response to Notice of Initiation,'' dated March 30, 2020.

[5] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Expedited Third Sunset Review of the Antidumping Duty Order on Tetrahydrofurfuryl Alcohol from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: June 29, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. History of the *Order*
V. Legal Framework
VI. Discussion of the Issues
  1. Likelihood of Continuation of Recurrence of Dumping
  2. Magnitude of the Margin Likely to Prevail
VII. Final Results of Third Expedited Sunset Review
VIII. Recommendation

[FR Doc. 2020–14680 Filed 7–7–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–919]

Electrolytic Manganese Dioxide From the People's Republic of China: Continuation of Antidumping Duty Order

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

SUMMARY: As a result of the determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) that revocation of the antidumping duty (AD) order on electrolytic manganese dioxide from the People's Republic of China (China) would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing a notice of continuation of the AD order.

DATES: Applicable July 8, 2020.

FOR FURTHER INFORMATION CONTACT: Thomas Hanna or Howard Smith, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0835 or (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 2008, Commerce published in the **Federal Register** the AD order on electrolytic manganese dioxide from China.[1] On December 2, 2019, the ITC instituted and Commerce initiated the second sunset review of the *Order* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] Commerce conducted this sunset review on an expedited basis, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2) because it received a complete timely and adequate notice of intent to participate in the sunset review and substantive response from domestic interested parties[3] but no substantive responses from respondent interested parties. As a result of its review, Commerce determined pursuant to sections 751(c)(1) and 752(c) of the Act, that revocation of the *Order* would likely lead to continuation or recurrence of dumping. Commerce also notified the ITC of the magnitude of the dumping margins likely to prevail should the *Order* be revoked.[4] On June 25, 2020, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Order* would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Order

The merchandise covered by this *Order* includes all manganese dioxide (MnO2) that has been manufactured in an electrolysis process, whether in powder, chip, or plate form. Excluded from the scope are natural manganese dioxide (NMD) and chemical manganese dioxide (CMD). The merchandise subject to this *Order* is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2820.10.00.00. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this *Order* is dispositive.

Continuation of the Order

As a result of the determinations by Commerce and the ITC that revocation of the *Order* would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the AD order on electrolytic manganese dioxide from China. U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the *Order* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next sunset review of the *Order* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Notification to Interested Parties

This five-year sunset review and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act and this notice is published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: June 30, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–14681 Filed 7–7–20; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping Duty Order: Electrolytic Manganese Dioxide from the People's Republic of China,* 73 FR 58537 (October 7, 2008) (*Order*).

[2] *See* Initiation of Five-Year (Sunset) Reviews, 84 FR 65968 (December 2, 2019); *see also* Electrolytic Manganese Dioxide From China; Institution of a Five-Year Review, 84 FR 66005 (December 2, 2019).

[3] *See* Domestic Interested Parties' Letter, ''Electrolytic Manganese Dioxide from the People's Republic of China: Notice of Intent to Participate,'' dated December 17, 2019; *see also* Domestic Interested Parties' Letter, ''Electrolytic Manganese Dioxide from the People's Republic of China: Substantive Response to Notice of Initiation of Five-Year (Sunset) Review of the Antidumping Duty Order,'' dated January 2, 2020.

[4] *See Electrolytic Manganese Dioxide From the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order,* 85 FR 16057 (March 20, 2020) (Final Results).

[5] *See* Electrolytic Manganese Dioxide from China; Determination, Investigation No. 731–TA–1125 (Second Review), 85 FR 38159 (June 25, 2020).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA264]

Endangered Species; File Nos. 18238, 23639, and 23850

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

ACTION: Notice; receipt of applications for permits and a permit modification.

SUMMARY: Notice is hereby given that three applicants have applied in due form for a permit or permit modification to take green (*Chelonia mydas*), hawksbill (*Eretmochelys imbricata*), Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), loggerhead (*Caretta caretta*), and olive ridley (*L. olivacea*) sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or email comments must be received on or before August 7, 2020.

ADDRESSES: Each application and related documents are available for review by selecting ''Records Open for Public Comment'' from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting the applicable File No. from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on the application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Erin Markin, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permits and permit modification are requested under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

File No. 18238–03: NMFS, Southwest Fisheries Science Center, 8901 La Jolla Shores Drive, La Jolla, California 92037, (Responsible Party: Robin LeRoux), proposes to modify Permit No. 18238–02. The permit, originally issued on April 21, 2016 (81 FR 43589, July 5, 2016), authorizes researchers to conduct long-term monitoring of green, loggerhead, olive ridley sea turtles in southern California waters. Researchers may conduct vessel surveys for sea turtle counts, captures, examination, observation, marking, biological sampling, tagging, and morphometrics. The permit holder requests authority to (1) take 10 hawksbill sea turtles annually as a target species for study; (2) increase the number of green, loggerhead, and olive ridley sea turtles that may be captured annually by 20, 50, 300 animals, respectively; (3) expand the study area; (4) use an unmanned aircraft system (UAS) for surveys and to sight turtles for capture; (5) analyze the microbiome and biotoxins in collected urine, cloacal, lavage, and/or fecal samples; (6) measure the internal body temperature of captured animals; (7) attach another type of suction cup tag to green sea turtles to study their energetics and nutrition; and (8) add personnel to operate the UAS. The permit is valid through September 30, 2025.

File No. 23639: Coonamessett Farm Foundation, Inc., 277 Hatchville Road, East Falmouth, MA 02536, (Responsible Party: Ronald Smolowitz), proposes to study the behavior and distributions of green, Kemp's ridley, leatherback, and loggerhead sea turtles within the northwestern Atlantic Ocean. Researchers would capture by dip net, measure, weigh, photograph, flipper and passive integrated transponder (PIT) tag, biologically sample (blood, cloacal swab, cloacal lavage, skin, scute, and fecal), tag (epoxy or suction cup) and release up to 15 green, 15 Kemp's ridley, and 30 loggerhead sea turtles annually. After release animals may be temporarily tracked with an underwater remotely operated vehicle (ROV). In addition, 45 green, 45 Kemp's ridley, and 60 loggerhead sea turtles annually may be tracked and observed in water by ROV only (no capture). Up to 30 leatherbacks annually may be sighted and tracked by a manned aircraft for subsequent vessel-based research involving remote attachment of a suction-cup tag, ROV tracking, and remote PIT tag scanning later in the same day. Another 60 leatherback and 20 unidentified sea turtles may be targeted for study in the same manner without tagging annually. The applicant also requests take of 45 green, 45 Kemp's ridley, 60 leatherback, 60 loggerhead, and 10 unidentified sea turtles annually for pursuit during unsuccessful capture or remote tagging attempts. The permit would be valid for up to 10 years from the date of issuance.

File No. 23850: Shigetomo Hirama, Florida Fish and Wildlife Conservation Commission, Fish and Wildlife Research Institute, 1105 SW Williston Road, Gainesville, FL, proposes to quantify threats to pelagic sea turtles and to gather information on their life history, genetics, movements, behavior, and diet of green, Kemp's ridley, hawksbill, leatherback, and loggerhead sea turtles in the waters around Florida. Up to 210 green, 20 hawksbill, 110 Kemp's ridley, 15 leatherback, and 210 loggerhead sea turtles would be captured annually by dip net, fecal sampled (opportunistically collected from naturally voided feces), oral examination, photographed/videoed, measured, and weighed, prior to release. A subset of sea turtles would be gastric lavaged, tagged (flipper, PIT), biologically sampled (scute, skin), and/or receive a satellite tag (epoxy attachment), prior to release. The permit would be valid for up to five years from the date of issuance.

Dated: July 1, 2020.

Amy Sloan,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–14670 Filed 7–7–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA236]

Takes of Marine Mammals Incidental To Specified Activities; Taking Marine Mammals Incidental to the Crowley Kotzebue Dock Upgrade Project in Kotzebue, Alaska

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Crowley Fuels, LLC to incidentally harass, by Level B harassment only, marine mammals during construction activities associated with the Crowley Kotzebue Dock Upgrade in Kotzebue, Alaska.

DATES: This Authorization is effective from July 6, 2020 through July 5, 2021.

FOR FURTHER INFORMATION CONTACT: Leah Davis, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On January 13, 2020, NMFS received a request from Crowley Fuels, LLC (Crowley) for an IHA to take marine mammals incidental to pile driving activities at the Crowley Kotzebue Dock. The application was deemed adequate and complete on April 9, 2020. Crowley's request is for take of a small number of nine species of marine mammals, by Level B harassment only. Neither Crowley nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Activity

Crowley is proposing to upgrade their existing sheet pile bulkhead dock for vessel-based fuel and cargo distribution in Kotzebue, Alaska, as the existing bulkhead at the dock is corroding and has reached the end of its useful service life. Crowley is proposing to construct a new dock wall on the water ward side of the existing dock. Vibratory pile driving would introduce underwater sounds that may result in take, by Level B harassment, of marine mammals in Kotzebue Sound. Crowley is not proposing to conduct any demolition of the current facility.

Crowley's Kotzebue Dock provides berthing for the company's bulk fueling operations. The dock also provides essential access for community barges, cargo-loading, transloading, subsistence harvest, and other community events; all of which are necessary operations to the City of Kotzebue, its residents, and adjacent villages supported by Kotzebue's connections to marine-based transportation.

A detailed description of the planned project is provided in the **Federal Register** notice for the proposed IHA (85 FR 23766; April 29, 2020). Since that time, no changes have been made to the planned construction activities (other than schedule changes, noted below). Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Responses

A notice of NMFS' proposal to issue an IHA to Crowley was published in the **Federal Register** on April 29, 2020 (85 *FR 23766*). That notice described, in detail, Crowley's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission). Additionally, NMFS received three recommendations from an Arctic Peer Review Panel (PRP) convened by NMFS that were beyond the scope of the peer review process (please see the *Monitoring Plan Peer Review* section, below), and have therefore been considered as equivalent to public comments. NMFS also received a letter from the general public. All substantive recommendations are responded to here. The comments and recommendations have been posted online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* Please see the Commission's letter and the PRP report for full details regarding the recommendations and supporting rationale.

Comment 1: The Commission and the PRP recommended that NMFS reduce the number of authorized Level B harassment takes of beluga whale given more recent survey information (Frost and Lowry 1990, Alaska Beluga Whale Committee (ABWC) 2008) than was referenced in the proposed authorization (Frost *et al.,* 1983). The panel noted that the number of beluga whales in Kotzebue Sound may be less than 50 animals per year, as they have declined since the mid-1980s (Frost and Lowry 1990; ABWC 2008). The panel suggested that 200 Level B harassment takes of beluga whales may be more appropriate, but recommended that Crowley consult further with NMFS. The Commission recommended that NMFS reduce the number of Level B harassment takes from 100 to 51 on each project day based on the Alaska Department of Fish and Game's (ADFG) 1987 survey (ABWC 2008).

Response: NMFS agrees that this more-recent data suggests that the proposed number of Level B harassment takes of beluga whale is likely an overestimate. Given that each beluga whale potentially present in the project area has the potential to be taken by Level B harassment each project day, NMFS expects that 200 Level B harassment takes may not be sufficient. Therefore, as suggested by the Commission, NMFS has estimated that 51 Level B harassment takes of beluga whale may occur on each of the 87 project days, based on the ADFG 1987 aerial surveys. Therefore, NMFS has authorized a total of 4,437 Level B harassment takes of beluga whale.

Comment 2: The Commission recommended that NMFS increase the shut-down zone from 10 to 15 meters (m) for high-frequency (HF) cetaceans during vibratory installation of sheet piles.

Response: NMFS does not concur and does not accept the Commission's recommendation. The largest Level A harassment zone for HF cetaceans is 13 m, and NMFS has included a 10 m shutdown zone for all activities, as included in the proposed authorization. Given the duration component associated with actual occurrence of Level A harassment take, a 10 m shutdown zone is sufficient to prevent

the potential for permanent threshold shift (PTS), *i.e.,* Level A harassment take, in an estimated 13 m Level A harassment zone.

Comment 3: The Commission recommended that NMFS require Crowley to position its southernmost Protected Species Observer (PSO) farther north along Beach Trail, suggesting that this location minimizes the gap between the observers and maximizes the extent of the Level B harassment zone(s) observed. Additionally, the Commission recommends that Crowley position the PSOs on elevated platforms, if feasible.

Response: NMFS concurs with the recommendation to position PSOs on elevated platforms, and is requiring Crowley to provide elevated monitoring locations for all PSOs. However, NMFS did not adopt the Commission's recommended location for Crowley's southernmost PSO. The southernmost PSO will be stationed on a raised platform on the seawall 'bump-out' in front of the Nullaġvik hotel. Given the shoreline configuration, NMFS expects that the sound is unlikely to propagate along the shoreline by the Beach Trail, and therefore expects that the Nullaġvik hotel is a more appropriate location for the southernmost PSO. NMFS has included the required number and locations of PSOs in the final authorization and in this notice.

Comment 4: The Commission recommended that NMFS include all of the peer review panel's recommendations in the **Federal Register** notice of issuance and specify which recommendations were implemented, as well as the rationale for those that were not implemented.

Response: NMFS concurs with the recommendation and has included a thorough explanation of the peer review panel's recommendations in the *Monitoring Plan Peer Review* section of this notice. This discussion outlines the recommendations as well as whether, and if so, how the recommendations will be implemented. The discussion also includes rationale for why some recommendations were not implemented.

Comment 5: The Commission recommended that NMFS revise its standard condition for ceasing in-water heavy machinery activities to include, as examples, movement of the barge to the pile location, positioning of the pile on the substrate, use of barge-mounted excavators, and dredging in all draft and final incidental take authorizations involving pile driving and removal.

Response: NMFS does not adopt this recommendation as stated. The examples are simply intended to serve as examples. We will consider revising these examples on a case-specific basis.

Comment 6: The Commission recommended that NMFS include in the final authorization the requirement that Crowley conduct pile-driving activities during daylight hours only.

Response: NMFS does not agree that it is necessary to stipulate that the activity may only occur during daylight hours and does not adopt the recommendation. As noted in the **Federal Register** notice for the proposed authorization (85 FR 23766; April 29, 2020), Crowley does plan to conduct pile driving during daylight hours only. While Crowley has no intention of conducting pile driving activities at night, it is unnecessary to preclude such activity should the need arise (*e.g.,* on an emergency basis or to complete driving of a pile begun during daylight hours, should the construction operator deem it necessary to do so).

Comment 7: The Commission recommended that NMFS ensure that Crowley keeps a running tally of the total takes, based on observed and extrapolated takes, for Level B harassment consistent with condition 4(f) of the final authorization.

Response: We agree that Crowley must ensure they do not exceed authorized takes but do not concur with the recommendation. NMFS is not responsible for ensuring that Crowley does not operate in violation of an issued IHA.

Comment 8: The Commission recommended that NMFS refrain from issuing renewals for any authorization and instead use its abbreviated **Federal Register** notice process. If NMFS continues to propose to issue renewals, the Commission recommends that it (1) stipulate that a renewal is a one-time opportunity (a) in all **Federal Register** notices requesting comments on the possibility of a renewal, (b) on its web page detailing the renewal process, and (c) in all draft and final authorizations that include a term and condition for a renewal and, (2) if NMFS declines to adopt this recommendation, explain fully its rationale for not doing so.

Response: NMFS concurs with the recommendation to stipulate that a renewal is a one-time opportunity and has done so in the issued IHA. However, NMFS does not agree with the remainder of the Commission's recommendations on this topic and, therefore, does not adopt those recommendations. NMFS will provide a detailed explanation of its decision within 120 days, as required by section 202(d) of the MMPA.

Comment 10: The PRP recommended that Crowley revise their application to clarify the metrics being used to estimate take for each species.

Response: NMFS clearly describes the methodology for estimating take for each species in this notice. Therefore, NMFS did not require Crowley to update their application.

Comment 11: The PRP recommended that Crowley consider deploying a sound attenuation device to minimize the potential for takes by Level B harassment and reduce the uncertainty in takes for distances exceeding the PSOs' visible ranges.

Response: The majority of the piles that Crowley will install are sheet piles. Effectively implementing sound attenuation for sheet piles is difficult, and Crowley does not expect that they would be able to achieve effective attenuation for these piles. Additionally, Crowley is conducting vibratory pile driving and removal only (no impact pile driving), therefore, the calculated Level A harassment isopleths are already very small (<14 m) and will be easy for PSOs to observe. Therefore, NMFS is not requiring Crowley to use a sound attenuation device.

Changes From the Proposed IHA to Final IHA

Crowley has pushed back their start date to July 6, 2020, rather than June 1, 2020 as included in the proposed authorization. Because of Crowley's delayed start, construction has potential to extend through June 2021. Therefore, NMFS has not reduced the take calculation from what was proposed (including higher take estimates for ringed and bearded seals the month of June when more seals are expected to be present). However, NMFS corrected an error in the number of Level B harassment takes of bearded seals in the month of June, which resulted in a corrected total of 1,115 Level B harassment takes of bearded seal. As discussed in the comment responses above, the daily take estimate for beluga whales was reduced from 100 to 51 whales per day on the basis of newer information, for a total of 4,437 Level B harassment takes.

NMFS has modified Crowley's monitoring requirements based, in part, on the peer review of the monitoring plan. See ''Monitoring,'' later in this document for full details. Based on the peer review panel's report, PSO #3 will be stationed on a raised platform on the seawall ''bump-out'' in front of the Nullaġvik Hotel, and PSOs will record visibility conditions at 30 minute intervals. Separate from the peer review report, PSO #2 has been relocated also due to the applicant's inability to gain property access. PSO #2 is now located

on the Goodwin property, approximately 2 nautical miles northeast of the project site. Crowley will implement sound source verification (SSV) and passive acoustic monitoring (PAM) for marine mammals, as recommended by the peer review panel. Please refer to the *Monitoring Plan Peer Review* section for additional details regarding the panel's recommendations and whether or how Crowley will implement them.

NMFS also made a correction to the reporting measure concerning dead and injured marine mammals. The correction clarifies that Crowley must only cease activities if the death or injury was clearly caused by the specified activity.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all species or stocks for which take is expected and authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2019). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. 2018 SARs and draft 2019 SARs (*e.g.,* Muto *et al.,* 2019). All values presented in Table 1 are the most recent available at the time of publication and are available in the 2018 SARs (Muto *et al.,* 2019a, Carretta *et al.,* 2019a) and draft 2019 SARs (Muto *et al.,* 2019b, Carretta *et al.,* 2019b) (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 1—SPECIES FOR WHICH TAKE IS REASONABLY LIKELY TO OCCUR

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	-/- ; N	26,960 (0.05, 25,849, 2016)	801	139
Family Balaenopteridae (rorquals):						
Minke whale	*Balaenoptera acutorostrata*	Alaska	-/- ; N	NA (see SAR, NA, see SAR)	UND	0
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Beluga whale	*Delphinapterus leucas*	Beaufort Sea	-/- ; N	39,258 (0.229, NA, 1992)	UND	139
		Eastern Chukchi Sea	-/- ; N	20,752 (0.7, 12,194, 2012)	244	67
Killer whale	*Orcinus orca*	Gulf of Alaska, Aleutian Islands, Bering Sea Transient.	-/- ; N	587 c (NA, 587, 2012)	5.87	1
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Bering Sea	-/- ; Y	48,215 (0.223, NA, 1999)	UND	0.2
Order Carnivora—Superfamily Pinnipedia						
Family Phocidae (earless seals):						
Bearded seal	*Erignathus barbatus*	Beringia	T/D ; Y	see SAR (see SAR, see SAR, 2013	See SAR	557
Ringed seal	*Phoca (pusa) hispida*	Alaska	T/D ; Y	see SAR (see SAR, see SAR, 2013	5,100	863
Spotted seal	*Phoca largha*	Alaska	-/- ; N	461,625 (see SAR, 423,237, 2013)	12,697	329
Ribbon seal	*Histriophoca fasciata*	Alaska	-/- ; N	184,697 (see SAR, 163,086, 2013)	9,785	3.9

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-species-stock.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual mortality/serious injury (M/SI) often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

As indicated above, all nine species (with 10 managed stocks) in Table 1 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have authorized it. All species that could potentially occur in the project area are included in Table 2 of the IHA application. While Eastern North Pacific Alaska Resident Stock killer whales, bowhead whales, fin whales, humpback whales, and narwhals could potentially occur in the area, the spatial occurrence of these species is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here.

NMFS was unable to locate evidence supporting the presence of resident killer whales within Kotzebue Sound. Based on evidence of predation on marine mammals, NMFS expects killer whales within the Sound to be from transient stocks. Additionally, bowhead whales (Braham *et al.,* 1984), humpback whales, and fin whales (Clarke *et al.,* 2013) do not typically occur in the nearshore area within Kotzebue Sound. As noted in the *Specific Geographic Region* section of our notice of proposed

IHA, Kotzebue Sound is relatively shallow, further reducing the likelihood for these species to occur. The narwhal occurs in Canadian waters and occasionally in the Alaskan Beaufort Sea and the Chukchi Sea, but it is considered extralimital in U.S. waters and is not expected to be encountered. There are scattered records of narwhal in Alaskan waters, including reports by subsistence hunters (Reeves *et al.,* 2002); however, we do not expect narwhals to occur in Kotzebue Sound during the project period.

In addition, the polar bear (*Ursus maritimus*) and Pacific walrus (*Odobenus rosmarus divergens*) may occur in the project area. However, both species are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

A detailed description of the species likely to be affected by Crowley's project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (85 FR 23766; April 29, 2020); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from Crowley's construction activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the survey area. The notice of proposed IHA (85 *FR 23766;* April 29, 2020) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from Crowley's construction activities on marine mammals and their habitat. That information and analysis is incorporated by reference and is not repeated here; please refer to the notice of proposed IHA (85 *FR 23766;* April 29, 2020).

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination. Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns and/or temporary threshold shift (TTS) for individual marine mammals resulting from exposure to acoustic sources. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* shutdown zones) discussed in detail below in the Mitigation Measures section, Level A harassment is neither anticipated nor authorized.

As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 decibel (dB) re 1 μPa rms (microPascal, root mean square) for continuous (*e.g.,* vibratory pile-driving) and above 160 dB re 1 μPa rms for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

Crowley's project includes the use of continuous (vibratory pile driving) sources only, and therefore the 120dB re 1 μPa rms is applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). Crowley's project includes the use of non-impulsive (vibratory pile driving) sources.

These thresholds are provided in Table 2. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 2—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* vibratory pile driving and removal). The maximum (underwater) area ensonified above the thresholds for behavioral harassment referenced above is 52.5 km² (20.3 mi²), and the calculated distance to the farthest behavioral harassment isopleth is approximately 5.2 kilometer (km) (2.0 miles (mi)).

The project includes vibratory pile installation and removal. Source levels for these activities are based on reviews of measurements of the same or similar types and dimensions of piles available in the literature. Source levels for each pile size and activity are presented in Table 3. Source levels for vibratory installation and removal of piles of the same diameter are assumed to be the same.

TABLE 3—SOUND SOURCE LEVELS FOR PILE DRIVING

Pile size	Source level (dB RMS SPL at 10m)	Literature source
Template Piles (18-inch pipe piles) [a]	158.0	Pritchard Lake Pumping Plant, 2014.[b]
Alternate Template Piles (14-inch H piles). [a]	158.8	URS Corporation, 2007 [c]
Anchor Piles (14-inch H piles). [b]	158.8	URS Corporation, 2007.[c]
Sheet Piles	160.7	PND, 2016.

[a] We have conservatively conducted the analysis with the maximum potential pile sizes that Crowley may choose to use.

[b] Source level is the average of three 18-inch pipe piles installed at Pritchard Lake Pumping Plant. Data originally provided by Illingworth and Rodkin, Inc. and accessed in Caltrans, 2005.

[c] Port of Anchorage Test Pile Driving Program. Accessed in Caltrans, 2015. The applicant averaged the vibratory installation levels from Table I.4–9, normalized to a consistent 10-meter distance. The applicant rejected any source levels more than one standard deviation from the average (Piles 2 and 12 Down).

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

TL = B * Log10 (R1/R2),

where

TL = transmission loss in dB

B = transmission loss coefficient

R1 = the distance of the modeled SPL from the driven pile, and

R2 = the distance from the driven pile of the initial measurement

Absent site-specific acoustical monitoring with differing measured transmission loss, a practical spreading value of 15 is used as the transmission loss coefficient in the above formula. Site-specific transmission loss data for Crowley's Kotzebue dock are not available; therefore, the default coefficient of 15 is used to determine the distances to the Level A and Level B harassment thresholds.

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output

where appropriate. For stationary sources such as pile driving, NMFS User Spreadsheet predicts the distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would incur PTS. Inputs used in the User Spreadsheet, and the resulting isopleths are reported below.

TABLE 4—USER SPREADSHEET INPUT PARAMETERS USED FOR CALCULATING LEVEL A HARASSMENT ISOPLETHS

	Template piles (18-in pipe pile)	Alternate template piles (14-in H-piles)	Anchor piles (14-in H-piles)	Sheet piles
Source Level (RMS SPL)	158	158.8	158.8	160.7
Number of Piles within 24-h Period	10	10	10	9
Duration to Drive a Single Pile (minutes)	10	10	10	10
Propagation (xLogR)	15	15	15	15
Distance From Source Level Measurement (m)	10	10	10	10

Note: All calculations were completed in User Spreadsheet tab A.1: Vibratory Pile Driving with a weighting factor adjustment of 2.5kHz.

TABLE 5—CALCULATED DISTANCES TO LEVEL A AND LEVEL B HARASSMENT ISOPLETHS

Activity	Level A harassment zone (m)					Level B harassment zone (m) [a]
	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid pinnipeds	Otariid pinnipeds	
Template Piles (18-in Pipe Pile)	6	1	9	4	<1	3415
Alternate Template Piles (14-in H-piles)	7	1	10	4	<1	3861
Anchor Piles (14-in H-piles)	7	1	10	4	<1	3861
Sheet Piles	9	1	13	5	<1	5168

[a] All Level B harassment zones were calculated using practical spreading (15logR) and a 120dB re 1 μPa rms threshold.

TABLE 6—ESTIMATED AREA ENSONIFIED ABOVE THE LEVEL B HARASSMENT TAKE THRESHOLD, AND ESTIMATED DAYS OF CONSTRUCTION FOR EACH ACTIVITY

Pile size	Estimated area ensonified above level b harassment take threshold (km^2)	Estimated duration (days)
Template Piles (18-in Pipe Pile)	24.8	[a] 37
Alternate Template Piles (14-in H-piles)	32.1	[a] 37
Anchor Piles (14-in H-piles)	32.1	2
Sheet Piles	52.5	48
All Activities		87

[a] Includes both installation and removal.
Note: The estimated days of construction for each activity include a 10 percent contingency period to account for potential construction delays.

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. We describe how the information provided above is brought together to produce a quantitative take estimate.

Gray Whale

Gray whales were reported as present and feeding (sometimes in large numbers) in Kotzebue Sound, and a gray whale was harvested by whale hunters at Sisualiq in 1980

(Frost *et al.,* 1983). Additionally, between 2010 and 2019, there were five reports of gray whale strandings within inner Kotzebue Sound, including one in Hotham Inlet. An additional unidentified large whale was reported stranded south of Cape Blossom in 2018 (Savage, pers. comm. 2019). NMFS was unable to locate data describing frequency of gray whale occurrence, group size, or density within the project area.

Crowley plans to construct 14 cells in the planned dock, and construction of each is expected to require approximately one week; however, NMFS estimates that construction of all cells will last 15 weeks to account for potential delays or other unforeseen circumstances. NMFS expects that a gray whale or group of gray whales may enter the project area periodically throughout the duration of the construction period, averaging one gray whale per week. Therefore, given the limited information in the project area to otherwise inform a take estimate, NMFS has authorized 15 Level B harassment takes of gray whale.

The largest Level A harassment zone for low-frequency cetaceans extends 8.5 m from the source during vibratory pile driving of the sheet piles (Table 5). Crowley is planning to implement a 10 m shutdown zone during all construction activities, which, especially in combination with the already low frequency of gray whales entering the area, is expected to eliminate the potential for Level A harassment take of gray whale. Therefore, Crowley did not request Level A harassment takes of gray whale, nor has NMFS authorized any.

Minke Whale

Minke whales were reported as sometimes present in Kotzebue Sound during the summer months and two

individuals beached in the mouth of the Buckland River in autumn during the late 1970s (Frost *et al.,* 1983). NMFS was unable to locate additional, more recent data describing frequency of minke whale occurrence, group size, or density within the project area.

Crowley plans to construct 14 cells in the dock, and construction of each is expected to require approximately one week; however, NMFS estimates that construction of all cells will last 15 weeks to account for potential delays or other unforeseen circumstances. NMFS estimates that a minke whale may enter a Level B harassment zone every other week throughout the duration of the construction period. Therefore, given the limited information in the project area to otherwise inform a take estimate, NMFS has authorized eight Level B harassment takes of minke whale.

The largest Level A harassment zone for low-frequency cetaceans extends 8.5 m from the source during vibratory pile driving of the sheet piles (Table 5). Crowley is planning to implement a 10 m shutdown zone during all construction activities, which, especially in combination with the already low likelihood of minke whales entering the area, are expected to eliminate the potential for Level A harassment take of minke whale. Therefore, Crowley did not request Level A harassment takes of minke whale, nor has NMFS authorized any.

Beluga Whale

Reports of belugas at Sisualiq Spit, directly across from Kotzebue, include groups of 75–100 individuals, described as moving clockwise into the Sound. Along the west coast of Baldwin peninsula, they have been reported in groups of 200–300, culminating in groups of 1,000 or more in Eschscholtz Bay and near the Chamisso Islands (Frost *et al.,* 1983).

Beluga whales from the Beaufort Sea and Eastern Chukchi Sea stocks have the potential to be taken by Level B harassment. NMFS and Crowley initially estimated that 100 beluga whales may be taken, by Level B harassment, on each project day. However, as noted previously, the PRP and the Commission noted that this estimate is likely too high given more recent data (ABWC, 2008). The ABWC (2008) notes that in an aerial survey of Kotzebue Sound in June and July 1987, researchers observed a maximum count of 51 beluga whales. The article notes that in later surveys (1996–98) in Kotzebue Sound, researchers observed fewer than 15 belugas per day, however, the authors state that this may have been partly due to the surveys being conducted too late in the season. Based on the surveys described in ABWC (2008), and as recommended by the Commission, NMFS has reduced the number of Level B harassment takes of beluga whale. NMFS conservatively estimates that up to 51 beluga whales may be taken by Level B harassment on each project day. Therefore, NMFS has conservatively authorized 4,437 Level B harassment takes of beluga whale (51 beluga whales × 87 estimated in-water work days = 4,437 Level B harassment takes).

The largest Level A harassment zone for mid-frequency cetaceans extends 0.8 m from the source during vibratory installation of the sheet piles (Table 5). Crowley is planning to implement a 10 m shutdown zone during all construction activities, which, given the extremely small size of the Level A harassment zones, is expected to eliminate the potential for Level A harassment take of beluga whale. Therefore, takes of beluga whale by Level A harassment have not been requested, and are not authorized.

Killer Whale

Photo identification of individuals spotted in the southern Chukchi sea during transect surveys (during which at least 37 individuals were spotted six times) identified transient type killer whales. Sightings reported included two sightings of 14 whales each in July, 3 sightings of 18 whales each in August, and one sighting of 5 whales in September, with an average group size of 15 animals (Clarke *et al.,* 2013).

Due to Crowley's project's remote location at the fringes of the known range of the stock, it is unlikely that more than one or two pods would be located in the region during construction. Crowley conservatively estimates, and NMFS agrees, that 15 Gulf of Alaska, Aleutian Islands, and Bering Sea Transient killer whales may be present in the Level B harassment zone on a maximum of 25 percent of project days, given the transient nature of the animals. Therefore, NMFS has authorized Level B harassment take of 15 individuals on 22 project days (25% of total expected days (87 days)) for a total of 330 Level B harassment takes.

The largest Level A harassment zone for mid-frequency cetaceans extends 0.8 m from the source during vibratory installation of the sheet piles (Table 5). Crowley is planning to implement a 10 m shutdown zone during all construction activities, which, given the extremely small size of the Level A harassment zones, is expected to eliminate the potential for Level A harassment take of killer whale. Therefore, takes of killer whale by Level A harassment were not requested, nor has NMFS authorized any.

Harbor Porpoise

The harbor porpoise frequents nearshore waters and coastal embayments throughout their range, including bays, harbors, estuaries, and fjords less than 650 feet (ft) (198 m) deep (NMFS, 2019g). Harbor porpoises have been detected in Kotzebue Sound between September and November and between January and March during acoustic monitoring in 2014 & 2015. Porpoises had not previously been reported under the ice in the Chukchi (Whiting *et al.,* 2019). NMFS was unable to locate a density or group size for Kotzebue Sound, and therefore used the maximum harbor porpoise group size (four animals) from the Distribution and Relative Abundance of Marine Mammals in the Eastern Chukchi and Western Beaufort Seas, 2018 Annual Report (Clarke *et al.,* 2019). Crowley plans to construct 14 cells in the dock, and construction of each is expected to require approximately one week; however, NMFS estimates that construction of all cells will last 15 weeks to account for potential delays or other unforeseen circumstances. NMFS estimates that approximately two groups of four harbor porpoises may be present during each week of construction, and has authorized 120 Level B harassment takes of harbor porpoise (4 animals in a group × 2 groups per week × 15 weeks = 120 Level B harassment takes).

The largest Level A harassment zone for high-frequency cetaceans extends 12.6 m from the source during vibratory installation of the sheet piles (Table 5). Crowley is planning to implement a 10 m shutdown zone during all construction activities, which, given the small size of the Level A harassment zones, and the associated duration component, is expected to eliminate the potential for Level A harassment take of harbor porpoise. Therefore, Crowley did not request takes of harbor porpoise by Level A harassment, nor has NMFS authorized any.

Bearded Seal

Aerial surveys of ringed and bearded seals in the Eastern Chukchi Sea in May and June reported relatively few bearded seals within inner Kotzebue Sound, as bearded seals typically congregate on offshore ice rather than nearshore. In 1976 aerial surveys of bearded seals in the Bering Sea, densities ranged between 0.006 and 0.782 seals per km^2. Bearded seals were typically spotted in groups of one to two individuals with occasional larger

groupings in denser areas (Braham *et al.,* 1984). Bengtson *et al.,* 2005 includes bearded seal densities calculated from aerial surveys in May and June 1999 and May 2000, however, the density for the project area was zero in both years. However, data shows that at least some bearded seals are nearby from June to September, and could potentially enter the project area (Bengtson *et al.,* 2005, Quakenbush *et al.,* 2019). Therefore, NMFS determined that 0.782 (Braham *et al.,* 1984) is the most appropriate density, considering those available.

Given the known association between ice cover and bearded seal density, NMFS estimates that bearded seal density will be highest in June, and will taper off as the ice melts (Quakenbush *et al.,* 2019). As such, for the proposed authorization, NMFS estimated bearded seal take for the month of June separately from the remainder of the expected project period (July through September). Crowley is now beginning construction in July. Given this delay, the open-water construction season is shorter, and there is a chance that Crowley may need to extend construction into June of 2021. Therefore, NMFS retains the separate calculation for bearded seal take in the month of June in the final authorization.

As noted in the *Detailed Description of Specific Activity* section in the **Federal Register** notice for the proposed IHA (85 FR 23766; April 29, 2020), Crowley will construct the dock upgrade one cell at a time, with construction of each cell requiring approximately one week. In an effort to separate out work that will occur in June, NMFS made several assumptions: (1) NMFS assumes that the best density available is 0.782 (Braham *et al.,* 1984); (2) While there are 14 cells and construction of each is expected to require approximately one week, NMFS estimates that construction of all cells will last 15 weeks to account for potential delays or other unforeseen circumstances; (3) NMFS assumes that each cell will require the same number of each pile type, and therefore the same duration for installation (and removal of template piles), despite known differences in design among some cells; and (4) NMFS assumes that construction will require approximately 87 in-water workdays.

NMFS calculated the assumed days per cell for each activity (Table 7) by considering the proportion of the assumed project days for each activity out of the 87 total project days in comparison to the assumed days per cell out of the expected duration of seven days to complete a cell (see assumption (2), above). (*i.e.* Assumed Project Days/87 days = Assumed Days per Cell/7 days). NMFS calculated the Anticipated Days in June by multiplying the Assumed Days per Cell × 4 weeks of June.

NMFS calculated take for each activity during the month of June (Table 7) by multiplying the anticipated days in June × area of Level B harassment zone (km^2) × density (0.782 km^2). Given these assumptions and takes per activity (Table 7), NMFS estimates approximately 961 bearded seal takes in the month of June (sum of Takes per Activity in Table 7).

TABLE 7—NMFS ASSUMPTIONS FOR BEARDED SEAL JUNE TAKE ESTIMATE

Pile type	Assumed project days	Assumed days per cell	Anticipated days in June	Area of level B harassment zone (km^2)	Take per activity
Template Piles [a]	[b] 37	3.0	12	32.1	301
Anchor Piles (14-in H-piles)	2	0.2	0.8	32.1	20
Sheet Piles	48	3.9	15.6	52.5	640

[a] Conservatively assumes 14-inch H-piles rather than 18-inch pipe piles.
[b] Includes installation and removal.

During the months of July to September, NMFS expects that the number of bearded seals in the project area will be much lower due to the lack of sea ice. NMFS considered the relative number of ringed and bearded seals locations reported in Quakenbush *et al.,* (2019, Figures 7, 30, and 55), and estimates that approximately twice as many bearded seals (two to four) are likely to occur in the project area than ringed seals (one to two), because tagging studies show that nearly all of the ringed seals spend the summer north of Point Hope (Figures 30 and 55). NMFS estimates that approximately 14 Level B harassment takes of bearded seals takes may occur each week. Given the assumed 15 weeks of construction, and four assumed weeks of construction in June, NMFS estimates that Crowley will conduct pile driving activities for 11 weeks from July through September. To estimate bearded seal takes during that period, NMFS multiplied the estimated weekly take estimate by the estimated number of weeks of construction, for a total of 154 Level B harassment takes from July to September (14 bearded seals × 11 weeks of construction = 154 Level B harassment takes).

Therefore, throughout the entire project period, NMFS has authorized 1,115 Level B harassment takes of bearded seals (961 estimated takes in June + 154 estimated takes from July to September = 1,115 Level B harassment takes).

The largest Level A harassment zone for phocids extends 5.2 m from the source during vibratory installation of the sheet piles (Table 5). Crowley is planning to implement a 10 m shutdown zone during all construction activities, which, given the extremely small size of the Level A harassment zones, is expected to eliminate the potential for Level A harassment take of bearded seals. Therefore, takes of bearded seal by Level A harassment have not been requested, and are not authorized.

Ringed Seal

Ringed seals are distributed throughout Arctic waters in all ''seasonally ice-covered seas.'' In winter and early spring when sea ice is at its maximum coverage, they occur in the northern Bering Sea, in Norton and Kotzebue Sounds, and throughout the Chukchi and Beaufort Seas. In years with particularly extensive ice coverage, they may occur as far south as Bristol Bay (Muto *et al.,* 2019). In 1976 aerial surveys of ringed seals in the Bering Sea, densities ranged between 0.005 and 0.017 seals per seals per km^2 (Braham *et al.,* 1984). Surveys of seals in their breeding grounds in the Sea of Okhotsk in 1964 found densities of 0.1 to 2 seals per km^2 (CNRC, 1965). Bengtson *et al.,* 2005 includes ringed seal densities calculated from aerial surveys in May and June 1999 and May 2000. Densities for the waters surrounding Kotzebue ranged from 3.82 (2000) to 5.07 (1999).

Given the known association between ice cover and ringed seal density, NMFS estimates that ringed seal density will

be highest when the project begins in June, and will taper off as the ice melts (Quakenbush *et al.,* 2019). As such, for the proposed authorization, NMFS estimated ringed seal take for the month of June separately from the remainder of the expected project period (July through September). Crowley is now beginning construction in July. Given this delay, the open-water construction season is shorter, and there is a chance that Crowley may need to extend construction into June of 2021. Therefore, NMFS has still separately calculated ringed seal take for the month of June in the final authorization.

As noted in the Description of Activity section, Crowley will construct the dock upgrade one cell at a time, with construction of each cell requiring approximately one week. In an effort to separate out work that will occur in June, NMFS made several assumptions: (1) NMFS assumes that the best density available 5.07 animals/km² (Bengtson *et al.,* 2005); (2)While there are 14 cells and construction of each is expected to require approximately one week, NMFS estimates that construction of all cells will last 15 weeks to account for potential delays or other unforeseen circumstances; (3) NMFS assumes that each cell will require the same number of each pile type, and therefore the same duration for installation (and removal of template piles), despite known differences in design among some cells; and (4) NMFS assumes that construction will require approximately 87 in-water workdays.

NMFS calculated the assumed days per cell for each activity (Table 8) by considering the proportion of the assumed project days for each activity out of the 87 total project days in comparison to an assumed days per cell out of the expected duration of seven days to complete a cell (see assumption (2), above). (*i.e.* Assumed Project Days/87 days = Assumed Days per Cell/7 days). NMFS calculated the Anticipated Days in June by multiplying the Assumed Days per Cell × 4 weeks of June.

NMFS calculated take for each activity during the month of June (Table 8) by multiplying the anticipated days in June × area of Level B harassment zone (km²) × density (5.07/km²). Given these assumptions (Table 8), NMFS estimates 6,235 ringed seal takes in the month of June (sum of Takes per Activity in Table 8).

TABLE 8—NMFS ASSUMPTIONS FOR RINGED SEAL JUNE TAKE ESTIMATE

Pile type	Assumed project days [b]	Assumed days per cell	Anticipated days in June	Area of level B harassment zone (km²)	Take per activity
Template Piles [a]	[b] 37	3.0	12	32.1	1,953
Anchor Piles (14-in H-piles)	2	0.2	0.8	32.1	130
Sheet Piles	48	3.9	15.6	52.5	4,152

[a] Conservatively assumes 14-inch H-piles rather than 18-inch pipe piles.
[b] Includes installation and removal.

During the months of July to September, NMFS expects that the number of ringed seals in the project area will much lower due to the lack of sea ice. NMFS considered the relative number of ringed and bearded seals locations reported in Quakenbush *et al.* (2019, Figures 30, and 55), and estimates that approximately twice as many bearded seals (two to four) are likely to occur in the project area than ringed seals (one to two). NMFS estimates that approximately seven Level B harassment takes of ringed seals takes may occur each week. Given the assumed 15 weeks of construction, and four assumed weeks of construction in June, NMFS estimates that Crowley will conduct pile driving activities for 11 weeks from July through September. To estimate ringed seal takes during that period, NMFS multiplied the estimated weekly take estimate by the estimated number of weeks of construction, for a total of 77 Level B harassment takes (7 ringed seals × 11 weeks of construction = 77 Level B harassment takes from July to September).

Therefore, throughout the entire project period, NMFS has authorized 6,312 Level B harassment takes of ringed seals (6,235 estimated takes in June + 77 estimated takes from July to September).

The largest Level A harassment zone for phocids extends 5.2 m from the source during vibratory installation of the sheet piles (Table 5). Crowley is planning to implement a 10 m shutdown zone during all construction activities, which, given the extremely small size of the Level A harassment zones, is expected to eliminate the potential for Level A harassment take of ringed seals. Therefore, takes of ringed seal by Level A harassment have not been requested, and are not authorized.

Spotted Seal

From the late-fall through spring, spotted seals are distributed where sea ice is available for hauling out. From summer through fall, the seasonal sea ice has melted and spotted seals haul out on land (Muto *et al.,* 2019). An estimated 69,000–101,000 spotted seals from the eastern Bering Sea use the Chukchi Sea during the spring open-water period (Boveng *et al.,* 2017). In 1976 aerial surveys of spotted seals in the Bering Sea, densities ranged between 0.013 and 1.834 seals per seals per km² (Braham *et al.,* 1984). According to Audubon (2010), spotted seals haul out between June and December in Krusenstern Lagoon, the Noatak River delta, the tip of the Baldwin Peninsula, and Cape Espenberg. Subsistence users report that spotted seals move into the area in July, following fish runs into the Sound and up the Noatak River (NAB, 2016). Spotted seals in the Chamisso Islands were reported in groups of up to 20, but they may reach groups of over 1,000 at Cape Espenberg (Frost *et al.,* 1983).

To calculate estimated Level B harassment takes, Crowley used a density of 1.834 spotted seals/km² (Braham *et al.,* 1984). NMFS was not able to locate information to support a separate take calculation for June from the remainder of the work period, as was done for the other ice seals. Therefore, NMFS calculated Level B harassment takes by multiplying 1.834 spotted seals/km² × the area ensonified above the Level B harassment threshold during each pile driving activity × estimated days of construction for each activity (Table 6) for a total of 6,917 Level B harassment takes. Given that the Braham *et al.,* 1984 density is from the Bering Sea, and Boveng *et al.,* 2017 states that spotted seals from the Bering Sea use the Chukchi Sea during the open water period, NMFS expects that this Bering Sea density provides an appropriate estimate for Kotzebue during the project period. Additionally, the estimated group size of up to 20 individuals at the Chamisso Islands is

over 50 km from the project site, and NMFS expects that the count of 1,000 animals at Cape Epsenberg (Frost *et al.,* 1983) is an outlier. Therefore, given the limited information in the project area to otherwise inform a take estimate, NMFS has authorized 6,917 Level B harassment takes of spotted seal.

The largest Level A harassment zone for phocids extends 5.2 m from the source during vibratory installation of the sheet piles (Table 5). Crowley is planning to implement a 10 m shutdown zone during all construction activities, which, given the extremely small size of the Level A harassment zones, is expected to eliminate the potential for Level A harassment take of spotted seals. Therefore, takes of spotted seal by Level A harassment have not been requested, and are not authorized.

Ribbon Seal

Ribbon seals range from the North Pacific Ocean and Bering Sea into the Chukchi and western Beaufort Seas in Alaska. They occur in the Bering Sea from late March to early May. From May to mid- July the ice recedes, and ribbon seals move further north into the Bering Strait and the southern part of the Chukchi Sea (Muto *et al.,* 2019). An estimated 6,000–25,000 ribbon seals from the eastern Bering Sea use the Chukchi Sea during the spring open-water period (Boveng *et al.,* 2017). In 1976 aerial surveys of ribbon seals in the Bering Sea, maximum reported densities were 0.002 seals per seals per km² (Braham *et al.,* 1984). Range mapping of the ribbon seal shows them present in the project vicinity from June to December; however, they typically concentrate further offshore, outside of the Sound (Audubon, 2010).

To calculate estimated Level B harassment takes, Crowley used a density of 0.002 ribbon seals/km² (Braham *et al.,* 1984). NMFS recognizes that this density estimate is from the Bering Sea, but was unable to locate more local or recent data describing frequency of ribbon seal occurrence, group size, or density within the project area. Crowley calculated a Level B harassment take estimate by multiplying 0.002 ribbon seals/km² × the area ensonified above the Level B harassment threshold during each pile driving activity × estimated days of construction for each activity, for a total of eight Level B harassment takes. Given the limited information in the project area to otherwise inform a take estimate, NMFS has authorized eight Level B harassment takes of ribbon seal.

The largest Level A harassment zone for phocids extends 5.2 m from the source during vibratory installation of the sheet piles (Table 5). Crowley is planning to implement a 10 m shutdown zone during all construction activities, which, given the extremely small size of the Level A harassment zones, is expected to eliminate the potential for Level A harassment take of ribbon seals. Therefore, takes of ribbon seal by Level A harassment have not been requested, and are not authorized.

TABLE 9—ESTIMATED TAKE BY LEVEL B HARASSMENT, BY SPECIES AND STOCK

Common name	Stock	Level B harassment take	Stock abundance	Percent of stock
Gray Whale	Eastern North Pacific	15	26,960	.06
Minke Whale	Alaska	8	N/A	N/A
Killer Whale	Gulf of Alaska, Aleutian Islands, and Bering Sea Transient.	330	587	56.2
Beluga Whale	Beaufort Sea	4,437	39,258	11.3
	Eastern Chukchi Sea		20,752	21.4
Harbor Porpoise	Bering Sea	120	48,215	0.2
Bearded Seal	Alaska	1,115	N/A	N/A
Ringed Seal	Alaska	6,312	N/A	N/A
Spotted Seal	Alaska	6,917	461,625	1.5
Ribbon Seal	Alaska	8	184,697	0.004

Potential Effects of Specified Activities on Subsistence Uses of Marine Mammals

The activity may impact the availability of the affected marine mammal stocks or species for subsistence uses. The subsistence uses that may be affected and the potential impacts of the activity on those uses are described below. Measures included in this IHA to reduce the impacts of the activity on subsistence uses are described in the Mitigation Measures section. Last, the information from this section and the Mitigation Measures section is analyzed to determine whether the necessary findings may be made in the Unmitigable Adverse Impact Analysis and Determination section.

Residents of Qikiqtaġruq (Kotzebue), Ipnatchiaq (Deering), Nunatchiaq (Buckland), Nuataaq (Noatak), and Nuurvik (Noorvik) harvest marine mammals from Kotzebue Sound during all seasons. Traditional harvests include bowhead and beluga whales and all four seal species discussed in this notice, as well as subsistence fishing. Additionally, a gray whale harvest at Sisualiq Spit was reported to the Alaska Department of Fish & Game (ADF&G) in 1980 (Frost *et al.,* 1983).

Beluga whales are routinely hunted throughout the Sound in spring and summer (NAB, 2016). Traditional hunting grounds for beluga (sisuaq) are directly across from Kotzebue at Sisualiq Spit (Huntington *et al.,* 2016). Recently, regional hunters have reported a significant change in the presence of beluga whales in the Sound. There are no longer sufficient whales to make a traditional, coordinated drive hunt on Sisualiq Spit, and Belugas are no longer common in Eschscholtz Bay, either. Hunters attribute the decrease to a variety of factors, including engine noise (both air and vessel traffic have increased), lack of coordinated hunts, and killer whale pressure (Huntington *et al.,* 2016b). Impacts from Crowley's project are not expected to reach the traditional beluga harvest grounds.

Bowhead whales are harvested mostly by the residents between Kivalina and Point Hope (NAB, 2016). We do not expect Crowley's project to impact bowhead whales, given that the whales are primarily targeted outside of the Sound, and the project is not expected to impact their prey or migratory behavior.

Bearded and ringed seals are the most commonly harvested seals in the Kotzebue Sound area (Huntington *et al.,* 2016). Bearded seals are the primary focus for Kotzebue Sound hunters in the spring, with harvests occurring near

Cape Krusenstern and Goodhope Bay. Hunt effort for bearded seals appears equal in spring and fall (NAB 2016). In thinner ice years, there is less suitable denning habitat for ice seals and more danger for seal hunters to camp out and to approach the seals. Hunters report that there is no longer ice for hunting bearded seals into July, as there was in the 1980s.

Huntington *et al.,* (2016) report that bearded and ringed seals are hunted from ice breakup until the spotted seals arrive and chase them from the area. The NAB (2016) also reported harvest efforts for spotted and ribbon seals in Kotzebue Sound. With the exception of bearded seals, there were limited hunting efforts in the spring (March–May) with nearly twice as much harvest effort in the fall (September–November) and significantly less hunting in summer (June–August).

Ribbon seals have always been infrequent in Kotzebue Sound, but are becoming increasingly more rare (Huntington *et al.,* 2016). They are not harvested for human consumption, but their hides are harvested and meat and blubber used as dog food. Generally, hunters reported that there is less need for seal hunting than in the past because they are needed less for sled dog feed and sealskin storage containers (Huntington *et al.,* 2016).

Project activities mostly avoid traditional ice seal harvest windows (noted above) and are generally not expected to negatively impact hunting of seals. However, as noted above, some seal hunting does occur throughout the project period. The project could deter target species and their prey from the project area, increasing effort required for a successful hunt. Construction may also disturb beluga whales, potentially causing them to avoid the project area and reducing their availability to subsistence hunters as well. Additionally, Crowley's dock provides essential water access for subsistence harvests, so construction at the dock has the potential to reduce access for subsistence hunters.

Mitigation Measures

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat, as well as subsistence uses. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Mitigation for Marine Mammals and Their Habitat

In addition to the measures described later in this section, Crowley will employ the following mitigation measures:

- Conduct briefings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all pile driving activity and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;
- For in-water heavy machinery work other than pile driving (*e.g.,* standard barges, *etc.*), if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) Movement of the barge to the pile location; or (2) positioning of the pile on the substrate via a crane (*i.e.,* stabbing the pile);
- For those marine mammals for which Level B harassment take has not been requested, in-water pile installation/removal will shut down immediately if such species are observed within or on a path towards the Level B harassment zone; and
- If take reaches the authorized limit for an authorized species, pile installation will be stopped as these species approach the Level B harassment zone to avoid additional take.

Additionally, Crowley is required to implement all mitigation measures described in the biological opinion.

The following mitigation measures would apply to Crowley's in-water construction activities.

Establishment of Shutdown Zones—Crowley will establish a 10-meter shutdown zone for all construction activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area).

The placement of PSOs during all pile driving and removal activities (described in detail in the Monitoring and Reporting section) will ensure that the entire shutdown zone is visible during pile installation. Should environmental conditions deteriorate such that marine mammals within the entire shutdown zone would not be visible (*e.g.,* fog, heavy rain), pile driving and removal must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

Monitoring for Level B Harassment—Crowley will monitor the Level B harassment zones (areas where sound pressure levels (SPLs) are equal to or exceed the 120 dB rms threshold during vibratory pile driving). Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential cease of activity should the animal enter the shutdown zone. Placement of PSOs on the shorelines around Kotzebue will allow PSOs to observe marine mammals within the Level B harassment zones. However, due to the large Level B harassment zones (Table 5), PSOs will not be able to effectively observe the entire zone. Therefore, Level B harassment exposures will be recorded and extrapolated based upon the

number of observed takes and the percentage of the Level B harassment zone that was not visible.

Pre-activity Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile driving/removal of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 15 minutes. If the Level B harassment zone has been observed for 30 minutes and no species for which take is not authorized are present within the zone, work can commence and continue even if visibility becomes impaired within the Level B harassment monitoring zone. When a marine mammal for which Level B harassment take is authorized is present in the Level B harassment zone, activities may begin and Level B harassment take will be recorded. If the entire Level B harassment zone is not visible at the start of construction, pile driving/removal activities can begin. If work ceases for more than 30 minutes, the pre-activity monitoring of both the Level B harassment zone and shutdown zones will commence.

Mitigation for Subsistence Uses of Marine Mammals or Plan of Cooperation

Regulations at 50 CFR 216.104(a)(12) further require IHA applicants conducting activities that take place in Arctic waters to provide a Plan of Cooperation (POC) or information that identifies what measures have been taken and/or will be taken to minimize adverse effects on the availability of marine mammals for subsistence purposes.

A plan must include the following:

- A statement that the applicant has notified and provided the affected subsistence community with a draft plan of cooperation;
- A schedule for meeting with the affected subsistence communities to discuss proposed activities and to resolve potential conflicts regarding any aspects of either the operation or the plan of cooperation;
- A description of what measures the applicant has taken and/or will take to ensure that proposed activities will not interfere with subsistence whaling or sealing; and
- What plans the applicant has to continue to meet with the affected communities, both prior to and while conducting the activity, to resolve conflicts and to notify the communities of any changes in the operation.

Crowley provided a draft POC to affected parties on November 12, 2019. It includes a description of the project, community outreach that has already been conducted, and project mitigation measures. Crowley is working on their plan for continuing coordination with subsistence communities throughout the project duration. The POC is a live document and may continue to be updated.

Crowley will coordinate with local subsistence groups to avoid or mitigate impacts to beluga whale harvests. Additionally, project activities avoid traditional ice seal harvest windows, and are not expected to negatively impact hunting of bearded or ringed seals. Crowley will coordinate with local communities and subsistence groups throughout construction to avoid or mitigate impacts to ice seal harvests. Additionally, Crowley will regularly communicate throughout the project by broadcast public radio announcement and periodic activity reports to interested parties via email.

Based on our evaluation of Crowley's proposed measures, as well as other measures considered by NMFS, NMFS has determined that the mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses.

Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

Visual Monitoring

Marine mammal monitoring during pile driving and removal must be conducted by NMFS-approved PSOs in a manner consistent with the following:

- Independent PSOs (*i.e.,* not construction personnel) who have no other assigned tasks during monitoring periods must be used;
- Where a team of three or more PSOs are required, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience working as a marine mammal observer during construction;
- Other PSOs may substitute education (degree in biological science or related field) or training for experience. PSOs may also substitute Alaska native traditional knowledge for experience. (NMFS recognizes that PSOs with traditional knowledge may also have prior experience, and therefore be eligible to serve as the lead PSO.); and
- Crowley must submit PSO Curriculum Vitae for approval by NMFS prior to the onset of pile driving.

PSOs must have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;

• Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

• Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and

• Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Three PSOs will be present during all pile driving/removal activities. One PSO will have an unobstructed view of all water within the shutdown zone, and all three PSOs will observe as much of the Level B harassment zone as possible. One PSO must be stationed on an elevated platform at each of the following locations:

(1) At or near the site of pile driving;

(2) Goodwin property (approximately 2 nautical miles northeast of pile driving site); and

(3) Seawall 'bump-out' in front of the Nullaġvik hotel.

Monitoring would be conducted 30 minutes before, during, and 30 minutes after pile driving/removal activities. Observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes. PSOs must also record visibility conditions every 30 minutes based on established on-land reference landmarks.

Additionally, two PSOs are required to monitor for a one-week period before and after pile driving.

Acoustic Monitoring

Crowley intends to conduct a SSV study to confirm the sound source levels, transmission loss coefficient, and size of the Level A and Level B harassment zones. They intend to request a modification to the zones, if appropriate based on the results of the SSV study. Their plan follows accepted methodological standards to achieve their objectives, and is available on NMFS' website at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* If NMFS approves the results of the SSV study, we will modify the zone sizes based on the approved data. Additionally, Crowley intends to conduct PAM to record marine mammal vocalizations for 1–2 weeks. Acoustic monitoring report requirements are listed in the Reporting section, below.

Reporting

A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of pile driving and removal activities. The report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

• Dates and times (begin and end) of all marine mammal monitoring.

• Construction activities occurring during each daily observation period, including precise start and stop time of each type of construction operation mode, how many and what type of piles were driven or removed and by what method (*i.e.,* impact or vibratory).

• Total number of hours during which each construction activity type occurred.

• Total number of hours that PSOs were on duty during each construction activity, and total number of hours that PSOs were on duty during periods of no construction activity.

• Weather parameters and water conditions during each monitoring period (*e.g.,* wind speed, percent cover, visibility, sea state), and number of hours of observation that occurred during various visibility and sea state conditions.

• The number of marine mammals observed, by species, relative to the active construction cell location and if pile driving or removal was occurring at time of sighting.

• Age and sex class, if possible, of all marine mammals observed.

• PSO locations during marine mammal monitoring, including elevation above sea level.

• Distances and bearings of each marine mammal observed to the pile being driven or removed for each sighting (if pile driving or removal was occurring at time of sighting).

• Description of any marine mammal behavior patterns during observation, including direction of travel and estimated time spent within the Level A and Level B harassment zones while the source was active.

• Number of animals (differentiated by month as appropriate) detected within the monitoring zone, by species and construction activity (including no activity periods as the ''undisturbed'' condition.

• Estimates of number of marine mammals taken, by species (a correction factor may be applied to total take numbers, as appropriate).

• Histograms of perpendicular distances to PSO sightings, by species (or species group if sample sizes are small).

• Sighting rates summarized into daily or weekly periods for the before, during, and after construction periods.

• Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal, if any.

• Description of attempts to distinguish between the number of individual animals taken and the number of incidences of take, such as ability to track groups or individuals.

• An extrapolation of the estimated takes by Level B harassment based on the number of observed exposures within the Level B harassment zone and the percentage of the Level B harassment zone that was not visible.

If no comments are received from NMFS within 30 days, the draft report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Crowley must include the following information in their acoustic monitoring report.

• Hydrophone equipment and methods: Recording devices, sampling rate, sensitivity of the PAM equipment, locations of the hydrophones, duty cycle, distance (m) from the pile where recordings were made, depth of recording devices, depth of water in area of recording devices.

• Type and size of pile being driven, substrate type, method of driving during recordings.

• Mean, median, and maximum received sound levels: Root mean square sound pressure level (SPLrms) in 1-sec segments, peak sound pressure level (SPLpeak), cumulative sound exposure level (SELcum), duration to install each pile.

• Duration per pile measured, one-third octave band spectrum, power spectral density plot.

• Estimated source levels referenced to 10 m, transmission loss coefficients, and estimated Level A and Level B harassment isopleths.

• Number of acoustic detections, by species and operation mode (including

no activity periods as the ''undisturbed'' condition).

Crowley must also submit acoustic recordings and necessary metadata associated with passive acoustic monitoring for marine mammals within one month of monitoring.

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the IHA-holder shall report the incident to the Office of Protected Resources (OPR) (301–427–8401), NMFS and to the Alaska Statewide 24-Hour Stranding Hotline (877–925–7773) as soon as feasible. If the death or injury was clearly caused by the specified activity, the IHA-holder must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The IHA-holder must not resume their activities until notified by NMFS.

The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Monitoring Plan Peer Review

The MMPA requires that monitoring plans be independently peer reviewed where the proposed activity may affect the availability of a species or stock for taking for subsistence uses (16 U.S.C. 1371(a)(5)(D)(ii)(III)). Regarding this requirement, NMFS' implementing regulations state that upon receipt of a complete monitoring plan, and at its discretion, NMFS will either submit the plan to members of a peer review panel for review or within 60 days of receipt of the proposed monitoring plan, schedule a workshop to review the plan (50 CFR 216.108(d)).

NMFS established an independent PRP to review Crowley's Monitoring Plan for the proposed project in Kotzebue. NMFS provided Crowley's monitoring plan to the PRP and asked them to answer the following questions:

1. Will the applicant's stated objectives effectively further the understanding of the impacts of their activities on marine mammals and otherwise accomplish the goals stated below? If not, how should the objectives be modified to better accomplish the goals below?

2. Can the applicant achieve the stated objectives based on the methods described in the plan?

3. Are there technical modifications to the proposed monitoring techniques and methodologies proposed by the applicant that should be considered to better accomplish the objectives?

4. Are there techniques not proposed by the applicant (*i.e.,* additional monitoring techniques or methodologies) that should be considered for inclusion in the applicant's monitoring program to better accomplish the objectives?

5. What is the best way for an applicant to present their data and results (formatting, metrics, graphics, etc.) in the required reports that are to be submitted to NMFS (*i.e.,* 90-day report and comprehensive report)?

The PRP met in March 2020 and subsequently provided a final report to NMFS containing recommendations that the panel members felt were applicable to Crowley's monitoring plan. The panel concluded that the objectives are appropriate, however, they provided some recommendations to improve Crowley's ability to achieve their stated objectives. The PRP's primary recommendations and comments are summarized and addressed below. The PRP's full report is available on our website at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

The PRP recommended that PSOs focus on scanning the shoreline and water, alternately with visual scans and using binoculars, to detect as many animals as possible instead of following individual animals to collect detailed behavioral information. NMFS requires PSOs to document and report the behavior of marine mammals observed within the Level A and Level B harassment zones. While NMFS agrees that PSOs should not document behavior at the expense of detecting other marine mammals, particularly within the shutdown zone (10 m for all activities), we are still asking PSOs to record behaviors and to estimate of the amount of time that an animal spends in the harassment zone, which is important to help understand the likelihood of incurring PTS (given the duration component of the thresholds) and the likely severity of behavioral disturbance.

The PRP recommended that the PSOs record visibility conditions at regular intervals (*e.g.,* every 5 minutes) and as they change throughout the day. The panel recommended using either laser range finders or a series of ''landmarks'' at varying distances from each observer. The PRP notes that if Crowley uses landmarks, Crowley could measure the distance to the landmarks on the ground before pile driving or removal begins, and reference these landmarks throughout the season to record visibility. The landmarks could be buildings, signs, or other stationary objects on land that are located at increasing distances from each observation platform. PSOs should record visibility according to the farthest landmark the laser range finder can detect or that the PSO can clearly see. NMFS will require Crowley to record visibility conditions throughout construction; however, NMFS will require PSOs to record visibility every 30 minutes, rather than every 5 minutes, in an effort to minimize distraction from observing marine mammals. PSOs will be equipped with range finders, and will establish reference landmarks on land.

The PRP recommended that Crowley have a designated person on site keeping an activity log that includes the precise start and stop dates and times of each type of construction operation mode. Crowley's PSOs will record this information during construction.

The PRP expressed concern about the limited effective visual detection range of the PSOs in comparison with the estimated size of the Level B harassment zones, including Crowley's ability to estimate actual Level B harassment takes. The panel recommended that Crowley implement real-time PAM to verify the Level B harassment zone sizes, and to improve detection of marine mammals in the Level B harassment zones where visual detection probability is limited or not possible. The panel recommended that Crowley begin PAM 2 to 3 weeks prior to the start of construction and continue through 2 to 3 weeks after construction activities conclude for the season. They recommended archival bottom mounted recorders as an alternative to real-time PAM, but noted that these setups are not as easy to relocate and that data can only be accessed after recovery.

In a related comment, the panel recommended that Crowley report total estimated Level B harassment takes using two methods. First, the panel recommended that Crowley assume that animal density is uniform throughout the Level B harassment zone and use distance sampling methods, such as Burt *et al.,* 2014, using only the shore-based PSO observations to estimate actual Level B harassment takes.

Second, the PRP recommended that Crowley also use real-time PAM to estimate Level B harassment takes only in the far field, assuming that each acoustic marine mammal detection that occurs during pile driving or removal is a Level B harassment take.

NMFS is not requiring Crowley to report Level B harassment takes using distance sampling methods, as NMFS does not believe that it is appropriate to apply precise distance sampling methods intended for systematic surveys to estimating take numbers in this situation. As noted by the panel, the assumption of uniform density throughout the Level A and Level B harassment zone is likely violated in this instance, and the pile driving and removal activities are likely to further affect the distribution within the zones. Therefore, NMFS is requiring Crowley to include an extrapolation of the estimated takes by Level B harassment based on the number of observed exposures within the Level B harassment zone and the percentage of the Level B harassment zone that was not visible in their final report.

NMFS is requiring Crowley to conduct SSV to verify the size of the Level A and Level B harassment zones based on an approved monitoring plan. If NMFS approves the results of the SSV study, we will update the size of Level A and Level B harassment zones (and shutdown zone, if necessary to avoid unauthorized taking by Level A harassment) accordingly, and require Crowley to report estimated total Level B harassment take in consideration of these zone sizes. The SSV data will be gathered using a dip hydrophone from a boat during the period in which the bottom-mounted hydrophone is deployed for marine mammal detections (see below, approximately 1–2 weeks). Please refer to Crowley's acoustic monitoring plan for additional details.

NMFS is not requiring Crowley to implement real-time PAM for the purpose of detecting marine mammals. NMFS notes that real-time PAM would be helpful if there were a necessity to take an action, such as shutting down operations at the time that a detection occurs. However, in this instance, visual monitoring by PSOs can adequately prevent Level A harassment take given the very small size of the Level A harassment zones (<14 m for all activities).

Crowley is required to conduct archival PAM for marine mammals according to an approved acoustic monitoring plan. Crowley will deploy one hydrophone to monitor for marine mammals. This hydrophone will be placed approximately 2,000–2,500 m from the project site (see Crowley's acoustic monitoring plan for additional details). We expect that the SSV will likely show that the actual Level B harassment zones are smaller than those included in this authorization (due to the conservative assumptions regarding propagation used in the current analysis). Therefore, given the expected reduction in Level B harassment zone size, and the maximum distances at which we expect Crowley will be able to acoustically detect marine mammals (see PRP report), we expect that placing the hydrophone at this distance will ensure confidence that detected marine mammals are within the Level B harassment zone at the time they are detected. Additionally, we expect that the hydrophone will detect pile driving activity at this distance without masking marine mammal detections, therefore allowing the data analyst to confirm whether pile driving was occurring during the time at which the marine mammal was acoustically detected. Given the small scale of Crowley's project and the associated equipment and personnel costs, NMFS is requiring Crowley to implement PAM for marine mammals for 1–2 weeks, rather than throughout the entire duration of the project period.

Crowley will submit the raw data from the archival PAM receiver to NMFS within one month after completion of the monitoring period. NMFS will assist with the data analysis, and Crowley is required to include the results of the PAM for marine mammals in their final report. Crowley is also required to include results of the SSV analysis in their final report. The SSV results, if approved, will allow Crowley to better-define the size of the Level B harassment zones, which will allow Crowley to extrapolate observed Level B harassment takes across more accurate zone sizes than the zones estimated using practical spreading.

The PRP also recommended that PSO observations begin 2–3 weeks prior to construction, continue through the construction season (including days on which construction does not occur), and continue for 2–3 weeks after the construction season ends. NMFS will require two PSOs to begin observations one week prior to the start of pile driving, and continue observing through one week after the pile driving season is complete, rather than 2–3 weeks. Crowley is unable to amend their PSO contract to require monitoring on days on which construction is not occurring.

The PRP recommended that Crowley station PSOs on elevated platforms to increase sighting distance. The PRP also recommended that Crowley relocate PSO #3 to the vicinity of the Nullaġvik Hotel in order to eliminate the gap in PSO coverage between Observers #1 and #3 that would result from the PSO stations in the proposed plan due to the shoreline configuration. The panel recommended that Crowley station the PSO on the hotel roof, if possible. NMFS agrees that, given the shoreline configuration, PSO #3 should be stationed further north, and that PSOs should be stationed on elevated structures to increase visible distance. Crowley was unable to secure permission to station PSO #3 on top of the hotel. Instead, PSO #3 will be stationed on a raised platform on the seawall 'bump-out' in front of the hotel. NMFS is requiring Crowley to provide elevated monitoring locations for all PSOs.

The PRP made several suggested changes to Crowley's proposed PSO data sheets and associated codes included in Appendix B of Crowley's draft Marine Mammal Monitoring and Mitigation Plan. Crowley has since requested for their PSO contractor use their own data sheets. NMFS has approved their use, as the PSOs are familiar with this data sheet format, and we expect that using familiar data sheets will help facilitate effective monitoring. The panel recommended that Crowley's data sheet include categories distinguishing between ''other otariid,'' ''other phocid,'' ''other baleen whale,'' ''other large cetacean,'' and ''other small cetacean,'' include 0–1, 1–2, 2–3, >3 ft as the wave height categories (assuming significant lack of sighting ability with wave heights >3 ft), and distinguish between vibratory installation and removal. The PSO contractor's data sheets include these recommendations. NMFS is not requiring removal of codes that do not apply to this project (such as drilling). The PRP's remaining data sheet recommendations were specific corrections to Crowley's proposed data sheet (such as missing codes), and therefore do not apply to the PSO contractor's data sheet.

The PRP also made recommendations regarding how Crowley should present their monitoring data and results. Please refer to part V of the PRP report for those suggestions. Crowley will implement the reporting recommendations that do not require PAM for marine mammals.

The PRP recommended that Crowley use bubble curtains during construction and included several comments regarding the take estimate section of the IHA application. The panel acknowledged in the report that the take estimate is beyond the scope of the peer review process. We have considered the

bubble curtain and take estimate recommendations as public comments. Please see the Comments and Responses section for additional information.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the majority of our analyses apply to all of the species listed in Table 9, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks in anticipated individual responses to activities, impact of expected take on the population due to differences in population status or impacts on habitat, they are described independently in the analysis below.

Pile driving and removal activities associated with the project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment, from underwater sounds generated from pile driving and removal. Potential takes could occur if individuals of these species are present in zones ensonified above the thresholds for Level B harassment, identified above, when these activities are underway.

The takes from Level B harassment would be due to potential behavioral disturbance and TTS. No mortality or serious injury is anticipated given the nature of the activity, and no Level A harassment is anticipated due to Crowley's construction method. We expect that Crowley's planned mitigation measures will further reduce the potential for Level A harassment take (see Mitigation Measures section).

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff 2006; HDR, Inc. 2012; Lerma 2014; ABR 2016). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving and removal, although even this reaction has been observed primarily only in association with impact pile driving, which Crowley does not plan to conduct. Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. If sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring, particularly as the project is expected to occur over just 87 in-water work days, with an estimated 100 minutes of pile driving per work day over a period of approximately 11 hours.

The project is also not expected to have significant adverse effects on affected marine mammals' habitats. The project activities would not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range. We do not expect pile driving activities to have significant consequences to marine invertebrate populations. Given the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat, including fish and invertebrates, are not expected to cause significant or long-term negative consequences.

As previously noted, the NAB subsistence mapping project identified Kotzebue Sound as an important use area for beluga feeding, birthing, rearing, and migration (Figure 8 in Crowley's application, originally from NAB, 2016). While the locations identified as important birthing areas do not overlap with calculated Level B harassment zone, the feeding, rearing, and migration important areas directly overlap with the Level B harassment zone. The area of the feeding, rearing, and migration important use areas in which impacts of Crowley's project may occur is small relative to both the overall area of the important use areas and the overall area of suitable beluga whale habitat outside of these important use areas. The area of Kotzebue Sound affected is also small relative to the rest of the Sound, such that it allows animals within the migratory corridor to still utilize Kotzebue Sound without necessarily being disturbed by the construction. Therefore, take of beluga whales using the feeding, rearing, and migratory important use areas, given both the scope and nature of the anticipated impacts of pile driving exposure, is not expected to impact reproduction or survivorship of any individuals.

The NAB (2016) subsistence mapping project also identified Kotzebue Sound as an important use area for bearded seal feeding and migration (Figure 5 in Crowley's application). The area of the feeding and migratory important use areas in which impacts of Crowley's project may occur is small relative to both the overall area of the important use areas and the overall area of suitable bearded seal habitat outside of these important use areas. The area of Kotzebue Sound affected is also small relative to the rest of the Sound, such that it allows animals within the migratory corridor to still utilize Kotzebue Sound without necessarily being disturbed by the construction. Additionally, as previously described, we expect that most bearded seals will have left the area during the project period. Therefore, take of bearded seal using the feeding and migratory important use areas, given both the scope and nature of the anticipated impacts of pile driving exposure, is not expected to impact reproduction or survivorship of any individuals.

The NAB (2016) subsistence mapping project also identified Kotzebue Sound as an important use area for ringed seal feeding, including a high density feeding area south of the project area (Figure 6 in Crowley's application). The area identified as important for high density feeding does not overlap with the calculated Level B harassment zone.

The area of the feeding important use areas in which impacts of Crowley's project may occur is small relative to both the overall area of the important use areas and the overall area of suitable ringed seal habitat outside of these important use areas. Additionally, as previously described, NMFS expects that most ringed seals will have left the area during the project period. Therefore, take of ringed seal using the feeding and migratory important use areas, given both the scope and nature of the anticipated impacts of pile driving exposure, is not expected to impact reproduction or survivorship of any individuals.

Additionally, the NAB subsistence mapping project identified Kotzebue Sound as an important use area for spotted seal feeding, birthing, rearing, and migration, as well as important haulouts (Figure 9 in Crowley's application, originally from NAB, 2016). While the locations identified as important birthing areas do not overlap with calculated Level B harassment zone, the feeding, rearing, and migration important use areas directly overlap with the Level B harassment zone, and one key haulout is adjacent to the Level B harassment zone. However, the area of the feeding (including high density feeding), rearing, and migration important use areas in which impacts of Crowley's project may occur is small relative to both the overall area of the important use area and the overall area of suitable spotted seal habitat outside of these important use areas. The area of Kotzebue Sound affected is also small relative to the rest of the Sound, such that it allows animals within the migratory corridor to still utilize Kotzebue Sound without necessarily being disturbed by the construction. Therefore, take of spotted seals using the feeding and migratory important use areas and important haul outs, given both the scope and nature of the anticipated impacts of pile driving exposure, is not expected to impact reproduction or survivorship of any individuals.

As described in the **Federal Register** notice for the proposed authorization (85 FR 23766; April 29, 2020), unusual mortality events (UMEs) have been declared for both gray whales and ice seals, however, neither UME provides cause for concern regarding population-level impacts to any of these stocks. For gray whales, the estimated abundance of the Eastern North Pacific stock is 26,960 (Carretta *et al.,* 2019) and the stock abundance has increased approximately 22 percent in comparison with 2010/2011 population levels (Durban *et al.,* 2017). For bearded seals, the minimum estimated mean M/SI (557) is well below the calculated partial PBR (8,210). This PBR is only a portion of that of the entire stock, as it does not included bearded seals that overwinter and breed in the Beaufort or Chukchi Seas (Muto *et al.,* 2019). For the Alaska stock of ringed seals and the Alaska stock of spotted seals, the M/SI (863 and 329, respectively) is well below the PBR for each stock (5,100 and 12,697, respectively) (Muto *et al.,* 2019). No injury, serious injury, or mortality is expected or authorized, and Level B harassment takes of gray whale and ice seal species will be reduced to the level of least practicable adverse impact through the incorporation of the required mitigation measures. As such, the authorized Level B harassment takes of gray whales and ice seals would not exacerbate or compound upon the ongoing UMEs.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality or serious injury or PTS is anticipated or authorized;
- The anticipated incidents of Level B harassment would consist of, at worst, temporary modifications in behavior that would not result in fitness impacts to individuals;
- The area impacted by the specified activity is very small relative to the overall habitat ranges of all species; and
- While impacts would occur within areas that are important for feeding, birthing, rearing, and migration for multiple stocks, because of the small footprint of the activity relative to the area of these important use areas, and the scope and nature of the anticipated impacts of pile driving exposure, we do not expect impacts to the reproduction or survival of any individuals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the required monitoring and mitigation measures, NMFS finds that the total marine mammal take from the activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

For the Gulf of Alaska, Aleutian Islands, and Bering Sea Transient stock of killer whales, the estimated instances of take appear high when compared to the stock abundance (Table 9). However, when other qualitative factors are used to inform an assessment of the likely number of individual marine mammals taken, the resulting numbers are considered small. This is discussed further below. For all other species and stocks, our analysis shows that less than one-third of the best available population abundance estimate of each stock could be taken by harassment. The number of animals authorized to be taken for the Eastern North Pacific gray whale stock, Alaska minke whale stock, Beaufort Sea and Eastern Chuckchi Sea beluga whale stocks, Bering Sea harbor porpoise stock, and Alaska stocks of bearded, ringed, spotted and ribbon seals stocks discussed above would be considered small relative to the relevant stock's abundances even if each estimated taking occurred to a new individual, which is an unlikely scenario.

For beluga whale, the percentages in Table 9 also conservatively assume that all takes of beluga whale will be accrued to a single stock, when multiple stocks are known to occur in the project area. Additionally, we expect that most beluga whale takes will be of the same individuals, given that the calculated Level B harassment zone is an extremely small portion of each stock's overall range (Muto *et al.,* 2019a) and, therefore, the percentage of the stock taken is expected to be lower than that indicated in Table 9.

A lack of an accepted stock abundance value for the Alaska stock of minke whale did not allow for the calculation of an expected percentage of the population that would be affected. The most relevant estimate of partial stock abundance is 1,232 minke whales in coastal waters of the Alaska Peninsula and Aleutian Islands (Zerbini *et al.,* 2006). Given seven takes by Level B harassment for the stock, comparison to the best estimate of stock abundance shows less than 1 percent of the stock is expected to be impacted.

For the Alaska stock of bearded seals, a lack of an accepted stock abundance value did not allow for the calculation of an expected percentage of the population that would be affected. As noted in the 2019 Draft Alaska SAR (Muto *et al.,* 2019), an abundance estimate is currently only available for the portion of bearded seals in the Bering Sea (Conn *et al.,* 2012). The current abundance estimate for the Bering Sea is 301,836 bearded seals. Given the authorized 1,115 Level B harassment takes for the stock, comparison to the Bering Sea estimate, which is only a portion of the Alaska Stock (also includes animals in the Chukchi and Beaufort Seas), shows less that, at most, less than one percent of the stock is expected to be impacted.

The Alaska stock of ringed seals also lack an accepted stock abundance value, and therefore, we were not able to calculate an expected percentage of the population that may be affected by Crowley's project. As noted in the 2019 Draft Alaska SAR (Muto *et al.,* 2019), the abundance estimate available, 171,418 animals, is only a partial estimate of the Bering Sea portion of the population (Conn *et al.,* 2014). As noted in the SAR, this estimate does not include animals in the shorefast ice zone, and the authors did not account for availability bias. Muto *et al.* (2019) expect that the Bering Sea portion of the population is actually much higher. Given the authorized 6,312 Level B harassment takes for the stock, comparison to the Bering Sea partial estimate, which is only a portion of the Alaska Stock (also includes animals in the Chukchi and Beaufort Seas), shows less that, at most, less than 4 percent of the stock is expected to be impacted.

The expected take of the Gulf of Alaska, Aleutian Islands, and Bering Sea Transient stock of killer whales, as a proportion of the population abundance, would be 58.8 percent if all takes were assumed to occur for unique individuals. However, it is unlikely that all takes would occur to unique individuals. The stock's SAR shows a distribution that does not extend north beyond the Bering Sea. Therefore, we expect that the individuals in the project area represent a small portion of the stock, and that it is likely that there will be multiple takes of a small number of individuals within the project area. As such, it is highly unlikely that more than one-third of the stock would be exposed to the construction noise.

Based on the analysis contained herein of the activity (including the required mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

In order to issue an IHA, NMFS must find that the specified activity will not have an ''unmitigable adverse impact'' on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

Bowhead whale are primarily targeted outside of the Sound, and the project is not expected to impact any prey species or migratory behavior. Beluga whales have been traditionally harvested in abundance at Sisualiq, and project impacts are not expected to reach traditional harvest areas. Additionally, project activities avoid traditional ice seal harvest windows, as the majority of hunting occurs in the Fall and Spring. While some hunting continues throughout the summer, we do not anticipate that there would be impacts to seals that would make them unavailable for subsistence hunters. Additionally, ramps in the seawall along Shore Avenue can provide boat access while Crowley's dock is under construction.

Crowley will coordinate with local communities and subsistence groups to avoid or mitigate impacts to beluga whale and ice seal harvests, as noted in the Mitigation Measures section. Crowley will also regularly communicate throughout the project by broadcast public radio announcement and periodic activity reports to interested parties via email.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the required mitigation and monitoring measures, NMFS has determined that there will not be an unmitigable adverse impact on subsistence uses from Crowley's activities.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the Alaska Regional Office.

Two marine mammal species, bearded seal (Beringia distinct population segment (DPS)) and ringed seal (Arctic subspecies), occur in the project area and are listed as threatened under the ESA. The NMFS Alaska Regional Office issued a Biological Opinion under section 7 of the ESA, on the issuance of an IHA to Crowley Fuels under section 101(a)(5)(D) of the MMPA by the NMFS Office of Protected Resources. The Biological Opinion concluded that the action is not likely to jeopardize the continued existence of either species.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must evaluate our proposed action (*i.e.,* the promulgation of regulations and subsequent issuance of incidental take authorization) and alternatives with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that our action qualifies to be categorically excluded from further NEPA review.

Authorization

NMFS has issued an IHA to Crowley Fuels, LLC for the potential harassment of small numbers of nine marine mammal species incidental to Crowley Kotzebue Dock Upgrade in Kotzebue, Alaska, provided the previously mentioned mitigation, monitoring and reporting requirements are followed.

Dated: July 1, 2020.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–14628 Filed 7–7–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA262]

New England Fishery Management Council; Public Meeting; Correction

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

ACTION: Notice of a correction to a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a joint public meeting of its Ecosystem-Based Fishery Management (EBFM) Committee via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Tuesday, July 21, 2020 at 9.30 a.m. Webinar registration URL information: *https://attendee.gotowebinar.com/register/3710429939133088527.*

ADDRESSES: The meeting will be held via webinar.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The original notice published in the **Federal Register** on July 2, 2020 (85 FR 39886). The original notice stated the meeting would be held on July 16, 2020. This notice corrects the date of the meeting to be held on July 21, 2020. All other previously published information remains the same.

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

Dated: July 2, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–14700 Filed 7–7–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Alaska Region Pacific Halibut Fisheries: Charter

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on 02/24/2020 (85 FR 10413) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Alaska Region Pacific Halibut Fisheries: Charter.

OMB Control Number: 0648–0575.

Form Number(s): None.

Type of Request: Regular submission [extension of a current information collection, revision].

Number of Respondents: 656.

Average Hours per Response: 15 minutes for Application for Annual Registration of Charter Halibut Permits (CHPs); 0.5 hour for Application of Military CHP; 2 hours for Application for Transfer of CHP; 1.5 hours for Application for Transfer Between IFQ and GAF and Issuance of GAF Permit; 5 minutes for GAF Landing Report; 2 minutes for GAF Permit Log; 4 minutes for ADF&G Saltwater Sport Fishing Charter Trip Logbook; and 4 hours for Appeals.

Total Annual Burden Hours: 3,494 hours.

Needs and Uses: NMFS manages the charter halibut fishery off Alaska under the Charter Halibut Limited Access Program (CHLAP) and the Pacific Halibut Catch Sharing Plan (CSP). This collection of information is necessary for NMFS to manage and administer the charter halibut fishery under the CHLAP and the CSP, and to allow fishery participants to register, transfer, and utilize their fishery privileges and other program features. This collection is an essential part of the sustainable management of the Pacific halibut fishery off Alaska, and is an integral element of ensuring regulatory compliance in the charter halibut fishing sector. This request is for extension and revision of OMB Control No. 0648–0575, and will merge OMB Control No. 0648–0592 into this collection. As a result, 0648–0575 will now contain logbook reporting, landing reports, applications for permits and transfers, and administrative appeals for the charter halibut fishery.

Affected Public: Individuals; Business or other for-profit organizations; Not-for-profit institutions.

Frequency: Annually; As needed.

Respondent's Obligation: Voluntary; Required to Obtain or Retain Benefits.

Legal Authority: The Northern Pacific Halibut Act of 1982 (16 U.S.C. 773c) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq*).

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0575.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–14676 Filed 7–7–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Marine Recreational Fishing Expenditure Survey

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication

of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on February 24, 2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration (NOAA), Commerce.

Title: Marine Recreational Fishing Expenditure Survey.

OMB Control Number: 0648–0693.

Form Number(s): None.

Type of Request: Regular submission (revision and extension of a current information collection).

Number of Respondents: 28,474 annualized.

Average Hours per Response: Durable goods expenditure survey, 15 minutes; trip expenditure survey 5 minutes.

Total Annual Burden Hours: 3,215.

Needs and Uses: The purpose of this data collection is to gather information on marine recreational anglers' expenditures on fishing trips and durable goods related to fishing. These data are used in fisheries management analyses by state fisheries agencies, regional fishery management councils, and NOAA Fisheries to understand the economic effects of fisheries regulations and policies. The revision consists of adding back in the trip expenditure survey for fishing trips targeting highly migratory species as was included in the 2014 approval.

Affected Public: Individuals.

Frequency: Every 3 years.

Respondent's Obligation: Voluntary.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act as reauthorized in 2007 (16 U.S.C. 1801 *et seq.*).

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0693.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–14677 Filed 7–7–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; West Coast Region Vessel Monitoring System and Pre-Trip Reporting System Requirements

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on April 2, 2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: West Coast Region Vessel Monitoring System and Pre-Trip Reporting System Requirements.

OMB Control Number: 0648–0498.

Form Number(s): None.

Type of Request: Regular [extension of a current information collection].

Number of Respondents: 53.

Average Hours per Response: Vessel Monitoring System (VMS) installation—4hrs; Maintenance and repair of VMS units—1hr; VMS activation reports, on/off notifications, and pre-trip reports—5 minutes each.

Total Annual Burden Hours: 157.

Needs and Uses: This request is for extension of a current information collection. This collection applies to owners and operators of U.S. commercial fishing vessels that fish in the West Coast exclusive economic zone and the eastern Pacific Ocean waters of the Inter-American Tropical Tuna Commission (IATTC) Convention Area for highly migratory species (HMS) as defined by the Fishery Management Plan (FMP) for the United States (U.S.) West Coast Fisheries for Highly Migratory Species, as well as a broader group of tuna and tuna-like species covered by the IATTC. These vessel owners and operators are required to submit information about their intended and actual fishing activities. These submissions would allow the National Marine Fisheries Service (NMFS) and the Pacific Fisheries Management Council to monitor the fisheries. Submissions include pre-trip reporting requirements and vessel monitoring systems (VMS). Pre-trip reporting requirements are essential for effectively and efficiently assigning available observer coverage to selected HMS vessels. Data collected by observers are critical to evaluate that the objectives of the HMS FMP are being achieved and for evaluating the impacts of potential changes in fishery management. VMS units facilitate enforcement of management measures associated with HMS fisheries, provide timely information on associated fleet activities and enable confirmation of reported vessel fishing activity locations, which help validate logbook record accuracy.

Affected Public: Business or other for-profit organizations.

Frequency: One time, annually and on occasion.

Respondent's Obligation: Mandatory.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0498.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–14679 Filed 7–7–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; NOAA Fisheries Greater Atlantic Region Gear Identification Requirements

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on March 11, 2020, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration.

Title: NOAA Fisheries Greater Atlantic Region Gear Identification Requirements.

OMB Control Number: 0648–0351.

Form Number(s): None.

Type of Request: Regular submission [extension of a current information collection].

Number of Respondents: 4,789.

Average Hours per Response: 1 minute per string of gear.

Total Annual Burden Hours: 16,886.

Needs and Uses: The ability to link fishing gear to the vessel owner or operator is crucial for enforcement of regulations under the authority of the Magnuson-Stevens Fishery Conservation and Management Act and Atlantic Coastal Fisheries Cooperative Management Act. Gear identification is also used to identify ownership of lost or damaged gear, as well as gear involved in civil proceedings. Gear can be lost or damaged as the result of interactions between mobile and fixed gears. Gear identification is an important tool in identifying the parties involved in these conflicts. Proper marking also makes gear more visible to other vessels in the water to aid in navigation and increase safety at sea.

Affected Public: Individuals and households; business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Magnuson Stevens Fishery Conservation and Management Act, Atlantic Coastal Fisheries Cooperative Management Act.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0351.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–14683 Filed 7–7–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA211]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Seattle Multimodal Project at Colman Dock in Washington State

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the Washington State Department Transportation (WSDOT) for authorization to take marine mammals incidental to Seattle Multimodal Project at Colman Dock in Seattle, Washington State. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than August 7, 2020.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to *ITP.guan@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the

taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On April 21, 2020, NMFS received a request from WSDOT for an IHA to take marine mammals incidental to the fourth year of work associated with the Seattle Multimodal Project at Colman Dock in Seattle, Washington. The application was deemed adequate and complete on May 13, 2020. WSDOT's request is for take of a small number of 11 species of marine mammals by Level A and Level B harassment. Neither WSDOT nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

This proposed IHA would cover one year of a larger project for which WSDOT obtained prior IHAs (82 FR 31579, July 7, 2017; 83 FR 35226, July 25, 2018; 84 FR 36581, July 29, 2019). The project will reconfigure the dock while maintaining approximately the same vehicle holding capacity as current conditions. WSDOT complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHAs and information regarding their monitoring results may be found in the Effects of the Specified Activity on Marine Mammals and their Habitat section. WSDOT's previous monitoring reports are available online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Description of Proposed Activity

Overview

The purpose of the Seattle Multimodal Project at Colman Dock is to preserve the transportation function of an aging, deteriorating and seismically deficient facility to continue providing safe and reliable service. The project will also address existing safety concerns related to conflicts between vehicles and pedestrian traffic and operational inefficiencies.

Key project elements include:

- Replacing and re-configuring the timber trestle portion of the dock;
- Replacing the main terminal building;
- Reconfiguring the dock layout to provide safer and more efficient operations;
- Replacing the vehicle transfer span and the overhead loading structures of Slip 3;
- Replacing vessel landing aids;
- Maintaining a connection to the Marion Street pedestrian overpass;
- Moving the current passenger only ferry (POF) slip temporarily to the north to make way for south trestle construction, and then constructing a new POF slip in the south trestle area.
- Mitigating for additional 5,400 square feet (ft^2) (502 square meters (m^2)) of overwater coverage; and
- Capping contaminated sediments.

The Seattle Multimodal Project at Colman Dock involves in-water impact and vibratory pile driving and vibratory pile removal. Details of the proposed construction activities are provided below.

Dates and Duration

Due to NMFS and U.S. Fish and Wildlife Service (USFWS) in-water work timing restrictions to protect Endangered Species Act (ESA)-listed salmonids, planned WSDOT in-water construction is limited each year to July 15 through February 15 at this location. For this project, in-water construction is planned to take place between August 1, 2020 and February 15, 2021. The total worst-case time for pile installation and removal is 47 days (Table 1).

Specific Geographic Region

The Seattle Ferry Terminal at Colman Dock, serving State Route 519, is located on the downtown Seattle waterfront, in King County, Washington. The terminal services vessels from the Bainbridge Island and Bremerton routes, and is the most heavily used terminal in the WSF system. The Seattle terminal is located in Section 6, Township 24 North, Range 4 East, and is adjacent to Elliott Bay, a tributary to Puget Sound (Figure 1). Land use in the area is highly urban, and includes business, industrial, the Port of Seattle container loading facility, residential, the Pioneer Square Historic District and local parks.

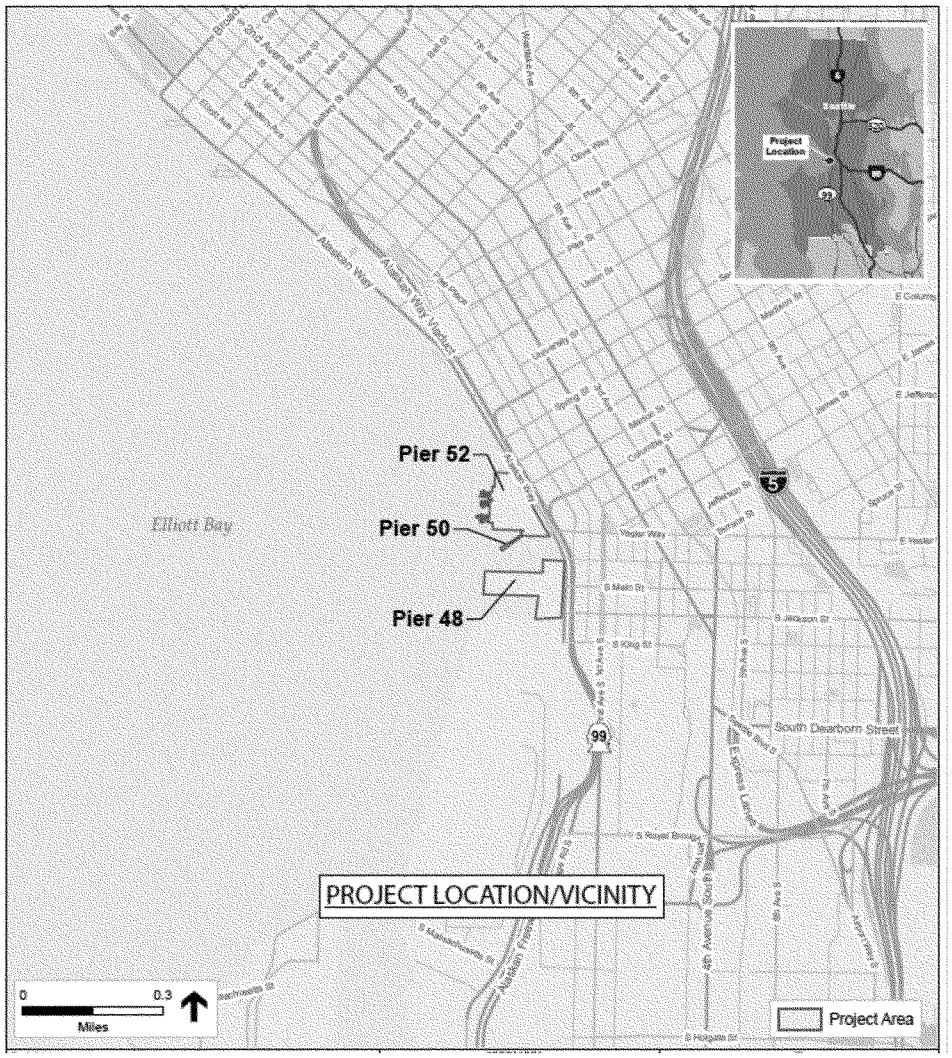

Figure 1 -- Location of Seattle Ferry Terminal at Colman Dock

Detailed Description of Specific Activity

Construction activities during the Year 4 Seattle Multimodal Project at Colman Dock include the following components.

The project will remove the northern timber trestle and replace a portion of it with a new concrete trestle. The area from Marion Street to the north edge of the property will not be rebuilt and after demolition will become a new area of open water. A section of fill contained behind a bulkhead underneath the northeast section of the dock will be removed. WSDOT will construct a new steel and concrete trestle from Columbia Street northward to Marion Street.

The project will maintain the current King County POF functions on site, and address safety concerns related to pedestrian/vehicle conflicts at Yesler Street. A new covered pier, sized to accommodate POF passenger waiting and connected by a new overhead pedestrian bridge to the terminal building and the Marion Street Overpass, will be constructed along the south side of Colman Dock.

The reconfiguration will increase total permanent overwater coverage (OWC) by about 5,400 ft^2 (502 m^2, about 1.7 percent more than existing overwater coverage at the site), due to the new walkway from the POF facility to Alaskan Way and new stairways and elevators from the POF to the upper level of the terminal. Removal of at least 5,400 ft^2 (502 m^2) from Pier 48, a condemned timber structure, will serve as mitigation for the permanent OWC increase.

Construction of the reconfigured dock will narrow (reduce) the OWC along the shoreline (at the landward edge) by 180 linear feet (ft) at the north end of the site, while 30 linear ft of new trestle will be constructed along the shoreline at the south end of the site. The net reduction of OWC in the nearshore zone is 150 linear ft.

The project includes demolition of the existing terminal building and construction of a new terminal building. The new terminal building will be located along the west edge of the dock, spanning all three slips to handle passenger traffic more efficiently, and will connect to the Marion Street Overpass by an elevated deck.

The project includes reconstruction of the vehicle transfer span and the passenger overhead loading (OHL) structures of Slip 3, including new hydraulic systems. The new OHL will be wider than the existing OHL, to accommodate the increased walk-on passenger volumes.

Sediment beneath the terminal has been contaminated by the creosote-treated piles and other chemicals discharged to the environment over the years. A cap was installed to cover contaminated sediment on the south half of the site prior to trestle expansion in 1990. WSDOT will place a new

sediment cap to the north and south of the current cap during construction of the project to contain existing contamination.

Specific in-water pile driving and pile removal activities include the follow components:

• Vibratory driving followed by impact proofing (driving) of 36-inch steel piles. A total of 73 piles will be installed using the vibratory hammer over 9 days, with an average of approximately 8 piles installed per day. Vibratory pile driving and impact proofing will occur on different days, and an additional nine days is estimated for impact proofing.

• Vibratory driving and then removal of 24-inch temporary steel piles. A total of 30 piles will be installed and later removed, with an average of 8 piles installed/removed per day. Vibratory pile driving and removal will occur on different days.

• Vibratory removal of 355 14-inch timber piles over 18 days, with approximately 20 piles removed per day.

• Vibratory removal of 30 12-inch steel piles over 3 days, with 10 piles removed per day.

A summary of the pile driving and pile removal activities for the Year 4 Seattle Multimodal Project at Colman Dock is provided in Table 1.

TABLE 1—SUMMARY OF IN-WATER PILE DRIVING DURATIONS

Method	Pile type	Pile size (inch)	Pile No.	Piles/day	Minutes/pile	Duration (days)
Impact drive (proof)	Steel	36	*73	8	10	9
Vibratory drive	Steel	36	*73	8	20	9
Vibratory drive	Steel (temporary)	24	*30	8	20	4
Vibratory remove	Steel (temporary)	24	*30	8	20	4
Vibratory remove	Timber	14	355	20	15	18
Vibratory remove	Steel	12	30	10	20	3
Total			488			47

*These are same piles.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species or stocks for which take is expected and proposed to be authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2019). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for all species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. All managed stocks in this region are assessed in NMFS's U.S Pacific and Alaska SARs (*e.g.,* Carretta *et al.,* 2020; Muto *et al.,* 2020). All values presented in Table 2 are the most recent available at the time of publication and are available in the 2018 SARs (Carretta *et al.,* 2019; Muto *et al.,* 2019) and draft 2019 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 2—MARINE MAMMALS WITH POTENTIAL PRESENCE WITHIN THE PROPOSED PROJECT AREA

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	N	26,960 (0.05, 25,849)	801	139
Family Balaenopteridae (rorquals):						
Humpback whale	*Megaptera novaeangliae*	California/Oregon/Washington	Y	2,900 (0.05, 2,784)	16.7	unk
Minke whale	*Balaenoptera acutorostrata*	California/Oregon/Washington	N	636 (0.72, 369)	3.5	1.3
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Killer whale	*Orcinus orca*	Eastern North Pacific Southern Resident.	Y	75 (NA, 75)	0	0
		West coast transient	N	243 (NA, 243)	2.4	0

TABLE 2—MARINE MAMMALS WITH POTENTIAL PRESENCE WITHIN THE PROPOSED PROJECT AREA—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; Strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Bottlenose dolphin	*Tursiops truncatus*	California/Oregon/Washington offshore.	N	1,924 (0.54, 1,255)	11	1.6
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Washington inland waters	N	11,233 (0.37, 8,308)	66	7.2
Dall's porpoise	*P. dalli*	California/Oregon/Washington	N	25,750 (0.45, 17,954)	172	0.3
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California sea lion	*Zalophus californianus*	U.S.	N	257,606 (NA, 233,515)	14,011	321
Steller sea lion	*Eumetopias jubatus*	Eastern U.S.	N	43,201 (NA, 43,201)	2,592	113
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina*	Washington northern inland waters.	N	[4] 11,036	NA	10.6
Northern elephant seal	*Mirounga angustirostris*	California breeding	N	179,000 (NA, 81,368)	4,882	8.8

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual serious injury/mortality often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] Harbor seal estimate is based on data that are 9 years old, but this is the best available information for use here.

As indicated above, all 11 species (with 12 managed stocks) in Table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing it, with the exception of the Southern Resident killer whale (SPKW). Take of SRKW can be avoided by implementing strict monitoring and mitigation measures (see Proposed Mitigation and Proposed Monitoring and Reporting sections below). All species that could potentially occur in the proposed survey areas are included in Table 2 of the IHA application.

In addition, the sea otter may be found in inland waters of Washington. However, this species is managed by the U.S. Fish and Wildlife Service and is not considered further in this document.

A detailed description of the marine mammals in the area of the activities is found in the notice of the Year 3 Seattle Multimodal Project at Colman Dock proposed IHA (84 FR 25757, June 4, 2019). This information remains valid so we do not repeat it here but provide a summary table with marine mammal species and stock details (Table 2).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.,* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.,* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS (NMFS, 2018)

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.,* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. 11 marine mammal species (7 cetacean and 4 pinniped (2 otariid and 2 phocid) species) have the reasonable potential to co-occur with the proposed survey activities. Please refer to Table 2. Of the cetacean species that may be present, 3 are classified as low-frequency cetaceans (*i.e.,* all mysticete species), 2 are classified as mid-frequency cetaceans (*i.e.,* all delphinid species), and 2 are classified as high-frequency cetaceans (*i.e.,* porpoise species).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

The WSDOT's Seattle Multimodal Project at Colman Dock construction work using in-water pile driving and pile removal could adversely affect marine mammal species and stocks by exposing them to elevated noise levels in the vicinity of the activity area.

Exposure to high intensity sound for a sufficient duration may result in auditory effects such as a noise-induced threshold shift—an increase in the auditory threshold after exposure to noise (Finneran *et al.,* 2005). Factors that influence the amount of threshold shift include the amplitude, duration, frequency content, temporal pattern, and energy distribution of noise exposure. The magnitude of hearing threshold shift normally decreases over time following cessation of the noise exposure. The amount of threshold shift just after exposure is the initial threshold shift. If the threshold shift eventually returns to zero (*i.e.,* the threshold returns to the pre-exposure value), it is a temporary threshold shift (Southall *et al.,* 2007).

Threshold Shift (noise-induced loss of hearing)—When animals exhibit reduced hearing sensitivity (*i.e.,* sounds must be louder for an animal to detect them) following exposure to an intense sound or sound for long duration, it is referred to as a noise-induced threshold shift (TS). An animal can experience temporary threshold shift (TTS) or permanent threshold shift (PTS). TTS can last from minutes or hours to days (*i.e.,* there is complete recovery), can occur in specific frequency ranges (*i.e.,* an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kilohertz (kHz), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced initially by only 6 dB or reduced by 30 dB). PTS is permanent, but some recovery is possible. PTS can also occur in a specific frequency range and amount as mentioned above for TTS.

For marine mammals, published data are limited to the captive bottlenose dolphin, beluga, harbor porpoise, and Yangtze finless porpoise (Finneran *et al.,* 2000, 2002, 2003, 2005, 2007, 2010a, 2010b; Finneran and Schlundt, 2010; Lucke *et al.,* 2009; Mooney *et al.,* 2009a, 2009b; Popov *et al.,* 2011a, 2011b; Kastelein *et al.,* 2012a; Schlundt *et al.,* 2000; Nachtigall *et al.,* 2003, 2004). For pinnipeds in water, data are limited to measurements of TTS in harbor seals, an elephant seal, and California sea lions (Kastak *et al.,* 1999, 2005; Kastelein *et al.,* 2012b).

Lucke *et al.,* (2009) found a TS of a harbor porpoise after exposing it to airgun noise with a received sound pressure level (SPL) at 200.2 dB (peak–to-peak) re: 1 microPascal (μPa), which corresponds to a sound exposure level of 164.5 dB re: 1 μPa^2s after integrating exposure. Because the airgun noise is a broadband impulse, one cannot directly determine the equivalent of SPL_{rms} (root-mean-square sound pressure level) from the reported peak-to-peak SPLs. However, applying a conservative conversion factor of 16 dB for broadband signals from seismic surveys (McCauley *et al.,* 2000) to correct for the difference between peak-to-peak levels reported in Lucke *et al.,* (2009) and SPL_{rms}, the SPL_{rms} for TTS would be approximately 184 dB re: 1 μPa, and the received levels associated with PTS (Level A harassment) would be higher. Therefore, based on these studies, NMFS recognizes that TTS of harbor porpoises is lower than other cetacean species empirically tested (Finneran and Schlundt, 2010; Finneran *et al.,* 2002; Kastelein and Jennings, 2012).

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. Also, depending on the degree and frequency range, the effects of PTS on an animal could range in severity, although it is considered generally more serious because it is a permanent condition. Of note, reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so one can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

In addition, chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals, which utilize sound for vital biological functions (Clark *et al.,* 2009). Acoustic masking is when other noises such as from human sources interfere with animal detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction.

Masking occurs at the frequency band that the animals utilize. Therefore, since noise generated from vibratory pile driving is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds by odontocetes (toothed whales). However, lower frequency man-made noises are more likely to affect detection of communication calls and other

potentially important natural sounds such as surf and prey noise. It may also affect communication signals when they occur near the noise band and thus reduce the communication space of animals (*e.g.,* Clark *et al.,* 2009) and cause increased stress levels (*e.g.,* Foote *et al.,* 2004; Holt *et al.,* 2009).

Unlike TS, masking, which can occur over large temporal and spatial scales, can potentially affect the species at population, community, or even ecosystem levels, as well as individual levels. Masking affects both senders and receivers of the signals and could have long-term chronic effects on marine mammal species and populations. Recent science suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of sound pressure level) in the world's ocean from pre-industrial periods, and most of these increases are from distant shipping (Hildebrand 2009). For WSDOT's Seattle Multimodal Project at Colman Dock Year 4 construction activities, noises from vibratory pile driving and pile removal contribute to the elevated ambient noise levels in the project area, thus increasing potential for or severity of masking. Baseline ambient noise levels in the vicinity of project area are high due to ongoing shipping, construction and other activities in the Puget Sound.

Finally, marine mammals' exposure to certain sounds could lead to behavioral disturbance (Richardson *et al.,* 1995), such as: Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses (*e.g.,* pinnipeds flushing into water from haulouts or rookeries).

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Southall *et al.,* 2007). Currently NMFS uses a received level of 160 dB re 1 μPa (rms) to predict the onset of behavioral harassment from intermittent noises (such as impact pile driving), and 120 dB re 1 μPa (rms) for continuous noises (such as vibratory pile driving). For the WSDOT's Seattle Multimodal Project at Colman Dock construction activities, both of these noise levels are considered for effects analysis because WSDOT plans to use impact pile driving and vibratory pile driving and pile removal.

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be biologically significant if the change affects growth, survival, and/or reproduction, which depends on the severity, duration, and context of the effects.

During the previous years of the project, WSDOT conducted the required marine mammal mitigation and monitoring and did not exceed the authorized levels of take. Marine mammal monitoring report for the 2019 Seattle Multimodal Project at Colman Dock construction activity shows that a total of 190 harbor seals, 225 California sea lions, 9 Steller sea lions, 1 gray whale, 1 humpback whale, and 49 harbor porpoises were observed within the Level A or Level B harassment zones. These numbers are well under the authorized take numbers issued in the 2019 IHA to WSDOT. In addition, no abnormal or drastic change of behavior of marine mammals was observed by the protected species observers (PSOs) during WSDOT's 2019 Seattle Multimodal Project at Colman Dock construction activity.

Potential Effects on Marine Mammal Habitat

The primary potential impacts to marine mammal habitat are associated with elevated sound levels produced by vibratory pile removal and pile driving in the area. However, other potential impacts to the surrounding habitat from physical disturbance are also possible.

With regard to fish as a prey source for cetaceans and pinnipeds, fish are known to hear and react to sounds and to use sound to communicate (Tavolga *et al.,* 1981) and possibly avoid predators (Wilson and Dill, 2002). Experiments have shown that fish can sense both the strength and direction of sound (Hawkins, 1981). Primary factors determining whether a fish can sense a sound signal, and potentially react to it, are the frequency of the signal and the strength of the signal in relation to the natural background noise level.

The level of sound at which a fish will react or alter its behavior is usually well above the detection level. Fish have been found to react to sounds when the sound level increased to about 20 dB above the detection level of 120 dB (Ona, 1988); however, the response threshold can depend on the time of year and the fish's physiological condition (Engas *et al.,* 1993). In general, fish react more strongly to pulses of sound (such as noise from impact pile driving) rather than continuous signals (such as noise from vibratory pile driving) (Blaxter *et al.,* 1981), and a quicker alarm response is elicited when the sound signal intensity rises rapidly compared to sound rising more slowly to the same level.

During the coastal construction only a small fraction of the available habitat would be ensonified at any given time. Disturbance to fish species would be short-term and fish would return to their pre-disturbance behavior once the pile driving activity ceases. Thus, the proposed construction would have little, if any, impact on marine mammals' prey availability in the area where construction work is planned.

Finally, the time of the proposed construction activity would avoid the spawning season of the ESA-listed salmonid species.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as noise from in-water impact and vibratory pile driving has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for high frequency cetaceans and phocids because predicted auditory injury zones are relatively large. Auditory injury is unlikely to occur for low- and mid-frequency cetaceans and otariids. The proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

WSDOT's Seattle Multimodal Project at Colman Dock Year 4 construction activity includes the use impact pile driving, vibratory pile driving and pile removal, and therefore the 120 dB and 160 dB re 1 μPa (rms) are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). WSDOT's Seattle Multimodal Project at Colman Dock Year 4 construction activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

Source Levels

The project includes impact pile driving (proofing) of 36-inch steel piles, vibratory pile driving of 36- and 24-inch steel piles, and vibratory pile removal of 24- and 12-inch steel piles, and 14-inch timber piles. Near source levels (defined as noise level at 10-m from the pile) of these pile driving and removal activities are all based on prior measurements conducted by WSDOT. A summary of the 10-m near source levels of the pile driving and removal activities is provided in Table 5, along with references.

TABLE 5—NEAR SOURCE NOISE LEVELS AT 10-M FROM THE PILE FOR VARIOUS PILE DRIVING AND REMOVAL AT SEATTLE MULTIMODAL PROJECT AT COLMAN DOCK YEAR 4 PROJECT

Activity/pile size	Source level (at 10m)	Literature source
Impact pile drive (proof) 36 inch steel pile	174 dB (SELss)	WSDOT Colman Year 1 measurement (2018).
Vibratory drive/remove 36 inch steel pile	177 dB (SPLrms)	WSDOT Port Townsend measurement (2010).
Vibratory drive 24 inch steel pile	174 dB (SPLrms)	WSDOT Port Townsend measurement (2010).
Vibratory removal 14 inch timber pile	155 dB (SPLrms)	WSDOT Port Townsend measurement (2011).
Vibratory removal 12 inch steel pile	155 dB (SPLrms)	Caltrans (2015) data for same pile.

Level A Harassment Distances and Areas

Distances to Level A harassment were estimated using the NMFS User Spreadsheet. When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources such as vibratory pile driving and pile removal, NMFS User Spreadsheet predicts the distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would incur PTS.

A summary of the calculated Level A harassment distances and areas is presented in Table 6.

Level B Harassment Distances and Areas

Level B harassment distances from impact pile driving of 36-inch steel piles and from vibratory pile removal of 12-inch steel piles and 14-inch timber piles are calculated using a practical spreading model of the sonar equation

$$EL = SL - 15 \log_{10}(R)$$

where EL is the echo level (or received level), which is the sound threshold level at the Level B harassment (160 dB re 1 μPa for impact pile driving and 120 dB re 1 μPa for vibratory pile driving and pile removal); R is the Level B harassment distance in meters.

Level B harassment distance for vibratory pile driving and removal of the 24-inch steel piles, and the vibratory driving of 36-inch piles is based on in situ measurements of vibratory pile driving of 36-inch piles conducted during Year One of the Seattle Multimodal Project at Colman Dock (WSDOT 2018). The results show that underwater pile driving noise cannot be detected at a distance of 8.69 km (WSDOT 2018).

The Level B harassment areas were estimated by WSDOT using geographic information system (GIS) tools to eliminate land masses and other obstacles that block sound propagation.

A summary of the measured Level B harassment distances and areas is presented in Table 6.

TABLE 6—LEVEL A AND LEVEL B HARASSMENT DISTANCES AND AREAS

Pile type, size & pile driving method	Level A harassment distance (m)/area (km²)					Level B harassment distance (m)/area (km²)
	LF cetacean	MF cetacean	HF cetacean	Phocid	Otariid	
Impact drive (proof) 36-inch steel pile	343.2/0.37	12.2/0.00	408.7/0.52	183.6/0.11	13.4/0.00	736/1.70
Vibratory drive 36-inch steel pile	153.1/0.07	13.6/0.00	226.4/0.16	93.1/0.03	6.5/0.00	8,690/40.53
Vibratory drive/removal, 24-inch steel piles	96.6/0.03	8.6/0.00	142.8/0.06	58.7/0.01	4.1/0.00	8,690/40.53
Vibratory removal 14-inch timber pile	8.0/0.00	0.7/0.00	11.8/0.00	4.8/0.00	0.3/0.00	2,154/5.47
Vibratory removal 12-inch steel pile	6.5/0.00	0.6/0.00	9.6/0.00	3.9/0.00	0.3/0.00	2,154/5.47

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

Marine mammal occurrence are based on the U.S. Navy Marine Species Density Database (U.S. Navy, 2019) and on WSDOT marine mammal monitoring efforts during prior years of construction work at Seattle Multimodal Project at Colman Dock. A summary of the marine mammal density is provided in Table 7.

TABLE 7—MARINE MAMMAL DENSITY IN THE SEATTLE MULTIMODAL PROJECT AT COLMAN DOCK CONSTRUCTION AREA

Marine mammals	Density (animals/km²)
Gray whale	0.0048
Humpback whale	0.00074
Minke whale	0.00045
Killer whale (West Coast transient)	0.005141
Bottlenose dolphin	NA
Harbor porpoise	0.75
Dall's porpoise	0.00045
Harbor seal	3.91
Northern elephant seal	0
California sea lion	0.2211

TABLE 7—MARINE MAMMAL DENSITY IN THE SEATTLE MULTIMODAL PROJECT AT COLMAN DOCK CONSTRUCTION AREA—Continued

Marine mammals	Density (animals/km²)
Steller sea lion	0.0478

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

The fundamental approach for take calculation is to use the information aggregated in the Navy density database

(U.S. Navy, 2019) with the following equation:

Total Take = marine mammal density × ensonified area × pile driving days

Some adjustments were made based on prior observation of marine mammals in the project area and account for group numbers. Specific adjustments for calculating take numbers are provided below.

• Humpback whale—During the prior year WSDOT Multimodal Project construction, three individuals have been observed. Given that humpback whales are occasionally present in the area, it is unlikely they would be present on a daily basis. Instead it is assumed that three individuals may be present in the Level B harassment zones once a month during the in-water work window (7 months), or 21 exposures.

• Minke whale—During the prior year WSDOT Multimodal Project work, one individual minke whale was observed. Observations have been of single individuals, not groups. It is assumed that one individual may be present in the Level B harassment zone once a month during the in-water work window (7 months), or 7 exposures.

• West Coast transient killer whale—Level B harassment exposures were calculated to be two. However, two groups of 10 individuals have been observed. It is assumed that one group size of 10 animals may be present in the Level B harassment zones once a month during the in-water work window (7 months), or 70 exposures.

• Bottlenose dolphin—The bottlenose dolphin estimate is based on sightings data from Cascadia Research Collective. Between September 2017 and March 2018, a group of up to seven individuals was sighted in South Puget Sound (EPS, 2018). It is assumed that this group is still present in the area. Given how rare bottlenose dolphins are in the area, it is unlikely they would be present on a daily basis. Instead it is assumed that one group size of seven animals may be present in the Level B harassment zone once a month during the in-water work window (7 months), or 49 exposures.

• Northern elephant seal—Estimated northern elephant seals Level B harassment exposures were calculated to be zero. However, one individual of this species was observed in the project area once. Therefore, the take number was adjusted to seven takes based on one animal for the project duration of 7 months.

• California sea lion—Estimated California sea lion Level B harassment exposures were calculated to be 104. However, there were 763 observations during project monitoring, with a high of 29 individuals in one day. Conservatively assuming that 29 individuals may be present in the Level B harassment zones during 47 days of pile driving or removal, it is assumed that 1,363 exposures to pile driving noise may occur.

• Harbor porpoise—Estimated harbor porpoise Level A harassment exposures were calculated to be five. However, given the relatively larger Level A harassment distance for high-frequency cetaceans, we assume that two incidents of Level A harassment may occur per month for the 7 months work window to yield a total of 14 takes by Level A harassment.

• Harbor seal—Estimated harbor seal Level A harassment exposures were calculated to be three. However, WSDOT made a total of 243 harbor seal observations in the 60–184 m Level A zone, with a high of two individuals in one day. This portion of the Level A harassment zone would be beyond the proposed shutdown zone, and this estimated zone would occur on 26 days. Assuming that two individuals may be present once a day for 26 days results in 52 potential Level A harassment takes.

A summary of estimated marine mammal takes is listed in Table 8.

TABLE 8—ESTIMATED NUMBERS OF MARINE MAMMALS THAT MAY BE EXPOSED TO RECEIVED NOISE LEVELS THAT CAUSE LEVEL A AND LEVEL B HARASSMENT

Marine mammals	Estimated level A harassment	Estimated level B harassment	Estimated total harassment	Abundance	Percentage (%)
Gray whale	0	5	5	26,906	0.02
Humpback whale	0	21	21	2,900	0.72
Minke whale	0	7	7	636	1.10
Killer whale (West Coast transient)	0	70	70	243	28.81
Bottlenose dolphin	0	49	49	1,924	2.55
Harbor porpoise	14	649	663	11,233	5.90
Dall's porpoise	0	40	40	25,750	0.16
Harbor seal	52	3,155	3,207	11,036	21.50
Northern elephant seal	0	7	7	179,000	0.02
California sea lion	0	1,363	1,363	257,606	0.72
Steller sea lion	0	39	39	43,201	0.09

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the

likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Time Restriction

The applicant stated that work would occur only during daylight hours, when visual monitoring of marine mammals can be conducted. In addition, all in-water construction will be limited to the period between August 1, 2020, and February 15, 2021.

Establishing and Monitoring Level A, Level B Harassment Zones, and Exclusion Zones

Before the commencement of in-water construction activities, which include vibratory pile driving and pile removal, WSDOT shall establish Level A harassment zones where received underwater SPLs or SEL_{cum} could cause PTS.

WSDOT shall also establish Level B harassment zones where received underwater SPLs are higher than 160 dB_{rms} re 1 μPa for impulse noise sources (impact pile driving) and 120 dB_{rms} re 1 μPa for continuous noise sources (vibratory pile driving and pile removal).

WSDOT shall establish exclusion zones as shown in Table 9 to prevent Level A harassment takes of all cetaceans and otariids, and to minimize Level A harassment takes of phocids. In addition, a minimum of 10 m exclusion zone must be in place during anytime when in-water construction activity is ongoing.

WSDOT shall establish exclusion zones for SRKW and all marine mammals that takes are not authorized at the Level B harassment distances. Specifically, impact pile driving of 36-inch steel piles, a 750 m exclusion zone shall be established. For vibratory driving of 24- and 36-inch steel piles and vibratory pile removal of 24-inch steel piles, a 8.7 km exclusion zone shall be established. For vibratory pile removal of 14-inch timber piles and 12-inch steel piles, a 2.2 km exclusion zone shall be established.

A summary of exclusion zones is provided in Table 9.

TABLE 9—EXCLUSION ZONES (M) FOR VARIOUS MARINE MAMMALS

Pile type, size & pile driving method	Exclusion distance (m)					SRKW (m)
	LF	MF	HF	Phocid	Otariid	
Impact drive 36-inch steel pile	350	15	410	60	15	750
Vibratory drive 36-inch steel pile	160	15	230	60	10	8,700
Vibratory drive/removal, 24-inch steel piles	100	10	150	60	10	8,700
Vibratory remove, 14-inch timber pile or 12-inch steel pile	10	10	15	10	10	2,200

*LF = low-frequency cetacean; MF = mid-frequency cetacean; HF = high-frequency cetacean; PW = phocid; OW = otariids; SRKW = Southern Resident killer whale

NMFS-approved PSO shall conduct an initial survey of the exclusion zones to ensure that no marine mammals are seen within the zones beginning 30 minutes before pile driving and pile removal of a pile segment begins. If marine mammals are found within the exclusion zone, pile driving of the segment would be delayed until they move out of the area. If a marine mammal is seen above water and then dives below, the contractor would wait 15 minutes. If no marine mammals are seen by the observer in that time it can be assumed that the animal has moved beyond the exclusion zone.

If pile driving of a segment ceases for 30 minutes or more and a marine mammal is sighted within the designated exclusion zone prior to commencement of pile driving, the observer(s) must notify the pile driving operator (or other authorized individual) immediately and continue to monitor the exclusion zone. Operations may not resume until the marine mammal has exited the exclusion zone or 15 minutes have elapsed since the last sighting.

Shutdown Measures

WSDOT shall implement shutdown measures if a marine mammal is detected within or entering an exclusion zone listed in Table 9.

WSDOT shall also implement shutdown measures if SRKW are sighted within the vicinity of the project area and are approaching the Level B harassment zone during in-water construction activities.

If a killer whale approaches the Level B harassment zone during pile driving or removal, and it is unknown whether it is a SRKW or a transient killer whale, it shall be assumed to be a SRKW and WSDOT shall implement the shutdown measure.

If a SRKW or an unidentified killer whale enters the Level B harassment zone undetected, in-water pile driving or pile removal shall be suspended until the whale exits the Level B harassment zone, or 15 minutes have elapsed with no sighting of the animal, to avoid further Level B harassment.

Further, WSDOT shall implement shutdown measures if the number of authorized takes for any particular species reaches the limit under the IHA (if issued) and if such marine mammals are sighted within the vicinity of the project area and are approaching the Level B harassment zone during in-water construction activities.

Coordination With Local Marine Mammal Research Network

Prior to the start of pile driving for the day, the Orca Network and/or Center for Whale Research will be contacted by WSDOT to find out the location of the nearest marine mammal sightings. The Orca Sightings Network consists of a list of over 600 (and growing) residents, scientists, and government agency personnel in the U.S. and Canada. Sightings are called or emailed into the Orca Network and immediately distributed to other sighting networks including: The NMFS Northwest Fisheries Science Center, the Center for Whale Research, Cascadia Research, the Whale Museum Hotline and the British Columbia Sightings Network.

Sightings information collected by the Orca Network includes detection by hydrophone. The SeaSound Remote Sensing Network is a system of interconnected hydrophones installed in the marine environment of Haro Strait (west side of San Juan Island) to study orca communication, in-water noise, bottom fish ecology and local

climatic conditions. A hydrophone at the Port Townsend Marine Science Center measures average in-water sound levels and automatically detects unusual sounds. These passive acoustic devices allow researchers to hear when different marine mammals come into the region. This acoustic network, combined with the volunteer (incidental) visual sighting network allows researchers to document presence and location of various marine mammal species.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, all of which are described above, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable adverse impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

Proposed Monitoring Measures

WSDOT shall employ NMFS-approved PSOs to conduct marine mammal monitoring for its Seattle Multimodal Project at Colman Dock. The PSOs will observe and collect data on marine mammals in and around the project area for 30 minutes before, during, and for 30 minutes after all pile removal and pile installation work. NMFS-approved PSOs shall meet the following requirements:

1. Independent observers (*i.e.,* not construction personnel) are required;
2. At least one observer must have prior experience working as an observer;
3. Other observers may substitute education (undergraduate degree in biological science or related field) or training for experience;
4. Where a team of three or more observers are required, one observer should be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer; and
5. NMFS will require submission and approval of observer Curriculum Vitas;

Monitoring of marine mammals around the construction site shall be conducted using high-quality binoculars (*e.g.,* Zeiss, 10 x 42 power). Due to the different sizes of ZOIs from different pile sizes, several different ZOIs and different monitoring protocols corresponding to a specific pile size will be established.

- During vibratory driving of 36-inch pile or vibratory driving/removal of 24-inch piles, four land-based PSOs and one ferry-based PSO will monitor the zone.
- During vibratory removal of 12-inch or 14-inch piles, four land-based PSOs will monitor the zone.
- During impact driving of 36-nch piles, three land-based PSOs will monitor the zone.

Locations of the land-based PSOs and routes of monitoring vessels are shown in WSDOT's Marine Mammal Monitoring Plan, which is available online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

To verify the required monitoring distance, the exclusion zones and zones of influence will be determined by using a range finder or hand-held global positioning system device.

Proposed Reporting Measures

WSDOT is required to submit a draft report on all marine mammal monitoring conducted under the IHA (if issued) within 90 calendar days of the completion of the project. A final report shall be prepared and submitted within 30 days following resolution of comments on the draft report from NMFS.

The marine mammal report must contain the informational elements described in the Marine Mammal Monitoring Plan, dated May 12, 2020, including, but not limited to:

1. Dates and times (begin and end) of all marine mammal monitoring.
2. Construction activities occurring during each daily observation period, including how many and what type of piles were driven or removed.
3. Weather parameters and water conditions during each monitoring period (*e.g.,* wind speed, percent cover, visibility, sea state).
4. The number of marine mammals observed, by species, relative to the pile location and if pile driving or removal was occurring at time of sighting.
5. Age and sex class, if possible, of all marine mammals observed.
6. PSO locations during marine mammal monitoring.
7. Distances and bearings of each marine mammal observed to the pile being driven or removed for each sighting (if pile driving or removal was occurring at time of sighting).
8. Description of any marine mammal behavior patterns during observation, including direction of travel and estimated time spent within the Level B harassment zones while the source was active.
9. Number of individuals of each species (differentiated by month as appropriate) detected within the monitoring zone.
10. Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal, if any.
11. Description of attempts to distinguish between the number of individual animals taken and the

number of incidences of take, such as ability to track groups or individuals.

12. Submit all PSO datasheets and/or raw sighting data (in a separate file from the Final Report referenced immediately above).

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, WSDOT shall report the incident to the Office of Protected Resources (OPR) (301–427–8401), NMFS and to the West Coast Region (WCR) regional stranding coordinator (1–866–767–6114) as soon as feasible. If the death or injury was clearly caused by the specified activity, WSDOT must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. WSDOT must not resume their activities until notified by NMFS.

The report must include the following information:

1. Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
2. Species identification (if known) or description of the animal(s) involved;
3. Condition of the animal(s) (including carcass condition if the animal is dead);
4. Observed behaviors of the animal(s), if alive;
5. If available, photographs or video footage of the animal(s); and
6. General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, this introductory discussion of our analyses applies to all the species listed in Table 8, given that the anticipated effects of WSDOT's Seattle Multimodal Project at Colman Dock activities involving pile driving and pile removal on marine mammals are expected to be relatively similar in nature. There is no information about the nature or severity of the impacts, or the size, status, or structure of any species or stock that would lead to a different analysis by species for this activity, or else species-specific factors would be identified and analyzed.

Although some marine mammals could experience, and are authorized for Level A harassment in the form of PTS if they stay within the Level A harassment zone during the entire pile driving for the day, the degree of injury is expected to be mild and is not likely to affect the reproduction or survival of the individual animals. It is expected that, if hearing impairments occurs, most likely the affected animal would lose a few dB in its hearing sensitivity, which in most cases is not likely to affect its survival and recruitment. Hearing impairment that occur for these individual animals would be limited to the dominant frequency of the noise sources *i.e.,* in the low-frequency region below 2 kHz. Therefore, the degree of PTS is not likely to affect the echolocation performance of the harbor porpoise specie which uses frequencies mostly above 100 kHz. Nevertheless, for all marine mammal species, it is known that in general animals avoid areas where sound levels could cause hearing impairment. Nonetheless, we evaluate the estimated take in this negligible impact analysis.

Most marine mammal takes that are anticipated and proposed to be authorized are expected to be limited to short-term Level B harassment (behavioral and TTS) only. Marine mammals present in the vicinity of the action area and taken by Level B harassment would most likely show overt brief disturbance (startle reaction) and avoidance of the area from elevated noise levels during pile driving and pile removal and the implosion noise. These behavioral distances are not expected to affect marine mammals' growth, survival, and reproduction due to the limited geographic area that would be affected in comparison to the much larger habitat for marine mammals in the Puget Sound. A few marine mammals could experience TTS if they occur within the Level B TTS zone. However, as discussed earlier in this document, TTS is a temporary loss of hearing sensitivity when exposed to loud sound, and the hearing threshold is expected to recover completely within minutes to hours. Therefore, it is not considered an injury.

Portions of the SRKW range is within the proposed action area. In addition, the entire Puget Sound is designated as the SRKW critical habitat under the ESA. However, WSDOT would be required to implement strict mitigation measures to suspend pile driving or pile removal activities when this stock is detected in the vicinity of the project area. We anticipate that take of SRKW would be avoided. There are no other known important areas for other marine mammals, such as feeding or pupping, areas.

The project also is not expected to have significant adverse effects on affected marine mammals' habitat, as analyzed in detail in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section. There is no other ESA designated critical habitat in the vicinity of the Seattle Multimodal Project at Colman Dock construction area. The project activities would not permanently modify existing marine mammal habitat. The activities may kill some fish and cause other fish to leave the area temporarily, thus impacting marine mammals' foraging opportunities in a limited portion of the foraging range. However, because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences. Therefore, given the consideration of potential impacts to marine mammal prey species and their physical environment, WSDOT's proposed construction activity at the Seattle Multimodal Project at Colman Dock would not adversely affect marine mammal habitat.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the

species or stock through effects on annual rates of recruitment or survival:

• Injury—a few individuals of harbor seal and harbor porpoise could experience Level A harassment in the form of mild PTS;

• Behavioral disturbance—eleven species/stocks of marine mammals could experience behavioral disturbance and TTS from the WSDOT's Seattle Multimodal Project at Colman Dock construction. However, as discussed earlier, the area to be affected is small and the duration of the project is short. In addition, the nature of the take would involve mild behavioral modification; and

• Although portion of the SWKR critical habitat is within the project area, strict mitigation measures such as implementing shutdown measures and suspending pile driving are expected to avoid take of SRKW, and impacts to prey species and the habitat itself are expected to be minimal. No other important habitat for marine mammals exist in the vicinity of the project area.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The estimated takes are below 30 percent of the population for all marine mammals (Table 8).

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the West Coast Regional Office, whenever we propose to authorize take for endangered or threatened species.

The only species listed under the ESA with the potential to be present in the action area is the Mexico Distinct Population Segment (DPS) of humpback whales. The effects of this proposed Federal action were adequately analyzed in NMFS' Biological Opinion for the Seattle Multimodal Project at Colman Dock, Seattle, Washington, dated October 1, 2018, which concluded that issuance of an IHA would not jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify any designated critical habitat. NMFS West Coast Region has confirmed the Incidental Take Statement (ITS) issued in 2017 is applicable for the IHA. That ITS authorizes the take of seven humpback whales from the Mexico DPS.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to WSDOT for conducting Seattle Multimodal Project at Colman Dock Year 4 construction in the Seattle, Washington, between August 1, 2020, through July 31, 2021, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHA for the proposed Seattle Multimodal Project at Colman Dock Year 4 construction. We also request at this time comment on the potential Renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent Renewal IHA.

On a case-by-case basis, NMFS may issue a one-time one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the Description of Marine Mammals in the Area of Specified Activities section of this notice is planned or (2) the activities as described in the Description of Marine Mammals in the Area of Specified Activities section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

• A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).

• The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

• Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate,

and the findings in the initial IHA remain valid.

Dated: June 30, 2020.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–14617 Filed 7–7–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Establishment of the Communications Supply Chain Risk Information Partnership

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: The National Telecommunications and Information Administration (NTIA) announces the establishment of the Communications Supply Chain Risk Information Partnership (C–SCRIP) in support of the requirements of Section 8 of the Secure and Trusted Communications Network Act of 2019 (Act). The Act directs NTIA, in cooperation with other designated federal agencies, to establish a program to share supply chain security risk information with trusted providers of advanced communications service and suppliers of communications equipment or services.

DATES: Applicable on July 8, 2020.

ADDRESSES: C–SCRIP, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Megan Doscher, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 4725, Washington, DC 20230; telephone (202) 482–2503; *mdoscher@ntia.gov.* Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002, or at *press@ntia.gov.*

SUPPLEMENTARY INFORMATION: Section 8 of the Secure and Trusted Communications Network Act of 2019 (Act) directs NTIA, in cooperation with the Office of the Director of National Intelligence (ODNI), the Department of Homeland Security (DHS), the Federal Bureau of Investigation (FBI), and the Federal Communications Commission (FCC), to establish a program to share ''supply chain security risk'' information with trusted providers of ''advanced communications service'' and suppliers of communications equipment or services.[1] Through this Notice, NTIA is announcing the establishment of the Communications Supply Chain Risk Information Partnership (C–SCRIP), a partnership to share supply chain security risk information with trusted communications providers and suppliers.

NTIA is collaborating with the ODNI, DHS, FBI, and FCC to establish the program. This program is aimed primarily at trusted small and rural communications providers and equipment suppliers, with the goal of improving their access to risk information about key elements in their supply chain.[2] C–SCRIP will allow for regularly scheduled informational briefings, with a goal of providing more targeted information for C–SCRIP participants as the program matures over time. NTIA will aim to ensure that the risk information identified for sharing under the program is relevant and accessible, and will work with its government partners to enable the granting of security clearances under established guidelines when necessary.

NTIA is using a phased approach to establish the C–SCRIP program, in cooperation with its government partners. In Phase 1, NTIA establishes the program and develops the required report to Congress on NTIA's plan to work with its interagency partners on: (1) Declassifying material to help share information on supply chain risks with trusted providers; and (2) expediting and expanding the provision of security clearances for representatives of trusted providers.[3] During Phase 1, NTIA will coordinate closely with its federal partners to take advantage of the existing processes and procedures in place for the processing of security clearances and the declassification of threat intelligence and to develop a strategic implementation plan for the C–SCRIP program to establish primary goals and operating principles for the partnership. The strategic implementation plan is intended to harmonize the C–SCRIP program with other government programs to ensure cohesion and to avoid overlap.

In Phase 2, NTIA will operationalize the program, informed by public comments, and will establish the methods and means to initiate and sustain the partnership community of providers and suppliers that are eligible under the Act to receive supply chain security risk information.[4] Phase 2 will be driven by the strategic implementation plan. In particular, NTIA expects to establish partnership guidelines during Phase 2, as driven by the Act's requirements. NTIA will also initiate ad hoc briefings to trusted providers during Phase 2 on an as-needed basis.

In Phase 3, NTIA will refine its methods and means for generating and sharing information with the C–SCRIP partnership community to best secure U.S. communications networks against supply chain threats. NTIA also expects to formalize its process and schedule for briefings and alerts during this phase, and to establish mechanisms for ongoing coordination and communication.

During Phase 4, NTIA will evaluate the initiation period of the program and make recommendations for adjustments or enhancements to advance the goal of diminishing supply chain risk among program participants.

Dated: July 2, 2020.

Douglas Kinkoph,

Associate Administrator, Office of Telecommunications and Information Applications, performing the non-exclusive functions and duties of the Assistant Secretary of Commerce for Communications and Information.

[FR Doc. 2020–14725 Filed 7–7–20; 8:45 am]

BILLING CODE 3510–60–P

[1] Secure and Trusted Communications Network Act of 2019, Public Law 116–124, § 8, 134 Stat. 158, 168 (2020) (codified at 47 U.S.C. 1607).

[2] *See id.* § 8(a)(2)(A), (B).

[3] *See id.* § 8(a)(2)(C).

[4] *See* NTIA, Notice; request for public comments, *Promoting the Sharing of Supply Chain Security Risk Information Between Government and Communications Providers and Suppliers,* 85 FR 35919 (June 12, 2020), available at *https://www.ntia.doc.gov/federal-register-notice/2020/request-comments-promoting-sharing-supply-chain-security-risk.*

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy

AGENCY: Department of the Army, DoD.

ACTION: Notice of open Federal advisory committee virtual meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the Federal Advisory Committee Microsoft Office 365 Teams virtual meeting of the U.S. Military Academy Board of Visitors (Board). This meeting is open to the public. For additional information about the Board, please visit the committee's website at *https://*

www.westpoint.edu/about/superintendent/board-of-visitors.

DATES: The United States Military Academy Board of Visitors will conduct a Microsoft Office 365 Teams virtual meeting from 10:00 a.m. to 12:00 p.m., July 29, 2020.

ADDRESSES: Microsoft Office 365 Teams virtual meeting. The U.S. Military Academy Board of Visitors meeting will be a Microsoft Office 365Teams virtual meeting. To participate in the meeting, see the Meeting Accessibility section for instructions.

FOR FURTHER INFORMATION CONTACT: Mrs. Deadra K. Ghostlaw, the Designated Federal Officer (DFO) for the committee, in writing in writing at: Secretary of the General Staff, ATTN: Deadra K. Ghostlaw, 646 Swift Road, West Point, NY 10996; by email at: *deadra.ghostlaw@westpoint.edu* or *BoV@westpoint.edu;* or by telephone at (845) 938–4200.

SUPPLEMENTARY INFORMATION: The USMA BoV provides independent advice and recommendations to the President of the United States on matters related to morale, discipline, curriculum, instruction, physical equipment, fiscal affairs, academic methods, and any other matters relating to the Academy that the Board decides to consider.

Purpose of the Meeting: This is the 2020 Summer Meeting of the USMA BoV. Members of the Board will be provided updates on Academy issues. Agenda: Board Business; Lessons learned from COVID–19; Update on USMA Campaign Plan: Develop Leaders of Character; Cultivate a Culture of Character Growth; Build Diverse, Effective, and Winning Teams; Modernize, Secure, and Reform; Strategic Partnerships.

Availability of Materials for the Meeting. A copy of the agenda or any updates to the agenda for the July 29, 2020 Microsoft Office 365 Teams virtual meeting will be available. The final version will be available at the Microsoft Office 365 Teams virtual meeting. All materials will be posted to the website after the meeting.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, the meeting is open through Microsoft Office 365 Teams to the public from time in 9:45 a.m.–12:00 p.m. Persons desiring to participate in the meeting through Microsoft Office 365 Teams are required to submit their name, organization, email and telephone contact information to Mrs. Deadra K. Ghostlaw at *deadra.ghostlaw@westpoint.edu* not later than Monday, July 20, 2020. Specific instructions, for Microsoft Office 365Teams participation in the meeting, will be provided by reply email. The meeting agenda will be available prior to the meeting on the Board's website at: *https://www.westpoint.edu/about/superintendent/board-of-visitors.*

Special Accommodations: Individuals requiring any special accommodations related to the virtual public meeting or seeking additional information about the procedures, should contact Mrs. Ghostlaw, the committee DFO, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section, at least seven (7) business days prior to the meeting so that appropriate arrangements can be made.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Board about its mission and/or the topics to be addressed in this Microsoft Office 365Teams virtual public meeting. Written comments or statements should be submitted to Mrs. Ghostlaw, the committee DFO, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section in the following formats: Adobe Acrobat or Microsoft Word. The comment or statement must include the author's name, title, affiliation, address, and daytime telephone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the committee DFO at least seven (7) business days prior to the meeting so that they may be made available to the Board for its consideration prior to the meeting. Written comments or statements received after this date may not be provided to the Board until its next meeting. Please note that because the Board operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection.

Pursuant to 41 CFR 102–3.140d, the committee is not obligated to allow a member of the public to speak or otherwise address the committee during the meeting. However, the committee Designated Federal Official and Chairperson may choose to invite certain submitters to present their comments verbally during the open portion of this meeting or at a future meeting. The Designated Federal Officer, in consultation with the committee Chairperson, may allot a specific amount of time for submitters to present their comments verbally.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2020–14712 Filed 7–7–20; 8:45 am]

BILLING CODE 5061–AP–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2020–HQ–0013]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army (USA), Department of Defense (DoD).

ACTION: Notice of a modified System of Records.

SUMMARY: The USA is modifying an existing System of Records titled, Mobilization Common Operating Picture (MOBCOP), A0500–5 DAMO. This System of Records will become the DoD Mobilization Deployment Management Information System (MDMIS). The MDMIS supports operational exercises, deployments and mission movements of military forces. The modification will expand the System of Records for use by all the military services, remove duplication of effort, improve efficiency within the department, and enhance public transparency.

DATES: This System of Records modification is effective upon publication; however, comments on the Routine Uses will be accepted on or before August 7, 2020. The Routine Uses are effective at the close of the comment period.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

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

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard, Chief, Defense Privacy, Civil Liberties, and Transparency Division, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700, or by phone at (703) 571–0070.

SUPPLEMENTARY INFORMATION: The MDMIS supports the national defense across the full spectrum of military operations, including sustained operational missions, emergent contingency operations, and service during national emergencies or in time of war. The system tracks all staffing decisions for the mobilization and deployment of every unit, military member, and civilian personnel in an automated and auditable information technology platform. In addition, the system provides business process analytics for programming and budget estimates; enables centralized management of travel and associated funding; and assists with order reconciliation.

The DoD notices for Systems of Records subject to the Privacy Act of 1974, as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or on the Defense Privacy, Civil Liberties, and Transparency Division website at *https://dpcld.defense.gov.*

The proposed system reports, as required by of the Privacy Act, as amended, were submitted on May 29, 2020, to the House Committee on Oversight and Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to Section 6 of OMB Circular No. A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' revised December 23, 2016 (December 23, 2016, 81 FR 94424).

Dated: June 25, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER:

Mobilization Deployment Management Information System (MDMIS), DoD 0003

SECURITY CLASSIFICATION:

Unclassified and Classified

SYSTEM LOCATION:

U.S. Army Information Technology Agency (USAITA) Pentagon Data Center, Pentagon, Washington, DC 20310–0400.

Air Force: Amazon Web Services, Inc., P.O. Box 81226, Seattle, WA 98108–1226. Navy Personnel Command, Augmentation Management Division (PERS–46), 5720 Integrity Drive, Millington, TN 38055–4000.

Civilian personnel: Decentralized locations include the DoD Components staff and field operating agencies, major commands, installations, and activities.

SYSTEM MANAGER(S):

Chief, Mobilization Deployment Information System (MDIS) Branch, Current Operations Division, Headquarters, Department of the Army, G3/5/7, Army Operations Center, Washington, DC 20310–0400.

Chief, War Planning and Policy Division, Headquarters, Department of the Air Force, Pentagon, Washington, DC 20330–1670.

Policy Official, Commander, Navy Personnel Command (PERS–4G), 5720 Integrity Drive, Millington, TN 38055–4000.

The Privacy Act responsibilities concerning access, amendment, and disclosure of the records within this system notice have been delegated to the employing DoD components.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 12301, Reserve components generally; 10 U.S.C. 12302, Ready Reserve, 10 U.S.C. 12304, Selected Reserve and certain Individual Ready Reserve members; order to active duty other than during war or national emergency; DoDD 1200.17, Managing the Reserve Components as an Operational Force; DoDI 1235.12, Accessing the Reserve Components (RC); Directive-type Memorandum (DTM) 17–004, Department of Defense Expeditionary Civilian Workforce; Joint Publication 1–0, Joint Personnel Support; Joint Publication 3–0, Joint Operations; Joint Publication 4–05, Joint Mobilization Planning; and E.O. 9397 (SSN), as amended.

PURPOSE(S) OF THE SYSTEM:

The MDMIS supports military forces in operational exercises, deployments and mission movements. The system tracks staffing decisions for the mobilization and deployment of every unit and military member in an automated and auditable information technology platform. The system provides end-to-end command visibility and control of integrated augmentation processes and automated work-flow for requesting manpower requirements, approving requirements, sourcing requirements, and writing orders for requirements, tracking, accounting, and performing data collection, and coordinating during activation/deactivation.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All armed services personnel, including National Guard and Reserve components and DoD civilian personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; Social Security Numbers; DoD Identification (DoD ID) number; passport information, telephone number(s); emails; address(es); marital status; birth date; place of birth; gender; race and ethnic origin; sponsoring and beneficiary information. Employment: grade, wage, pay status; position; unit of assignment; individual personnel and military service records; education information; language/foreign language qualifications, security clearance information; augmentation type. Medical readiness information: Physical profile qualification and limitations; disability determinations.

RECORD SOURCE CATEGORIES:

Individuals; Integrated Total Army Personnel Database system (iTAPDB); Air Expeditionary Forces (AEF) Online; Air Force Mobilization Management System (AFMMS); Air Reserve Component Operational Requirements Tracker (ARCORT), Air Reserve Orders Writing System (AROWS), Air Reserve Orders Writing System—Reserves (AROWS–R), Deliberate and Crisis Action Planning and Execution Segments (DCAPES), Defense Enrollment Eligibility Reporting System (DEERS), Defense Manpower Data Center (DMDC); Defense Travel System (DTS), Global Force Management Allocation Plan (GFMAP), GFM Toolset, Joint Capabilities Requirements Manager (JCRM), Joint Operation Planning and Execution System (JOPES), Logistics Modernization (LOGMOD), Manpower MPA Man-Day Management System (M4S), Military Personnel Data System (MilPDS); casualty incident reports; physical health assessment data; physical fitness testing results; substance abuse referrals; behavioral health profiles and official military records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

a. To contractors, grantees, experts, consultants, students, and others

performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government when necessary to accomplish an agency function related to this System of Records.

b. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

c. To any component of the Department of Justice for the purpose of representing the DoD, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

d. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

e. To the National Archives and Records Administration (NARA) for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

f. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

g. To appropriate agencies, entities, and persons when (1) the DoD suspects or confirms a breach of the System of Records; (2) the DoD determines as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

h. To another Federal agency or Federal entity, when the DoD determines information from this System of Records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and Electronic storage media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Name, DoD ID number, and SSN.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Permanent. Keep until no longer needed for conducting business, then transfer to the NARA when 25 years old.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Electronic records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Access to records is limited to person(s) servicing the record in performance of their official duties and who are properly screened and cleared for need-to-know. Access to computerized data is restricted by the use of Common Access Cards (CAC) and data encryption.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this System of Records should address written inquiries to the Freedom of Information Act Request Service Center of their employing DoD component. The addresses can be found here: *https://www.foia.gov/#agency-search.* For verification purposes, individuals should provide their full name, DoD ID Number, SORN ID number, and any details which may assist in locating records and their signature. In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

CONTESTING RECORD PROCEDURES:

The DoD rules for accessing records, contesting contents, and appealing initial agency determinations are contained in 32 CFR part 310, or may be obtained from the system manager.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this System of Records should address written inquiries to their original employing DoD component. For verification purposes, individuals should provide their full name, DoD ID Number, System of Records Notice (SORN) ID number, and any details which may assist in locating records and their signature. In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The DoD is exempting the records in the MDMIS, DoD 0003 from subsections 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), and (d)(4). Information specifically authorized to be classified pursuant to Executive Order 13526, as implemented by DoD Instruction 5200.01 and DoD Manual 5200.01, Volumes 1 and 3, that if disclosed could damage national security. An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 310. For additional information contact the system manager(s).

HISTORY:

December 6, 2013, 78 FR 73509, September 22, 2009, 74 FR 48238.

[FR Doc. 2020–14655 Filed 7–7–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, 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 Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries (the Board) will take place.

DATES: Open to the public Friday, July 24, 2020, from 10:00 a.m. to 1:00 p.m.

ADDRESSES: This meeting will be held virtually. For information regarding how to access the meeting, please contact Kathleen Ludwig, (703) 653–4758 or *Kathleen.A.Ludwig.civ@mail.mil* after July 10, 2020.

FOR FURTHER INFORMATION CONTACT: Inger Pettygrove, (703) 225–8803, *inger.m.pettygrove.civ@mail.mil* (Email). Mailing address is Defense Human Resources Activity, DoD Office of the Actuary, 4800 Mark Center Drive, STE 03E25, Alexandria, VA 22350–8000. website: *https://actuary.defense.gov/*. The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to execute the provisions of 10 U.S.C. chapter 56 (10 U.S.C. 1114 et. seq). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of benefits under DoD retiree health care programs for Medicare-eligible beneficiaries.

Agenda

1. Meeting Objective
   a. Approve actuarial assumptions and methods needed for calculating:
   (i) September 30, 2019 unfunded liability (UFL)
   (ii) FY 2022 per capita full-time and part-time normal cost amounts
   (iii) October 1, 2020, Treasury UFL amortization payment
   b. Approve per capita full-time and part-time normal cost amounts for the October 1, 2020 (FY 2021) normal cost payments
2. Trust Fund Update—Investment Experience
3. Medicare-Eligible Retiree Health Care Fund Update
4. September 30, 2018, Actuarial Valuation Results
5. September 30, 2019, Actuarial Valuation Proposals
6. Decisions
   (i) Actuarial assumptions and methods needed for calculating items specified in agenda item 1.a.
   (ii) Per capita full-time and part-time normal cost amounts needed for calculating item specified in agenda item 1.b.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165 and the availability of space, this meeting is open to the public.

Written Statements: Persons desiring to attend the DoD Medicare-Eligible Retiree Health Care Board of Actuaries meeting or make an oral presentation or submit a written statement for consideration at the meeting, must notify Kathleen Ludwig at (703) 653–4758, or *Kathleen.A.Ludwig.civ@mail.mil,* by July 10, 2020.

Dated: July 2, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–14727 Filed 7–7–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board

Meetings

AGENCY: National Assessment Governing Board, U.S. Department of Education.

ACTION: Announcement of open and closed virtual meetings.

SUMMARY: This notice sets forth the agenda for a series of National Assessment Governing Board (hereafter referred to as Governing Board) meetings that will be convened in July 2020 and August 2020. This notice provides information to members of the public who may be interested in accessing the meetings or providing written comments related to the work of the Governing Board. Notice of this meeting is required under § 10(a) (2) of the Federal Advisory Committee Act (FACA). The open sections of the virtual meetings can be accessed via registration at the Governing Board's web's site page at *www.nagb.gov* beginning at 2:00 p.m. E.T. on Monday, July 6, 2020.

DATES: The July and August 2020 meetings will be held on the following dates:

Assessment Development Committee (ADC): Open Meeting, July 13, 3:00–5:30 p.m. Eastern Time (ET).

Reporting and Dissemination (R&D) Committee Meeting: Open Meeting, July 16: 3:15–4:00 p.m. ET.

Committee on Design and Methodology (COSDAM): Closed Meeting: July 17, 2:00–3:30 p.m. ET; Open Meeting, 3:30 p.m. to 4:00 p.m. ET.

ADC and R&D: Open Meeting: July 23: 2:00–3:00 p.m. ET.

Full Board Meeting: Open Meeting: July 30: 2:00–3:30 p.m. Eastern Time (ET); Closed Meeting, 3:45–5:15 p.m.

Full Board Meeting: Open Meeting: July 31, 10:30 a.m. to 2:30 p.m. ET.; Closed Meeting, 2:45–3:25 p.m. ET; Open Meeting, 3:40—4:15 p.m. ET.

Nominations Committee: Closed Meeting: August 5, 3:00–4:00 p.m. ET.

ADDRESSES: Virtual Meetings.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Executive Officer/Designated Federal Official for the Governing Board, 800 North Capitol Street NW, Suite 825, Washington, DC 20002, telephone: (202) 357–6938, fax: (202) 357–6945, email: *Munira.Mwalimu@ed.gov.*

SUPPLEMENTARY INFORMATION:

Statutory Authority and Function: The Governing Board is established under the National Assessment of Educational Progress Authorization Act, Title III of Public Law 107–279. Information on the Governing Board and its work can be found at *www.nagb.gov.*

The Governing Board is established to formulate policy for the National Assessment of Educational Progress (NAEP) administered by the National Center for Education Statistics (NCES). The Governing Board's responsibilities include the following: Selecting subject areas to be assessed, developing assessment frameworks and specifications, developing appropriate student achievement levels for each grade and subject tested, developing standards and procedures for interstate and national comparisons, improving the form and use of NAEP, developing guidelines for reporting and disseminating results, and releasing initial NAEP results to the public.

Written comments related to the work of the Governing Board may be submitted electronically or in hard copy to the attention of the Executive Officer/Designated Federal Official (see contact information noted above).

July Standing Committee Meetings

The Governing Board's standing committees will meet to conduct regularly scheduled work based on agenda items planned for this Quarterly Board Meeting and follow-up items as reported in the Governing Board's

committee meeting minutes available at *https://www.nagb.gov/governing-board/quarterly-board-meetings.html.*

Meeting Agendas

ADC: Open Meeting, July 13, 3:00–5:30 p.m.

The following agenda items will be discussed with one action item:

- Reaping the Rewards of Reading for Understanding: A Briefing from the National Academy of Education
- Milestones for the 2025 NAEP Reading Framework: A Project Update
- Action Item: 2025 NAEP Mathematics Assessment and Item Specifications
- ADC Roles in Strategic Vision 2025: Discussing the Draft Vision

R&D: Open Meeting: July 16: 3:15–4:00 p.m.

The following agenda items will be discussed with one action item:

- Action Item: Release plan for NAEP Grade 12, Reading and Mathematics
- Discuss R&D components in draft Strategic Vision 2025

COSDAM: July 17, 2:00–4:00 p.m.

- Closed Meeting: 2:00 p.m. to 3:30 p.m.

On July 17, 2020, COSDAM will meet in closed session to discuss NAEP 2021 data quality risks. This meeting must be conducted in closed session because the discussion will include secure NAEP items which have not been released to the public. Public disclosure of secure items used in the assessments would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of § 552b(c) of Title 5 of the United States Code.

- Open Meeting: 3:30 p.m. to 4:00 p.m.

Discuss COSDAM components in draft Strategic Vision 2025.

ADC and R&D: Open Meeting: July 23: 2:00–3:00 p.m. Joint session to review COVID-related items on contextual questionnaires.

Nominations Committee: Closed Meeting: August 5, 3:00–4:00 p.m. Discuss updates regarding submission of finalists for October 1, 2020 appointments. This session must be closed because the discussions pertain solely to internal personnel rules and practices of an agency and information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. As such, the discussion is protected by exemptions 2 and 6 of § 552b(c) of Title 5 of the United States Code.

Governing Board Full Meeting: Open Session: July 30, 2:00 p.m. to 3:30 p.m.; Closed Meeting: 3:45 p.m. to 5:15 p.m.

On Thursday, July 30, 2020, the Governing Board will meet in open session from 2:00 p.m. to 3:30 p.m. The Governing Board Chairman will welcome members and the Governing Board will take action to approve the May 2020 Governing Board meeting minutes and the July 2020 Governing Board meeting agenda. The Governing Board will take action on a nomination for Governing Board Vice Chair for the term beginning October 1, 2020 and ending September 30, 2021. Then the Governing Board will discuss the 2025 Strategic Vision and take action on the Strategic Vision 2025 thereafter.

On Thursday, July 30, 2020, the full Governing Board will convene in closed session from 3:45 p.m. to 5:15 p.m. During this closed session, the Governing Board will discuss independent cost estimates related to the impact of the COVID–19 pandemic on the National Assessment of Educational Progress (NAEP) 2021 operations and subsequent potential impacts on the NAEP budget and assessment schedule as previously announced. The discussions may impact current and future NAEP contracts and budgets and must be kept confidential. Public disclosure of this confidential information would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of § 552b(c) of Title 5 of the United States Code.

On Friday, July 31, 2020, the Governing Board will meet in open session from 10:30 a.m. to 4:15 p.m.

From 10:30 a.m. to 12:15 p.m. the Governing Board will engage in discussion on COVID–19 and policy implications for NAEP. The Governing Board will take a break from 12:15 p.m. to 1:00 p.m. and reconvene in open session from 1:00 p.m. to 2:30 p.m. The Governing Board will receive a briefing on the proposed 2025 NAEP Reading Framework and will engage in a discussion of policy guidance led by Governing Board Member Dana Boyd, ADC Chair.

From 2:45–3:25 p.m., the Governing Board will convene in closed session to hear a briefing on the 2019 NAEP Reading and Mathematics Report Card for grade 12. This meeting must be conducted in closed session because the discussion will include secure NAEP data which have not yet been released to the public. Public disclosure of secure results would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of § 552b(c) of Title 5 of the United States Code.

The Governing Board will meet in open session from 3:40 p.m. to 3:45 p.m. to take action on a release plan for the 2019 NAEP Reading and Mathematics Report Card for grade 12.

Departing Governing Board members, Rebecca Gagnon, Andrew Ho, Terry Mazany, and Father Joseph O'Keefe whose terms conclude on September 30, 2020 will provide farewell remarks from 3:45 p.m. to 4:15 p.m., following which the July 31, 2020 session of the Governing Board meeting will adjourn.

Access to Records of the Meeting: Pursuant to FACA requirements, the public may also inspect the meeting materials at *www.nagb.gov* five working days prior to each meeting. The official verbatim transcripts of the public meeting sessions will be available for public inspection no later than 30 calendar days following the meeting.

Reasonable Accommodations: The meeting is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice no later than ten working days prior to each meeting.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the Adobe website. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: Pub. L. 107–279, Title III—National Assessment of Educational Progress § 301.

Lesley Muldoon,

Executive Director, National Assessment Governing Board, U. S. Department of Education.

[FR Doc. 2020–14702 Filed 7–7–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0060]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and approval; Comment Request; Loan Discharge Applications (DL/FFEL/Perkins)

AGENCY: 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 August 7, 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: Loan Discharge Applications (DL/FFEL/Perkins).

OMB Control Number: 1845–0058.

Type of Review: Extension of an existing information collection.

Respondents/Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 30,051.

Total Estimated Number of Annual Burden Hours: 15,027.

Abstract: The Department of Education is requesting an extension of the currently approved information collection. This information collection is necessary for loan holders in the FFEL, Direct Loan, and Perkins Loan programs to obtain the information that is needed to determine whether a borrower qualifies for a closed school or false certification loan discharge. The loan discharge regulations in all three loan programs require borrowers who seek discharge of their FFEL, Direct Loan, or Perkins Loan program loans to request a loan discharge and provide their loan holders with certain information in writing. This information collection includes the following five loan discharge applications that are used to obtain the information needed to determine whether a borrower qualifies for a closed school discharge, false certification—ATB, false certification—disqualifying status, false certification—unauthorized signature/unauthorized payment or unpaid refund loan discharges.

Dated: July 2, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–14682 Filed 7–7–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Technical Assistance on State Data Collection—IDEA Data Management Center

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2020 for an IDEA Data Management Center, Catalog of Federal Domestic Assistance (CFDA) number 84.373M. This Center will respond to State needs as States integrate their Individuals with Disabilities Education Act (IDEA) Part B data required to meet the data collection requirements in section 616 and section 618 of IDEA, including information collected through the IDEA State Supplemental Survey, into their longitudinal data systems. This will improve the capacity of States to collect, report, analyze, and use high-quality IDEA Part B data to establish and meet high expectations for each child with a disability. The Data Management Center will help States address challenges with data management procedures and data systems architecture and better meet current and future IDEA Part B data collection and reporting requirements. This notice relates to the approved information collection under OMB control number 1894–0006.

DATES:

Applications Available: July 8, 2020.

Deadline for Transmittal of Applications: August 24, 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: Amy Bae, U.S. Department of Education, 400 Maryland Avenue SW, Room 5016C, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–8272. Email: *Amy.Bae@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 purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet IDEA data collection and reporting requirements. Funding for the program is authorized under section 611(c)(1) of IDEA, which gives the Secretary the authority to reserve not more than ½ of 1 percent of the amounts appropriated under Part B for each fiscal year to provide TA activities authorized under section 616(i), where needed, to improve the

capacity of States to meet the data collection and reporting requirements under Parts B and C of IDEA. The maximum amount the Secretary may reserve under this set-aside for any fiscal year is $25,000,000, cumulatively adjusted by the rate of inflation. Section 616(i) of IDEA requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of section 616 of IDEA are collected, analyzed, and accurately reported to the Secretary. It also requires the Secretary to provide TA (from funds reserved under section 611(c)), where needed, to improve the capacity of States to meet the data collection requirements, which include the data collection and reporting requirements in sections 616 and 618 of IDEA. Additionally, the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019; and the Further Consolidated Appropriations Act, 2020 give the Secretary authority to use funds reserved under section 611(c) to ''administer and carry out other services and activities to improve data collection, coordination, quality, and use under parts B and C of the IDEA.'' Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019; Div. B, Title III of Public Law 115–245; 132 Stat. 3100 (2018). Further Consolidated Appropriations Act, 2020; Div. A, Title III of Public Law 116–94; 133 Stat. 2590 (2019).

Priority: This priority is from the notice of final priority and requirements (NFP) for this program published elsewhere in this issue of the **Federal Register**.

Background

The purpose of this priority is to establish a TA center to provide TA to improve States' capacity to collect, report, analyze, and use high-quality IDEA Part B data (including IDEA section 618 Part B data and section 616 Part B data) by enhancing, streamlining, and integrating their IDEA Part B data into the State's longitudinal data systems.[1] The Data Management Center's work will comply with the privacy and confidentiality protections in the Family Educational Rights and Privacy Act (FERPA) and IDEA. The Data Management Center will not provide the Department with access to child-level data and will further ensure that such data is de-identified, as defined in 34 CFR 99.31(b)(1).

A majority of States have State longitudinal data systems, but, until recently, very few of those systems integrated IDEA Part B data. Integrating State longitudinal data systems with IDEA Part B data is a complex issue. Specifically, in the IDEA State Supplemental Survey in school year (SY) 2015–16, only 18 of 60 Part B reporting entities responded that all their special education data was in their statewide longitudinal data system, rising to 23 Part B reporting entities in SY 2018–19. Therefore, many Part B reporting entities are still not integrating their IDEA Part B data with their States' longitudinal data systems. This lack of integration reduces States' ability both to make full use of their data and to meet changing reporting needs.

States are seeing the value of integrating IDEA Part B data into their State longitudinal data systems. Doing so allows States to standardize data collected across programs, assists in meeting Federal reporting requirements, provides additional information on the participation in other programs by children with disabilities, and supports program improvement.

Currently, most students with disabilities are educated in the same settings as students without disabilities; however, the majority of States continue to separate disability and special education related data from other data collected on students (*e.g.,* demographics, assessment data). Some States are using separate data collections to meet the reporting requirements under sections 616 and 618 of IDEA (*e.g.,* discipline, assessment, educational environments) rather than including all data elements needed for Federal reporting in their State longitudinal data systems. At the same time, various programs, districts, and State educational agencies (SEAs) are using different collection processes to gather data for their required data submissions, resulting in different degrees of reliability in the data collected.

These situations hinder the States' capacity both to collect and report valid and reliable data on children with disabilities to the Secretary and to the public, which is specifically required by IDEA sections 616(b)(2)(B)(i), 616(b)(2)(C)(ii), and 618(a), and to meet IDEA Part B data collection and reporting requirements under sections 616 and 618 of IDEA.

States with fragmented data systems are also more likely to have missing or duplicate data. For example, if a State collects and maintains data on disciplinary removals of students with disabilities in a special education data system but maintains data on the demographics of all students in another data system, the State may not be able to accurately match all data on disciplinary removals with the demographic data needed to meet IDEA Part B data collection and reporting requirements.

In addition, States with fragmented data systems often lack the capacity to cross-validate related data elements. For example, if the data on the type of statewide assessment in which students with disabilities participate is housed in one database and the grade in which students are enrolled is housed in another, the State may not be able to accurately match the assessment data to the grade-level data to meet the Federal reporting requirements, including IDEA Part B reporting requirements under sections 616 and 618 of IDEA.

Finally, the demand from States for support from the currently funded Data Management Center to assist them in integrating their IDEA Part B data within the States' longitudinal data system far exceeds the number of States that could be served by the current center. Ten States have received support from the current center while 28 additional States have indicated interest in integrating their IDEA Part B data with their State longitudinal data systems. In addition to the interest in integrating data, about 10 percent of States reported to the National Center for Education Statistics through the State longitudinal data program that they do not yet have non-ED*Facts* special education reporting and are interested in, or are working towards, this functionality. About one-third of States reported that they do not yet have IDEA Part B data integrated into their systems and are interested in or are working on developing this functionality.

In addition, this priority includes an indirect cost cap that is the lesser of the grantee's actual indirect costs as determined by the grantee's negotiated indirect cost rate agreement with its cognizant Federal agency and 40 percent of the grantee's modified total direct cost (MTDC) base. We believe this cap is appropriate as it maximizes the availability of funds for the primary TA purposes of this priority, which is to improve the capacity of States to meet the data collection and reporting requirements under Part B of IDEA and to ultimately benefit programs serving

[1] A State's longitudinal data system is a State-managed repository of longitudinal, linked, unit record data with connections across programs and sectors to support a comprehensive, integrated view of students, schools, and programs, and may also refer to other statewide data systems.

children with disabilities. The Department has done an analysis of the indirect cost rates for all current TA centers funded under the Technical Assistance and Dissemination and Technical Assistance on State Data Collection programs as well as other grantees that are large, midsize, and small businesses and small nonprofit organizations and has found that, in general, total indirect costs charged on these grants by these entities were at or below 35 percent of total direct costs (TDC). We recognize that, dependent on the structure of the investment and activities, the MTDC base could be much smaller than the TDC, which would imply a higher indirect cost rate than those calculated here. The Department arrived at a 40 percent rate to address some of that variation. This would account for a 12 percent variance between TDC and MTDC. However, we note that, in the absence of a cap, certain entities would likely charge indirect cost rates in excess of 40 percent of MTDC. Based on our analysis, it appears that those entities would likely be for-profit and nonprofit organizations, but these organizations appear to be outliers when compared to the majority of other large businesses as well as the entirety of the Office of Special Education Program's (OSEP's) grantees. Setting an indirect cost rate cap of 40 percent would be in line with the majority of applicants' existing negotiated rates with the cognizant Federal agency.

This priority aligns with two priorities from the Secretary's Final Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on March 2, 2018 (83 FR 9096): Priority 2: Promoting Innovation and Efficiency, Streamlining Education With an Increased Focus on Improving Student Outcomes, and Providing Increased Value to Students and Taxpayers; and Priority 5: Meeting the Unique Needs of Students and Children With Disabilities and/or Those With Unique Gifts and Talents.

Awards under this competition must be made and operated in a manner consistent with nondiscrimination requirements contained in the U.S. Constitution and the Federal civil rights laws.

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:

IDEA Data Management Center.

The purpose of this priority is to fund a cooperative agreement to establish and operate an IDEA Data Management Center (Data Management Center). The Data Management Center will respond to State needs as States integrate their IDEA Part B data required to meet the data collection requirements in section 616 and section 618 of IDEA, including information collected through the IDEA State Supplemental Survey, into their longitudinal data systems. This will improve the capacity of States to collect, report, analyze, and use high-quality IDEA Part B data to establish and meet high expectations for each child with a disability. The Data Management Center will help States address challenges with data management procedures and data systems architecture and better meet current and future IDEA Part B data collection and reporting requirements. The Data Management Center's work will comply with the privacy and confidentiality protections in FERPA and IDEA. The Data Management Center will not provide the Department with access to child-level data and will further ensure that such data is de-identified, as defined in 34 CFR 99.31(b)(1).

The Data Management Center must be designed to achieve, at a minimum, the following expected outcomes:

(a) Increased capacity of States to integrate IDEA Part B data required under sections 616 and 618 of IDEA within their longitudinal data systems;

(b) Increased use of IDEA Part B data within States by developing products to allow States to report their special education data to various stakeholders (*e.g.,* policymakers, school personnel, local and State school boards, local educational agency (LEA) administrators, researchers, charter school authorizers, parents and advocates, Indian Tribes and Tribal organizations) through their longitudinal data systems;

(c) Increased number of States that use data governance and data management procedures to increase their capacity to meet the IDEA Part B reporting requirements under sections 616 and 618 of IDEA;

(d) Increased capacity of States to utilize their State longitudinal data systems to collect, report, analyze, and use high-quality IDEA Part B data (including data required under sections 616 and 618 of IDEA); and

(e) Increased capacity of States to use their State longitudinal data systems to analyze high-quality data on the participation and outcomes of children with disabilities across various Federal programs (*e.g.,* IDEA, Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA)) in order to improve IDEA programs and the outcomes of children with disabilities.

In addition, the Data Management Center must provide a range of targeted and general TA products and services for improving States' capacity to report high-quality IDEA Part B data required under sections 616 and 618 of IDEA through their State longitudinal data systems. Such TA should include, at a minimum—

(a) In partnership with the Department, supporting, as needed, the implementation of an existing open source electronic tool to assist States in building ED*Facts* data files and reports that can be submitted to the Department and made available to the public. The tool must utilize Common Education Data Standards (CEDS) and meet all States' needs associated with reporting the IDEA Part B data required under sections 616 and 618 of IDEA;

(b) Developing and implementing a plan to maintain the appropriate functionality of the open source electronic tool described in paragraph (a) as changes are made to data collections, reporting requirements, file specifications, and CEDS (such as links within the system to include TA products developed by other OSEP/Department-funded centers or contractors);

(c) Conducting TA on data governance to facilitate the use of the open source electronic tool and providing training to State staff to implement the open source electronic tool;

(d) Revising CEDS ''Connections'' [2] to calculate metrics needed to report the IDEA Part B data required under sections 616 and 618 of IDEA;

(e) Identifying other outputs (*e.g.,* reports, Application Programming Interface, new innovations) of an open source electronic tool that can support reporting by States of IDEA Part B data to different stakeholder groups (*e.g.,* LEAs, charter schools, legislative branch, parents);

(f) Supporting the inclusion of other OSEP/Department-funded TA centers' products within the open source electronic tool or building connections that allow the SEAs to pull IDEA Part B data efficiently into the other TA products;

(g) Supporting a user group of States that are using an open source electronic

[2] A Connection is a way of showing which CEDS data elements might be necessary for answering a data question. For users who have aligned their data systems to CEDS, States will be able to utilize these Connections via the Connect tool to see which data elements, in their own systems, would be needed to answer any data question.

tool for reporting IDEA Part B data required under sections 616 and 618 of IDEA; and

(h) Developing products and presentations that include tools and solutions to challenges in data management procedures and data system architecture for reporting the IDEA Part B data required under sections 616 and 618 of IDEA.

Application Requirements: For FY 2020 and any subsequent year in which we make awards from the list of unfunded applications from this competition, the following application requirements from the NFP apply.

Applicants must—

(a) Demonstrate, in the narrative section of the application under ''Significance,'' how the proposed project will—

(1) Address State challenges associated with State data management procedures, data systems architecture, and building ED*Facts* data files and reports for timely reporting of the IDEA Part B data to the Department and the public. To meet this requirement the applicant must—

(i) Present applicable national, State, or local data demonstrating the difficulties that States have encountered in the collection and submission of valid and reliable IDEA Part B data;

(ii) Demonstrate knowledge of current educational and technical issues and policy initiatives relating to IDEA Part B data collections and ED*Facts* file specifications for the IDEA Part B data collections; and

(iii) Present information about the current level of implementation of integrating IDEA Part B data within State longitudinal data systems and the reporting of high-quality IDEA Part B data to the Department and the public.

(b) Demonstrate, in the narrative section of the application under ''Quality of project services,'' how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the needs of the intended recipients for TA and information; and

(ii) Ensure that services and products meet the needs of the intended recipients for TA and information;

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model (as defined in 34 CFR 77.1) by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework (and provide a copy in Appendix A) to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

Note: The following websites provide more information on logic models and conceptual frameworks: *www.osepideasthatwork.org/logicModel* and *www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.*

(4) Be based on current research and make use of evidence-based practices (EBPs).[3] To meet this requirement, the applicant must describe—

(i) The current research on data collection strategies, data management procedures, and data systems architecture; and

(ii) How the proposed project will incorporate current research and EBPs in the development and delivery of its products and services;

(5) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to identify or develop the knowledge base on States' data management processes and data systems architecture;

(ii) Its proposed approach to universal, general TA,[4] which must identify the intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(iii) Its proposed approach to targeted, specialized TA,[5] which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current infrastructure, available resources, and ability to build capacity at the State and local levels;

(C) Its proposed approach to prioritizing TA recipients with a primary focus on meeting the needs of Developing Capacity States;[6] and

(D) The process by which the proposed project will collaborate with other OSEP-funded centers and other federally funded TA centers to develop and implement a coordinated TA plan when they are involved in a State; and

(iv) Its proposed approach to intensive, sustained TA,[7] which must identify—

(A) The intended recipients, which must be Developing Capacity States, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to address States' challenges associated with integrating IDEA Part B data within State longitudinal data systems and to report high-quality IDEA Part B data to the Department and the public, which should, at a minimum, include providing on-site consultants to SEAs to—

(*1*) Model and document data management and data system

[3] For the purposes of this priority, ''evidence-based practices'' means practices that, at a minimum, demonstrate a rationale (as defined in 34 CFR 77.1), where 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.

[4] ''Universal, general TA'' means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

[5] ''Targeted, specialized TA'' means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

[6] ''Developing Capacity States'' are defined as States that have a data system that does not include linkages between special education data and other early childhood and K–12 data. Projects funded under this focus area will focus on helping such States develop those linkages to allow for more accurate and efficient reporting, analysis, and use of IDEA Part B data.

[7] ''Intensive, sustained TA'' means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. ''TA services'' are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

integration policies, procedures, processes, and activities within the State;

(*2*) Support the State's use of an open source electronic tool and provide technical solutions to meet State-specific data needs;

(*3*) Develop a sustainability plan for the State to maintain the data management and data system integration work in the future; and

(*4*) Support the State's cybersecurity plan in collaboration, to the extent appropriate, with the Department's Student Privacy Policy Office and its Privacy Technical Assistance Center;

(C) Its proposed approach to measure the readiness of the SEAs to work with the project, including their commitment to the initiative, alignment of the initiative to their needs, current infrastructure, available resources, and ability to build capacity at the State and local district levels;

(D) Its proposed plan to prioritize Developing Capacity States with the greatest need for intensive TA to receive products and services;

(E) Its proposed plan for assisting SEAs to build or enhance training systems that include professional development based on adult learning principles and coaching;

(F) Its proposed plan for working with appropriate levels of the education system (*e.g.,* SEAs, regional TA providers, districts, local programs, families) to ensure that there is communication between each level and that there are systems in place to support the collection, reporting, analysis, and use of high-quality IDEA Part B data, as well as State data management procedures and data systems architecture for building ED*Facts* data files and reports for timely reporting of the IDEA Part B data to the Department and the public; and

(G) The process by which the proposed project will collaborate and coordinate with other OSEP-funded centers and other Department-funded TA investments, such as the Institute of Education Sciences/National Center for Education Statistics research and development investments, where appropriate, to develop and implement a coordinated TA plan; and

(6) Develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes.

(c) In the narrative section of the application under ''Quality of the project evaluation,'' include an evaluation plan for the project developed in consultation with and implemented by a third-party evaluator.[8] The evaluation plan must—

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These questions should be related to the project's proposed logic model required in paragraph (b)(2)(ii) of these requirements;

(2) Describe how progress in and fidelity of implementation, as well as project outcomes, will be measured to answer the evaluation questions. Specify the measures and associated instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed logic model and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation and include staff assignments for completing the plan. The timeline must indicate that the data will be available annually for the State Performance Plan/Annual Performance Report (SPP/APR) and at the end of Year 2 for the review process; and

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with a third-party evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of resources,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities;

(4) The proposed costs are reasonable in relation to the anticipated results and benefits, and how funds will be spent in a way that increases their efficiency and cost-effectiveness, including by reducing waste or achieving better outcomes; and

(5) The applicant will ensure that it will recover the lesser of: (A) Its actual indirect costs as determined by the grantee's negotiated indirect cost rate agreement with its cognizant Federal agency; and (B) 40 percent of its modified total direct cost (MTDC) base as defined in 2 CFR 200.68.

Note: The MTDC is different from the total amount of the grant. Additionally, the MTDC is not the same as calculating a percentage of each or a specific expenditure category. If the grantee is billing based on the MTDC base, the grantee must make its MTDC documentation available to the program office and the Department's Indirect Cost Unit. If a grantee's allocable indirect costs exceed 40 percent of its MTDC as defined in 2 CFR 200.68, the grantee may not recoup the excess by shifting the cost to other grants or contracts with the U.S. Government, unless specifically authorized by legislation. The grantee must use non-Federal revenue sources to pay for such unrecovered costs.

(e) Demonstrate, in the narrative section of the application under ''Quality of the management plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation.

[8] A ''third-party'' evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, nor have any financial interest in the outcome of the evaluation.

(f) Address the following application requirements:

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, after receipt of the award, and an annual planning meeting in Washington, DC, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A two and one-half day project directors' conference in Washington, DC, during each year of the project period; and

(iii) Three annual two-day trips to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP;

(3) Include, in the budget, a line item for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(4) Maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility;

(5) Include, in Appendix A, an assurance to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to States during the transition to this new award period and at the end of this award period, as appropriate; and

(6) Budget to provide intensive, sustained TA to at least 25 States.

Program Authority: 20 U.S.C. 1411(c), 1416(i), 1418(c), 1442; the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, Div. B, Title III of Public Law 115–245, 132 Stat. 3100 (2018); and Further Consolidated Appropriations Act, 2020, Div. A, Title III of Public Law 116–94, 133 Stat. 2590 (2019).

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 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. (d) The regulations for this program in 34 CFR 300.702. (e) The NFP.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $2,700,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2021 from the list of unfunded applications from this competition.

Maximum Award: We will not make an award exceeding $2,700,000 for a single budget period of 12 months.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs, including public charter schools that are considered LEAs under State law; IHEs; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application. Under 34 CFR 75.708(e), a grantee may contract for supplies, equipment, and other services in accordance with 2 CFR part 200.

4. *Other General Requirements:*

(a) Recipients of funding under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants for, and recipients of, funding must, with respect to the aspects of their proposed project relating to the absolute priority, involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

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.

2. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make an award by the end of FY 2020.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative (Part III of the application) 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 70 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 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, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.
- Use a font that is 12 point or larger.
- *Use one of the following fonts:* Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference

list, the letters of support, or the appendices. However, the recommended page limit does apply to all of the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed below:

(a) *Significance (10 points).*

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(ii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project.

(b) *Quality of project services (35 points).*

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework.

(iii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(iv) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(v) The extent to which the TA services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.

(vi) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

(c) *Quality of the project evaluation (15 points).*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(iv) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(d) *Adequacy of resources and quality of project personnel (15 points).*

(1) The Secretary considers the adequacy of resources for the proposed project and the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(iv) The qualifications, including relevant training, experience, and independence, of the evaluator.

(v) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(vi) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(vii) The extent to which the budget is adequate to support the proposed project.

(viii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(e) *Quality of the management plan (25 points).*

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) 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 extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(iii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

(iv) How the applicant will ensure that a diversity of perspectives is brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

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. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are

eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications.

4. *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.

5. *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 extends 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 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.*

5. *Performance Measures:* Under the Government Performance Modernization Act of 2010, the Department has established a set of performance measures that are designed to yield information on various aspects of the effectiveness and quality of the Technical Assistance on State Data Collection program. These measures are:

- *Program Performance Measure 1:* The percentage of technical assistance and dissemination products and services deemed to be of high quality by an independent review panel of experts qualified to review the substantive content of the products and services.
- *Program Performance Measure 2:* The percentage of technical assistance and dissemination products and services deemed by an independent review panel of qualified experts or members of the target audiences to be of high relevance to educational and early intervention policy or practice.
- *Program Performance Measure 3:* The percentage of all technical assistance and dissemination products and services deemed by an independent review panel of qualified experts or members of target audiences to be useful in improving educational or early intervention policy or practice.
- *Program Performance Measure 4:* The cost efficiency of the Technical Assistance on State Data Collection Program includes the percentage of milestones achieved in the current annual performance report period and the percentage of funds spent during the current fiscal year.

The measures apply to projects funded under this competition, and grantees are required to submit data on these measures as directed by OSEP.

Grantees will be required to report information on their project's performance in annual and final performance reports to the Department (34 CFR 75.590).

The Department will also closely monitor the extent to which the products and services provided by the Center meet needs identified by stakeholders and may require the Center

to report on such alignment in their annual and final performance reports.

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; 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.

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. 2020–14072 Filed 7–7–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 13–132–LNG]

Change in Control; Magnolia LNG, LLC

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of change in control.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of a Statement and Notice of Change in Control (Notice) filed by Magnolia LNG, LLC (Magnolia) in the above-referenced docket on June 24, 2020. The Notice describes changes in Magnolia's ownership. The Notice was filed under section 3 of the Natural Gas Act (NGA).

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, July 23, 2020.

ADDRESSES:

Electronic Filing by email: fergas@hq.doe.gov.

Regular Mail: U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Benjamin Nussdorf or Amy Sweeney, U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–7893; (202) 586–2627, *benjamin.nussdorf@hq.doe.gov* or *amy.sweeney@hq.doe.gov.*

Cassandra Bernstein, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9793, *cassandra.bernstein@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Summary of Change in Control

Magnolia states that, at the time it filed its applications in this proceeding and through May 26, 2020, it was a wholly owned indirect subsidiary of Liquefied Natural Gas Limited (LNGL), a publicly listed Australian company. Magnolia states that, on May 26, 2020, LNGL transferred all of its interest in Magnolia to Magnolia LNG Holdings, LLC (Magnolia Holdings), a Delaware limited liability company. Accordingly, Magnolia Holdings now holds 100% of the membership interests in Magnolia. Magnolia states that Magnolia Holdings is wholly owned by Glenfarne Infrastructure Holdings, LLC—which, in turn, is wholly owned by Glenfarne Group, LLC.

Additional details can be found in Magnolia's Notice, posted on the DOE/FE website at: *https://www.energy.gov/sites/prod/files/2020/06/f76/Magnolia%20LNG%20--%20Notice%20of%20Change%20in%20Control%20%2806-24-2020%29.pdf.*

DOE/FE Evaluation

DOE/FE will review Magnolia's Notice in accordance with its Procedures for Changes in Control Affecting Applications and Authorizations to Import or Export Natural Gas (CIC Procedures).[1] Consistent with the CIC Procedures, this notice addresses Magnolia's authorization to export liquefied natural gas (LNG) to non-free trade agreement (non-FTA) countries, granted in DOE/FE Order No. 3909.[2] If no interested person protests the change in control and DOE takes no action on its own motion, the proposed change in control will be deemed granted 30 days after publication in the **Federal Register**. If one or more protests are submitted, DOE will review any motions to intervene, protests, and answers, and will issue a determination as to whether the proposed change in control has been demonstrated to render the underlying authorization inconsistent with the public interest.

Public Comment Procedures

Interested persons will be provided 15 days from the date of publication of this notice in the **Federal Register** in order to move to intervene, protest, and answer Magnolia's Notice.[3] Protests, motions to intervene, notices of intervention, and written comments are invited in response to this notice only as to the change in control described in Magnolia's Notice. All protests,

[1] 79 FR 65541 (Nov. 5, 2014).

[2] Magnolia's Notice also applies to its existing FTA authorizations and its pending application to amend its non-FTA authorization (DOE/FE Order No. 3909), but DOE/FE will respond to those portions of the document separately pursuant to the CIC Procedures, 79 FR 65542.

[3] Intervention, if granted, would constitute intervention only in the change in control portion of this proceeding, as described herein.

comments, motions to intervene, or notices of intervention must meet the requirements specified by DOE's regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Preferred method: Emailing the filing to *fergas@hq.doe.gov;* (2) mailing an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**. All filings must include a reference to the individual FE Docket Number(s) in the title line, or Magnolia LNG, LLC Change in Control in the title line. *Please note:* If submitting a filing via email, please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

Magnolia's Notice, and any filed protests, motions to intervene, notices of intervention, and comments, are available for inspection and copying in the Office of Regulation, Analysis, and Engagement docket room, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Magnolia's Notice, and any filed protests, motions to intervene, notices of intervention, and comments, will also be available electronically by going to the following DOE/FE Web address: *https://fossil.energy.gov/ng_regulation/.*

Signed in Washington, DC, on July 1, 2020.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Oil and Natural Gas.

[FR Doc. 2020–14648 Filed 7–7–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Proposed Subsequent Arrangement

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Proposed subsequent arrangement.

SUMMARY: This document is being issued under the authority of the Atomic Energy Act of 1954, as amended. The Department is providing notice of a proposed subsequent arrangement under the Agreement for Cooperation Concerning Civil Uses of Atomic Energy between the Government of the United States of America and the Government of Canada, as amended.

DATES: This subsequent arrangement will take effect no sooner than July 23, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Sean Oehlbert, Office of Nonproliferation and Arms Control, National Nuclear Security Administration, Department of Energy. Telephone: 202–586–3806 or email: *sean.oehlbert@nnsa.doe.gov.*

SUPPLEMENTARY INFORMATION: This subsequent arrangement concerns the retransfer of 7,766,272,000 g of U.S.-obligated natural uranium hexafluoride (UF6), 5,250,000,000 g of which is natural uranium, from Cameco Corporation in Port Hope, Ontario, Canada, to Urenco Deutschland GmbH, in Gronau, Germany for toll enrichment. Upon transfer to Germany, the material will become subject to the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States of America and the European Atomic Energy Community.

Pursuant to the authority in section 131 a. of the Atomic Energy Act of 1954, as delegated, I have determined that this proposed subsequent arrangement concerning the retransfer of U.S.-obligated nuclear material will not be inimical to the common defense and security of the United States of America.

Signing Authority

This document of the Department of Energy was signed on July 2, 2020, by Brent K. Park, Deputy Administrator for Defense Nuclear Nonproliferation, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on July 2, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2020–14723 Filed 7–7–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Proposed Subsequent Arrangement

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Proposed subsequent arrangement.

SUMMARY: This document is being issued under the authority of the Atomic Energy Act of 1954, as amended. The Department is providing notice of a proposed subsequent arrangement under the Agreement for Cooperation Concerning Civil Uses of Atomic Energy between the Government of the United States of America and the Government of Canada, as amended.

DATES: This subsequent arrangement will take effect no sooner than July 23, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Sean Oehlbert, Office of Nonproliferation and Arms Control, National Nuclear Security Administration, Department of Energy. Telephone: 202–586–3806 or email: *sean.oehlbert@nnsa.doe.gov.*

SUPPLEMENTARY INFORMATION: This subsequent arrangement concerns the retransfer of 7,766,272,000 g of U.S.-obligated natural uranium hexafluoride (UF6), 5,250,000,000 g of which is natural uranium, from Cameco Corporation in Port Hope, Ontario, Canada, to Urenco Ltd. in Almelo, the Netherlands for toll enrichment. Upon transfer to the Netherlands, the material will become subject to the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States of America and the European Atomic Energy Community.

Pursuant to the authority in section 131 a. of the Atomic Energy Act of 1954, as delegated, I have determined that this proposed subsequent arrangement concerning the retransfer of U.S.-obligated nuclear material will not be inimical to the common defense and security of the United States of America.

Signing Authority

This document of the Department of Energy was signed on July 2, 2020, by Brent K. Park, Deputy Administrator for Defense Nuclear Nonproliferation, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is

maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on July 2, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2020–14724 Filed 7–7–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Proposed Subsequent Arrangement

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Proposed subsequent arrangement.

SUMMARY: This document is being issued under the authority of the Atomic Energy Act of 1954, as amended. The Department is providing notice of a proposed subsequent arrangement under the Agreement for Cooperation Concerning Civil Uses of Atomic Energy between the Government of the United States of America and the Government of Canada, as amended.

DATES: This subsequent arrangement will take effect no sooner than July 23, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Sean Oehlbert, Office of Nonproliferation and Arms Control, National Nuclear Security Administration, Department of Energy. Telephone: 202–586–3806 or email: *sean.oehlbert@nnsa.doe.gov.*

SUPPLEMENTARY INFORMATION: This subsequent arrangement concerns the retransfer of 2,218,935,000 g of U.S.-obligated natural uranium hexafluoride (UF6), 1,500,000,000 g of which is natural uranium, from Cameco Corporation in Port Hope, Ontario, Canada, to Urenco Ltd. in Capenhurst, United Kingdom; Urenco Ltd. in Almelo, Netherlands; and Urenco Deutschland GmbH in Gronau, Germany for toll enrichment. Upon transfer to the United Kingdom, the Netherlands, and Germany, the material will become subject to the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States of America and the European Atomic Energy Community.

Pursuant to the authority in section 131 a. of the Atomic Energy Act of 1954, as delegated, I have determined that this proposed subsequent arrangement concerning the retransfer of U.S.-obligated nuclear material will not be inimical to the common defense and security of the United States of America.

Signing Authority

This document of the Department of Energy was signed on July 2, 2020, by Brent K. Park, Deputy Administrator for Defense Nuclear Nonproliferation, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on July 2, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2020–14697 Filed 7–7–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open conference call.

SUMMARY: This notice announces a conference call of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act requires that public notice of this conference call be announced in the **Federal Register**.

DATES: Wednesday, July 22, 2020; 1:00 p.m.–4:00 p.m.

ADDRESSES: Conference Call. To attend, please contact Menice Santistevan by email, *Menice.Santistevan@em.doe.gov,* no later than 5:00 p.m. MDT on Monday, July 20, 2020.

To sign up for public comment: Please contact Menice Santistevan by email, *Menice.Santistevan@em.doe.gov,* no later than 5:00 p.m. MDT on Monday, July 20, 2020.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 94 Cities of Gold Road, Santa Fe, NM 87506. Phone (505) 995–0393; Fax (505) 989–1752 or Email: *Menice.Santistevan@em.doe.gov.*

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Call to Order
- Welcome and Introductions
- Approval of Agenda
- Approval of May 20, 2020 Conference Call Minutes
- Old Business
  - Report from NNMCAB Chair and Vice Chair
  - Report from Committee Chairs
  - Other Items
- New Business
  - Appointment of Nomination Committee for Election of Officers in September 2020
  - Other Items
- Consideration and Action on Draft Recommendation 2020–03: Consent Order, Appendix B and C
- Update on DP Road
- Update from New Mexico Environment Department
- Update from EM Los Alamos Field Office
- Public Comment Period
- Wrap-Up and Comments from NNMCAB Members
- Adjourn

Public Participation: The conference call is open to the public. Written statements may be filed with the Board either before or after the conference call. The Deputy Designated Federal Officer is empowered to conduct the conference call in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or telephone number listed above. Minutes and other Board documents are on the internet at: *https://www.energy.gov/em/nnmcab/meeting-materials.*

Signed in Washington, DC, on July 2, 2020.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2020–14685 Filed 7–7–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[DOE–HQ–2020–0028]

Securing the United States Bulk-Power System

AGENCY: Office of Electricity, Department of Energy.

ACTION: Request for information (RFI).

SUMMARY: Pursuant to Executive Order 13920 (E.O. 13920) issued May 1, 2020, titled ''Securing the United States Bulk-Power System,'' the Department of Energy (DOE or the Department) is seeking information to understand the energy industry's current practices to identify and mitigate vulnerabilities in the supply chain for components of the bulk-power system (BPS).

DATES: Comments must be received on or before August 7, 2020. If you anticipate difficulty in submitting comments within that period, contact the person listed in **FOR FURTHER INFORMATION CONTACT** as soon as possible.

ADDRESSES: Interested persons are encouraged to submit comments, identified by ''Bulk-Power System EO RFI,'' by any of the following methods:

Federal eRulemaking Portal: https://www.regulations.gov/docketBrowser?rpp=25&po=0&D=DOE-HQ-2020-0028. Follow the instructions for submitting comments.

Email: bulkpowersystemEO@hq.doe.gov. Include ''Bulk-Power System EO RFI'' in the subject line of the message.

Mail: Charles Kosak, Deputy Assistant Secretary, Transmission Permitting and Technical Assistance Division, Office of Electricity, Mailstop OE–20, Room 8G–024, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Kosak, Deputy Assistant Secretary, Transmission Permitting and Technical Assistance Division, Office of Electricity, email: *bulkpowersystemEO@hq.doe.gov* or phone: (202) 586–2036.

SUPPLEMENTARY INFORMATION:

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I. Introduction

A. Background

E.O. 13920 (85 FR 26595, May 4, 2020) declares that threats by foreign adversaries to the BPS constitute a national emergency. The BPS provides the electricity that supports the United States (U.S.) national defense, our vital emergency services, critical infrastructure, economy, and way of life. The Office of the Director of National Intelligence's (ODNI) National Counterintelligence and Security Center (NCSC) assesses that China and Russia (near-peer foreign adversaries) possess highly advanced cyber programs and that both nations pose a major threat to the U.S. government, including, but not limited to, military, diplomatic, commercial, and critical, infrastructures. The BPS is a target of these adversaries' asymmetric cyber and physical plans and operations. A successful attack on the BPS would present significant risks to the U.S. economy and public health and safety and would render the U.S. less capable of acting in defense of itself and its allies. The Department of Defense's *2018 National Defense Strategy* states that the homeland is no longer a sanctuary and that malicious cyber activity against personal, commercial, or government infrastructure is growing significantly. According to ODNI's *2019 Worldwide Threat Assessment of the U.S. Intelligence Community* (see *https://www.dni.gov/files/ODNI/documents/2019-ATA-SFR---SSCI.pdf*), near-peer foreign adversaries have the capability and integrated plans necessary to launch cyber-attacks causing localized, disruptive effects on critical infrastructure—such as the disruption of a natural gas pipeline and electric infrastructure for days to weeks—in the U.S. These near-peer foreign adversaries continue to map U.S. critical infrastructure with the long-term goal of being able to cause substantial damage. According to the *2020–2022 National Counterintelligence Strategy* (see *https://www.dni.gov/index.php/ncsc-features/2741-the-national-counterintelligence-strategy-of-the-united-states-of-america-2020-2020*), these foreign adversaries are employing innovative combinations of traditional spying, economic espionage, and supply chain and cyber operations to gain access to critical infrastructure. They are also attempting to access our Nation's key supply chains at multiple points—from concept to design, manufacture, integration, deployment, and maintenance—by, among other things, inserting malware into important information technology networks and communications systems. As such, DOE is using NCSC's supply chain risk management (SCRM) framework to inform this RFI (see *https://www.dni.gov/index.php/ncsc-what-we-do/ncsc-supply-chain-threats*). The NCSC leads and supports the U.S. Government's counterintelligence (CI) and security activities that are critical to protecting our Nation; provides CI outreach to U.S. private sector entities at risk of foreign intelligence penetrations; and issues public warnings regarding intelligence threats to the U.S. and establishes the de facto standard for Federal SCRM processes.

E.O. 13920 directs DOE, in consultation with the heads of several other agencies, to issue regulations implementing the authorities the President delegated to the Secretary of Energy. The rulemaking process will allow the opportunity for stakeholder comment and input on the substance of the rule. Consistent with the Department's commitment to public participation in the rulemaking process, the Department is soliciting views on safeguarding the supply chain from threats and vulnerabilities. The Department is also soliciting views on its economic analysis.

B. Executive Order 13920 of May 1, 2020 (Securing the United States Bulk-Power System)

On May 1, 2020, the President issued Executive Order 13920, which has four main pillars:

(1) Prohibit any acquisition, importation, transfer, or installation of BPS electric equipment by any person or with respect to any property to which a foreign adversary or an associated national thereof has any interest, that poses an undue risk to the BPS, the security or resiliency of U.S. critical infrastructure or the U.S. economy, or U.S. national security;

(2) Authorize the Secretary to establish and publish criteria for recognizing particular equipment and vendors in the BPS electric equipment market as ''pre-qualified'' for future transactions and to apply these criteria to establish and publish a list of pre-qualified equipment and vendors;

(3) Direct the Secretary, in consultation with heads of other agencies, to identify existing BPS electric equipment in which a foreign adversary or associated national thereof has an interest that poses an undue risk to the BPS, the security or resiliency of U.S. critical infrastructure or the U.S. economy, or U.S. national security and develop recommendations to identify, isolate, monitor, or replace this equipment as appropriate; and

(4) Establish a Task Force on Federal Energy Infrastructure Procurement Policies Related to National Security, which will focus on the coordination of Federal Government procurement of energy infrastructure, the sharing of risk information

and risk management practices, and the development of recommendations for implementation to the Federal Acquisition Regulatory Council (FAR Council).

E.O. 13920 defines BPS as (i) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and (ii) electric energy from generation facilities needed to maintain transmission reliability. This definition includes transmission lines rated at 69,000 volts (69 kV) or more, but does not include facilities used in the local distribution of electric energy.

E.O. 13920 defines BPS electric equipment as items used in BPS substations, control rooms, or power generating stations, including reactors, capacitors, substation transformers, coupling capacitor potential devices [expressed in the E.O. as current coupling capacitors and coupling capacity voltage transformers], large generators, backup generators, substation voltage regulators, shunt capacitor equipment, automatic circuit reclosers, instrument transformers, protective relaying, metering equipment, high voltage circuit breakers, generation turbines, industrial control systems, distributed control systems, and safety instrumented systems. Items not included in the preceding list and that have broader application of use beyond the BPS are outside the scope of E.O. 13920.

''Foreign adversaries'' are defined as any foreign government or foreign non-government person engaged in a long-term pattern or serious instance of conduct significantly adverse to the national security of the U.S. or its allies or the security and safety of U.S. persons. The current list of ''foreign adversaries'' consists of the governments of the following countries: The People's Republic of China (China), the Republic of Cuba (Cuba), the Islamic Republic of Iran (Iran), the Democratic People's Republic of Korea (North Korea), the Russian Federation (Russia), and the Bolivarian Republic of Venezuela (Venezuela). This determination is based on multiple sources, including ODNI's *2016–2019 Worldwide Threat Assessments of the U.S. Intelligence Community,* the *2020–2022 National Counterintelligence Strategy,* and the *2018 National Cyber Strategy of the United States of America* (see *https://www.whitehouse.gov/wp-content/uploads/2018/09/National-Cyber-Strategy.pdf*). Note, the abovementioned countries identified as ''foreign adversaries'' are here identified as such only for the purposes of E.O. 13920. The identification does not reflect a determination by the U.S. about the nature of other countries for any purposes other than this Executive Order. Additionally, the Secretary will periodically review this list in consultation with appropriate agency heads and may add to, subtract from, supplement, or otherwise amend the list at any time.

II. Request for Information

The Department seeks public input on the following questions regarding the first three pillars of E.O. 13920. Please carefully read Section III below regarding the public nature of submissions. As explained in detail below, any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Instructions regarding how to provide Confidential Business Information are also provided below. To the extent possible, please reference the question being addressed in your response.

A. Supply Chain

Although this RFI covers the full scope of BPS electric equipment as defined in E.O. 13920, the Department seeks comments on specific equipment as outlined below to enable a phased process by which the Department can prioritize the review of BPS electric equipment by function and impact to the overall BPS. In doing so, the Department employs a defense-in-depth, phased approach that addresses risk as well as the dynamic nature of threats and vulnerabilities affecting the BPS. Accordingly, the Secretary may establish specific pre-qualification criteria for a set of components that support defense critical electric infrastructure (DCEI) and other critical loads and critical transmission feeders (69 kV and above) reported under critical infrastructure protection reliability standards as formulated by the North American Electric Reliability Corporation (NERC) and approved by the Federal Energy Regulatory Commission (FERC). Specific essential reliability services of interest may also include black start systems. The Department seeks comment on addressing the following types of equipment: Transformers (including generation step-up transformers), reactive power equipment (reactors and capacitors), circuit breakers, and generation (including power generation that is provided to the BPS at the transmission level and back-up generation that supports substations). This includes both the hardware and electronics associated with equipment monitoring, intelligent control, and relay protection. Only transformers rated at 20 MVA and with a low-side voltage of 69 kV and above are included.

The Department does not plan to develop a SCRM tool or repeat questions already deemed best practices from well-established SCRM frameworks and tools, including the ODNI NCSC Supply Chain Directorate's *SCRM Best Practices* (see *https://www.dni.gov/files/NCSC/documents/supplychain/20190405-UpdatedSCRM-Best-Practices.pdf*).

The Department will build upon efforts by standards development organizations, including but not limited to, NIST 800 series standards (see *https://csrc.nist.gov/publications/sp800*), ISO standards (see *https://www.iso.org/home.html*), ISA/IEC 62433 standards (see *http://www.isa.org/intech/201810standards/*), and NERC–CIP standards (see *https://www.nerc.com/pa/Stand/Pages/CIPStandards.aspx*). The Department is focused on improving utility owner/operator's asset/operations risk assessment by incorporating the identification of enterprise risk associated with supply chain vendor/services into the acquisition systems process. For example, the Cybersecurity Capability Maturity Model (C2M2) is an available tool that an organization might apply to continuously assess its cybersecurity posture (see *https://www.energy.gov/ceser/activities/cybersecurity-critical-energy-infrastructure/energy-sector-cybersecurity-0*).

The Department believes that it is prudent, and in the public interest, to address national security implications in acquisitions. This RFI is designed to specifically address: (1) Evidence-based cybersecurity maturity metrics and (2) foreign ownership, control, and influence (FOCI). As part of the Federal acquisition process and NERC–CIP standards, the Department is considering:

- Limited procurements,
- select build versus buy,
- the consequences of insufficient SCRM, and
- evidence-based performance metrics that support a continuous improvement process.

With that background, the Department seeks information responsive to the following questions:

(A–1) Do energy sector asset owners and/or vendors conduct enterprise risk assessments, including a cyber maturity model evaluation on a periodic basis? Provide an explanation or description of an assessment program if it addresses the mitigation of risks associated with FOCI with respect to foreign adversaries (see *https://www.dcsa.mil/mc/ctp/foci/*).

(A–2) Do energy sector asset owners and/or vendors identify, evaluate, and/or mitigate the following:

a. FOCI with respect to foreign adversaries with respect to access to company and utility data, product development, and source code (including research partnerships);

b. potential supply chain risks from sub-tier suppliers, recognizing that some sub-tier supply chain manufacturers could have FOCI with respect to foreign adversaries; and

c. assets and services critical risk tolerance regarding protecting these assets and services from FOCI?

(A–3) Are non-standard incentives or changes to established standard development organizations' SCRM standards (including NIST 800 series, ISA/IEC 62443, NERC–CIP, and other Cyber Risk Maturity Model evaluations/practices) necessary to build capacity to protect source code, establish a secure software and firmware development lifecycle, and maintain software integrity? How are benchmarks documented and tracked, including:

a. The ability to provide software, firmware, and hardware ''bill of materials'' (*e.g.* NTIA Software Component Transparency [see *https://www.ntia.doc.gov/SoftwareTransparency*] or equivalent industry norm) and track supply chain provenance and white-labeling;

b. authentication practices that prevent tampering, unauthorized production, and counterfeits; and

c. monitoring and tracking sub-tier supplier's adherence to security requirements as part of the SCRM?

(A–4) What information is available concerning the following: BPS electric equipment cyber vulnerability testing standards, analyses of vulnerabilities, and information on compromises of BPS electric equipment over the last five years, including results of independent BPS electric equipment testing and penetration testing of enterprise systems for vulnerabilities (including methodology for discovery and remediation)?

a. What process does the energy sector have to share information with utilities regarding vulnerabilities and vice versa? Are contingency plans in place? How is the effectiveness of vulnerability testing and mitigation efforts monitored, tracked, and audited?

b. Is a record of an analysis of component vulnerabilities and any compromises of components and systems maintained for a specific period of time (*e.g.,* five years)? If yes, are the results of independent component testing and penetration testing of enterprise systems for vulnerabilities (including timeline for discovery and remediation) also maintained?

c. How are the results of independent component testing and penetration testing of enterprise systems for vulnerabilities (including timeline for discovery and remediation) maintained?

d. How are vulnerabilities identified by external entities addressed? How is the distribution of information regarding patching security vulnerabilities in the supply chain facilitated?

e. What insecure by design/vulnerable communication protocols exist today that should be retired or cannot be disabled or mitigated from BPS electric equipment (examples of protocols include Distributed Network Protocol 3 [DNP3], File Transfer Protocol [FTP], Telnet, or Modbus)?

(A–5) What governance of sub-tier vendors do energy sector asset owners and/or vendors have in place? Is contract language for Supply Chain Security included in procurement contracts? Are metrics for supply chain security, along with cost, schedule, and performance maintained? What specific guidance should be developed for Integrator/Installer/Maintenance Service provider activities?

(A–6) Can energy sector asset owners and/or vendors document the level of engagement in information sharing and testing programs that identify threats and vulnerabilities and incorporation of indicators of compromise (*e.g.,* Information Sharing and Analysis Center, Information Sharing and Analysis Organization)? Does the energy sector participate in a community for sharing supply chain risks? Does the energy sector encourage security related information exchange with external entities, including the Federal government?

(A–7) What physical and logistical role-based access control policies have been developed to monitor and restrict access during installation when a foreign adversary, or associated foreign-owned, foreign-controlled, or foreign-influenced person is installing BPS electric equipment at a BPS site in the U.S.? What policies and practices exist to ensure installers/integrators effectively protect the systems and components during installation and commissioning? What policies and practices are in place to ensure that service providers (including those providing remote monitoring and management of systems) effectively maintain the security protections of the systems and components they are monitoring? Does an insider threat program exist?

(A–8) Are there critical mineral or supply chain materials, and if so, what are they? Specify if any of these critical inputs rely on foreign sources, and the cause for that reliance, such as lack of domestic capability or quality factors. Per Executive Order 13817, the Department of Interior prepared *The Final List of Critical Materials 2018,* see: *https://www.federalregister.gov/documents/2018/05/18/2018-10667/final-list-of-critical-minerals-2018.*

B. Economic Analysis

As this RFI covers the full scope of BPS electric equipment as defined in E.O. 13920, the Department seeks information responsive to the following questions:

(B–1) Within the E.O. 13920 definition of BPS electric equipment, what are the estimated one-time and recurring costs of developing, implementing, and periodically revising compliance plans and procedures associated with the Executive Order, including but not limited to:

a. Evaluating requirements.

b. Developing compliance plans and frameworks: Supply chain documentation, foreign involvement evaluations, risk assessments, and process reviews.

c. Implementing plans: New supplier processes and contractual provisions; and supplier audits.

d. Supporting transaction reviews: Records retention and responding to information inquiries.

e. Negotiating agreements to mitigate concerns raised in connection with transactions.

f. Other compliance costs.

(B–2) Within the E.O. 13920 definition of BPS electric equipment, are there categories of BPS electric equipment that are more reliant on vendors likely to become the subject of transaction reviews, and if so, what are they? What are the sourcing challenges and cost impacts for companies facing prohibited transactions for those BPS electric equipment categories?

(B–3) Does the energy sector have a procedure to identify services, components, and/or systems which are or should be covered by E.O. 13920? If yes, list the services, components, and systems and provide the reasoning regarding why they should or should not be covered by E.O. 13920.

(B–4) What unique challenges could E.O. 13920 present to small businesses? [1]

[1] Using the North American Industry Classification System (NAICS) classifications, the Small Business Administration (SBA) defines small businesses in terms of firm revenues or employees. SBA's Table of Size Standards can be found at *https://www.sba.gov/document/support--table-size-standards.*

III. Submission of Comments

DOE invites all interested parties to submit in writing by August 7, 2020, comments and information on matters addressed in this RFI.

Submitting comments via http://www.regulations.gov. The *http://www.regulations.gov* web page requires you to provide your name and contact information. Your contact information will be viewable to DOE only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *http://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *http://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *http://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *http://www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email or postal mail. Comments and documents submitted via email or postal mail also will be posted to *http://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English, and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

Signing Authority

This document of the Department of Energy was signed on July 2, 2020, by Bruce J. Walker, Assistant Secretary, Office of Electricity, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on July 2, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2020–14668 Filed 7–7–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Proposed Subsequent Arrangement

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Proposed subsequent arrangement.

SUMMARY: This document is being issued under the authority of the Atomic Energy Act of 1954, as amended. The Department of Energy is providing notice of a proposed subsequent arrangement under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan Concerning Peaceful Uses of Nuclear Energy.

DATES: This subsequent arrangement will take effect no sooner than July 23, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Sean Oehlbert, Office of Nonproliferation and Arms Control, National Nuclear Security Administration, Department of Energy. Telephone: 202–586–3806 or email: *sean.oehlbert@nnsa.doe.gov.*

SUPPLEMENTARY INFORMATION: This proposed subsequent arrangement concerns the retransfer of 147 grams of U.S.-origin highly enriched uranium, containing 130 grams of the isotope U–235 (88 percent enrichment) in various forms originally exported under numerous U.S. Nuclear Regulatory Commission licenses, from Toshiba Corporation, in Tokyo Japan; Toshiba Energy Systems & Solutions Corporation in Kanagawa, Japan; and, Westinghouse Electric Japan Ltd. (WEJ), Tokyo, Japan, to Springfields Fuel Limited (SFL) in Lancashire, United Kingdom (UK), and National Nuclear Laboratory (NNL) in Lancashire, UK, for recovery treatment

and disposal. Upon transfer to the UK, the proposed 147 grams uranium containing 130 grams of the isotope U–235 (88 percent enrichment) will be subject to the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States of America and the European Atomic Energy Community (Euratom).

Pursuant to the authority in section 131 a. of the Atomic Energy Act of 1954, as delegated, I have determined that this proposed subsequent arrangement concerning the retransfer of nuclear material of U.S. origin will not be inimical to the common defense and security of the United States of America.

Signing Authority

This document of the Department of Energy was signed on July 2, 2020, by Brent K. Park, Deputy Administrator for Defense Nuclear Nonproliferation, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on July 2, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2020–14722 Filed 7–7–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1511–008; ER10–2231–007.
Applicants: Louisville Gas & Electric Company, Kentucky Utilities Company.
Description: Triennial Market Power Update of the PPL Southeast Companies.
Filed Date: 6/30/20.
Accession Number: 20200630–5468.
Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER10–1987–004.
Applicants: Ontario Power Generation Energy Trading, Inc.
Description: Triennial Market Power Update for Southeast Region of Ontario Power Generation Energy Trading, Inc.
Filed Date: 6/30/20.
Accession Number: 20200630–5470.
Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER10–2042–035; ER10–1858–008; ER10–1862–029; ER10–1870–008; ER10–1889–008; ER10–1893–029; ER10–1895–008; ER10–1934–029; ER10–1938–030; ER10–1942–027; ER10–1944–008; ER10–2029–012; ER10–2036–011; ER10–2040–010; ER10–2041–010; ER10–2043–010; ER10–2044–010; ER10–2051–010; ER10–2985–033; ER10–3049–034; ER10–3051–034; ER10–3260–010; ER11–4369–014; ER13–1401–008; ER14–2931–008; ER16–2218–014; ER17–696–015; ER18–1321–003; ER20–1939–001.
Applicants: Calpine Energy Services, L.P., Bethpage Energy Center 3, LLC, Calpine Bethlehem, LLC, Calpine Construction Finance Company, L.P., Calpine Energy Solutions, LLC, Calpine Fore River Energy Center, LLC, Calpine Mid-Atlantic Generation, LLC, Calpine Mid-Atlantic Marketing, LLC, Calpine Mid Merit, LLC, Calpine Mid-Merit II, LLC, Calpine New Jersey Generation, LLC, Calpine Northeast Development, LLC, Calpine Power America—CA, LLC, Calpine Vineland Solar, LLC, CES Marketing IX, LLC, CES Marketing X, LLC, Champion Energy, LLC, Champion Energy Marketing LLC, Champion Energy Services, LLC, CPN Bethpage 3rd Turbine, Inc., Granite Ridge Energy, LLC, KIAC Partners, Nissequogue Cogen Partners, North American Power and Gas, LLC, North American Power Business, LLC, TBG Cogen Partners, Power Contract Financing, L.L.C., Westbrook Energy Center, LLC, Zion Energy LLC.
Description: Updated Market Power Analysis for Northeast Region of the Calpine Corporation indirect subsidiaries.
Filed Date: 6/30/20.
Accession Number: 20200630–5457.
Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER10–2133–022.
Applicants: Sheldon Energy LLC.
Description: Triennial Report Sheldon Energy LLC.
Filed Date: 6/30/20.
Accession Number: 20200630–5418.
Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER10–2487–006; ER15–2380–004.
Applicants: Pacific Summit Energy LLC, Willey Battery Utility, LLC.
Description: Triennial Market Based Rate Analysis for Northeast Region of Pacific Summit Energy LLC, et al.
Filed Date: 6/30/20.
Accession Number: 20200630–5444.
Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER10–2718–036; ER10–2719–036.
Applicants: Cogen Technologies Linden Venture, L.P., East Coast Power Linden Holding, L.L.C.
Description: Triennial Compliance Filing of Cogen Technologies Linden Venture, L.P.
Filed Date: 6/30/20.
Accession Number: 20200630–5455.
Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER10–2881–035; ER10–2882–036; ER10–2883–034; ER10–2884–034; ER16–2509–005; ER17–2400–006; ER17–2401–006; ER17–2403–006; ER17–2404–006.
Applicants: Alabama Power Company, Southern Power Company, Mississippi Power Company, Georgia Power Company, Rutherford Farm, LLC, SP Butler Solar, LLC, SP Decatur Parkway Solar, LLC, SP Pawpaw Solar, LLC, SP Sandhills Solar, LLC.
Description: Updated Market Power Analysis for the Southeast Region of Alabama Power Company, et al.
Filed Date: 6/30/20.
Accession Number: 20200630–5461.
Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER11–3872–023.
Applicants: Stony Creek Energy LLC.
Description: Triennial Report of Stony Creek Energy LLC.
Filed Date: 6/30/20.
Accession Number: 20200630–5419.
Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER13–1266–030; ER10–2611–022; ER10–2984–047; ER11–2044–034; ER11–3876–025; ER15–2211–027; ER18–1419–003.
Applicants: MidAmerican Energy Company, CalEnergy, LLC, Cordova Energy Company LLC, MidAmerican Energy Services, LLC, Saranac Power Partners, L.P., Walnut Ridge Wind, LLC, Merrill Lynch Commodities, Inc.
Description: Northeast Triennial Market Power Analysis of CalEnergy, LLC, et al.
Filed Date: 6/30/20.
Accession Number: 20200630–5451.
Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER13–1641–005; ER15–1045–005; ER16–2226–003 ER16–2227–004.
Applicants: Chestnut Flats Lessee, LLC, Kelly Creek Wind, LLC, McHenry Battery Storage, LLC, Pilot Hill Wind, LLC.
Description: Triennial Market Power Update Filing for the Northeast Region of the EDFR Sellers.
Filed Date: 6/30/20.
Accession Number: 20200630–5467.
Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER14–2102–003.

Applicants: Danskammer Energy, LLC.

Description: Triennial Market Power Update for the Northeast Region of Danskammer Energy, LLC.

Filed Date: 6/30/20.

Accession Number: 20200630–5464.

Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER14–2329–003; ER14–2330–003.

Applicants: Entergy Nuclear Indian Point 3, LLC, Entergy Nuclear Power Marketing, LLC.

Description: Updated Market Power Analysis for the Northeast Region of the Entergy Northeast MBR Utilities.

Filed Date: 6/30/20.

Accession Number: 20200630–5453.

Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER15–103–009.

Applicants: Invenergy Nelson LLC.

Description: Triennial Report of Invenergy Nelson LLC.

Filed Date: 6/30/20.

Accession Number: 20200630–5415.

Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER16–2278–003.

Applicants: Cube Yadkin Generation LLC.

Description: Updated Market Power Analysis for the Southeast Region of Cube Yadkin Generation LLC.

Filed Date: 6/30/20.

Accession Number: 20200630–5421.

Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER17–424–007.

Applicants: Footprint Power Salem Harbor Development LP.

Description: Triennial Compliance Filing of Footprint Power Salem Harbor Development LP.

Filed Date: 6/30/20.

Accession Number: 20200630–5454.

Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER18–140–006.

Applicants: Lackawanna Energy Center LLC.

Description: Triennial Report of Lackawanna Energy Center LLC.

Filed Date: 6/30/20.

Accession Number: 20200630–5420.

Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER18–1906–003; ER10–1532–006; ER10–1541–007; ER10–1642–008; ER10–1767–006; ER13–2349–005; ER13–2350–005; ER16–221–004; ER17–1757–004; ER18–1907–003.

Applicants: Entergy Services, LLC, Entergy Arkansas, LLC, Entergy Louisiana, LLC, Entergy Mississippi, LLC, Entergy New Orleans, LLC, Entergy Texas, Inc., Entergy Nuclear Palisades, LLC, Entergy Power, LLC, EWO Marketing, LLC, EAM Nelson Holding, LLC, RS Cogen, LLC.

Description: Notification of Non-Material Change in Status of the Entergy Central MBR Utilities.

Filed Date: 6/30/20.

Accession Number: 20200630–5456.

Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER19–2726–002.

Applicants: Invenergy Wilkinson Solar Holdings LLC.

Description: Triennial Report of Invenergy Wilkinson Solar Holdings LLC.

Filed Date: 6/30/20.

Accession Number: 20200630–5412.

Comments Due: 5 p.m. ET 8/29/20.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR20–5–000.

Applicants: North American Electric Reliability Corporation, Northeast Power Coordinating Council, Inc., ReliabilityFirst Corporation, SERC Reliability Corporation, Western Electric Coordinating Council, Texas Reliability Entity, Inc.

Description: Petition of the North American Electric Reliability Corporation, et al. for approval of the revised Pro Forma Regional Delegation Agreement and revised Regional Entity RDAs.

Filed Date: 6/29/20.

Accession Number: 20200629–5552.

Comments Due: 5 p.m. ET 7/20/20.

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: July 1, 2020

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–14686 Filed 7–7–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6916–011]

City and County of Denver, Colorado; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed an application submitted by City and County of Denver, Colorado acting by and through its Board of Water Commissioners (Denver Water), to exempt its Strontia Springs Project No. 6916 from the licensing requirements of Part I of the Federal Power Act. The Strontia Project is located on the South Platte River, in Douglas and Jefferson counties, Colorado. The project occupies federal lands within Pike San Isabel National Forest, administered by the U.S. Forest Service.

An environmental assessment (EA) has been prepared as part of Commission staff's review of the proposal. In the application, Denver Water proposes to upgrade its turbine generator unit, which would increase the total installed capacity of the project to 1.25-megawatts, and to convert its license to an exemption. The EA contains Commission staff's analysis of the probable environmental impacts of the proposed action and concludes that approval of the proposal would not constitute a major federal action significantly affecting the quality of the human environment.

The Commission provides all interested persons an opportunity to view and/or print the EA via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the eLibrary link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. At this time, the Commission has suspended access to 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 Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and

issuances related to this or other pending projects.

Dated: July 1, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–14666 Filed 7–7–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2322–069]

Brookfield White-Pine Hydro LLC; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2322–069.

c. *Date filed:* January 31, 2020.

d. *Applicant:* Brookfield White-Pine Hydro, LLC (Brookfield).

e. *Name of Project:* Shawmut Hydroelectric Project.

f. *Location:* The existing project is located on the Kennebec River in Kennebec and Somerset Counties, Maine. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Randy Dorman, 150 Main Street, Lewiston, Maine 04240; (207) 755–5600 or email at *Randy.Dorman@BrookfieldRenewable.com.*

i. *FERC Contact:* Matt Cutlip, telephone (503) 552–2762, and email *matt.cutlip@ferc.gov.*

j. Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary prescriptions: 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *The Shawmut Project consists of the following constructed facilities:* (1) a 24-foot-high, 1,480-foot-long concrete gravity dam consisting of: (i) A 380-foot-long overflow section with hinged flashboards, (ii) a 730-foot-long overflow section with an inflatable bladder, (iii) 25-foot-wide sluice section; (iv) a non-overflow section; and (v) a headworks containing 11 headgates that regulate flow into a forebay; (2) a 1,310-acre impoundment extending about 12 miles upstream; (3) two powerhouses adjacent to the forebay, separated by a 10-foot-high by 7-foot-wide Tainter gate and a 6-foot-high by 6-foot-wide deep gate; (4) eight turbine-generating units; (5) a 300-foot-long tailrace; (6) 250-foot-long generator leads connecting the powerhouses with a substation; and (7) appurtenant facilities.

Brookfield operates the project in a run-of-river mode and implements specific operating procedure to facilitate upstream and downstream fish passage at the project. Upstream passage for American eel is provided by a dedicated eel passage facility located adjacent to one of the powerhouses. There are no constructed upstream anadromous fishways at the project. Currently anadromous fish are captured and transported upstream of the Shawmut Project via a fish lift and transport system at the Lockwood Dam Hydroelectric Project No. 2574, located about 6 miles downstream. Downstream fish passage for American eel and anadromous fish at the Shawmut Project is provided via a combination of routing flows through the project's spillways, turbines, and downstream fish passage facilities (*e.g.,* deep gate and Tainter gate between the powerhouses).

Brookfield proposes to construct and operate a forebay guidance boom to direct downstream migrating fish to a surface bypass route and minimize passage through the turbines.

m. A copy of the application can viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. 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 comment date for the particular application.

All filings must (1) bear in all capital letters the title PROTEST, MOTION TO INTERVENE, COMMENTS, REPLY COMMENTS, RECOMMENDATIONS, PRELIMINARY TERMS AND CONDITIONS, or PRELIMINARY FISHWAY PRESCRIPTIONS; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. *Procedural Schedule:* The application will be processed according

to the following revised Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of recommendations, preliminary terms and conditions, and preliminary fishway prescriptions.	August 2020.
Commission issues Draft EA or EIS.	April 2021.
Comments on Draft EA or EIS.	May 2021.
Modified Terms and Conditions.	July 2021.
Commission Issues Final EA or EIS.	October 2021.

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

q. A license applicant must file no later than 60 days following the date of issuance of the notice of acceptance and ready for environmental analysis provided for in 5.22: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Dated: July 1, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–14665 Filed 7–7–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–485–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Application

Take notice that on June 22, 2020, Great Lakes Gas Transmission Limited Partnership (GLGT), 700 Louisiana Street, Suite 700, Houston, Texas 77002, filed in Docket No. CP20–485–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) requesting authorization to abandon firm capacity by a lease agreement with ANR Pipeline Company (ANR). This application is related to application filed by ANR in Docket No. CP20–484–000 to construct and operate the Alberta Xpress Project including the authorization to acquire firm capacity from GLGT pursuant to the capacity lease agreement between GLGT and ANR dated June 19, 2020.

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.

Any questions concerning this application may be directed to Richard Bralow, Sr. Legal Counsel, ANR Pipeline Company, 700 Louisiana Street, Suite 700, Houston, Texas 77002, by phone (832) 320–5177, or by email *Richard_bralow@tcenergy.com.*

Pursuant to section 157.9 of the Commission's rules (18 CFR 157.9), within 90 days of this Notice, the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit five copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

As of the February 27, 2018 date of the Commission's order in Docket No. CP16–4–001, the Commission will apply its revised practice concerning out-of-time motions to intervene in any new NGA section 3 or section 7 proceeding.[1] Persons desiring to become a party to a certificate proceeding are to intervene in a timely manner. If seeking to intervene out-of-time, the movant is required to show good cause why the time limitation should be waived, and should provide justification by reference to factors set forth in Rule 214(d)(1) of the Commission's Rules and Regulations.[2]

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using

[1] *Tennessee Gas Pipeline Company, L.L.C.,* 162 FERC 61,167 at 50 (2018).

[2] 18 CFR 385.214(d)(1).

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.

Comment Date: 5:00 p.m. Eastern Standard Time on July 22, 2020.

Dated: July 1, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–14664 Filed 7–7–20; 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: RP17–913–004.
Applicants: Natural Gas Pipeline Company of America.
Description: Compliance filing NGPL Fuel Transparency Report Informational Filing.
Filed Date: 6/30/20.
Accession Number: 20200630–5153.
Comments Due: 5 p.m. ET 7/13/20.

Docket Numbers: RP20–972–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rates—Chevron 911109 Releases eff 07–01–20 to be effective 7/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5045.
Comments Due: 5 p.m. ET 7/13/20.

Docket Numbers: RP20–973–000.
Applicants: NEXUS Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Columbia Gas 860005 7–1–2020 releases to be effective 7/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5046.
Comments Due: 5 p.m. ET 7/13/20.

Docket Numbers: RP20–974–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Various Releases eff 7–1–20 to be effective 7/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5053.
Comments Due: 5 p.m. ET 7/13/20.

Docket Numbers: RP20–975–000.
Applicants: Northern Natural Gas Company.
Description: § 4(d) Rate Filing: 20200630 Negotiated Rate to be effective 7/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5061.
Comments Due: 5 p.m. ET 7/13/20.

Docket Numbers: RP20–976–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Filing—Devon Gas Services to be effective 7/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5095.
Comments Due: 5 p.m. ET 7/13/20.

Docket Numbers: RP20–977–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Amendment to a Negotiated Rate Agreement Filing-Lucid Energy to be effective 7/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5103.
Comments Due: 5 p.m. ET 7/13/20.

Docket Numbers: RP20–978–000.
Applicants: Cheyenne Connector, LLC.
Description: § 4(d) Rate Filing: CC 2020–06–30 Administrative Changes to be effective 8/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5109.
Comments Due: 5 p.m. ET 7/13/20.

Docket Numbers: RP20–979–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: REX 2020–06–30 Administrative Changes to be effective 8/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5112.
Comments Due: 5 p.m. ET 7/13/20.

Docket Numbers: RP20–980–000.
Applicants: East Tennessee Natural Gas, LLC.
Description: § 4(d) Rate Filing: ETNG Section 4 Rate Case to be effective 8/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5156.
Comments Due: 5 p.m. ET 7/13/20.

Docket Numbers: RP20–981–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Limited Section 4 to Adjust Fuel Gas and Lost and Unaccounted For Retention Fact to be effective 8/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5158.
Comments Due: 5 p.m. ET 7/13/20.

Docket Numbers: RP20–982–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Atlanta Gas 8438 releases eff 7–1–2020) to be effective 7/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5164.
Comments Due: 5 p.m. ET 7/13/20.

Docket Numbers: RP20–983–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Remove Expired Agreements eff 7/1/2020 to be effective 7/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5162.
Comments Due: 5 p.m. ET 7/13/20.

Docket Numbers: RP20–984–000.
Applicants: Dominion Energy Transmission, Inc.
Description: § 4(d) Rate Filing: DETI—June 30, 2020 Negotiated Rate and Nonconforming Service Agreements to be effective 8/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5171.
Comments Due: 5 p.m. ET 7/13/20.

Docket Numbers: RP20–985–000.
Applicants: Columbia Gulf Transmission, LLC.
Description: Compliance filing Compliance to Settlement in RP20–177–000 Implement Rates to be effective 8/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5176.
Comments Due: 5 p.m. ET 7/13/20.

Docket Numbers: RP20–986–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Cherokee AGL—Replacement Shippers—Jul 2020 to be effective 7/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5245.
Comments Due: 5 p.m. ET 7/13/20.

Docket Numbers: RP20–987–000.
Applicants: Northern Natural Gas Company.
Description: § 4(d) Rate Filing: 20200630 Non Conforming to be effective 7/30/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5290.
Comments Due: 5 p.m. ET 7/13/20.

Docket Numbers: RP20–988–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: TETLP EPC AUG 2020 FILING to be effective 8/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5293.
Comments Due: 5 p.m. ET 7/13/20.

Docket Numbers: RP20–989–000.
Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Negotiated Rates—ConEd 910950 to ENGIE eff 07–01–20 to be effective 7/1/2020.

Filed Date: 6/30/20.

Accession Number: 20200630–5363.

Comments Due: 5 p.m. ET 7/13/20.

Docket Numbers: RP20–990–000.

Applicants: Rockies Express Pipeline LLC.

Description: § 4(d) Rate Filing: REX 2020–06–30 Non-Conforming Negotiated Rate Amendment to be effective 7/1/2020.

Filed Date: 6/30/20.

Accession Number: 20200630–5384.

Comments Due: 5 p.m. ET 7/13/20.

Docket Numbers: RP20–991–000.

Applicants: LA Storage, LLC.

Description: § 4(d) Rate Filing: Filing of Negotiated Rate, Conforming IW Agreements 7.1.20 to be effective 7/1/2020.

Filed Date: 6/30/20.

Accession Number: 20200630–5389.

Comments Due: 5 p.m. ET 7/13/20.

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: July 1, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–14688 Filed 7–7–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD20–17–000]

Impacts of COVID–19 on the Energy Industry; Supplemental Notice of Technical Conference

As announced in the Notice of Technical Conference issued in this proceeding on May 20, 2020, the Federal Energy Regulatory Commission (Commission) will convene a Commissioner-led technical conference in the above-referenced proceeding on Wednesday and Thursday, July 8–9, 2020, from approximately 9:00 a.m. to 5:00 p.m. Eastern time each day. The conference will be held electronically. The purpose of this conference is to consider the ongoing, serious impacts that the emergency conditions caused by COVID–19 are having on various segments of the United States' energy industry. The Commission will explore the potential longer-term impacts on the entities that it regulates in order to ensure the continued efficient functioning of energy markets, transmission of electricity, transportation of natural gas and oil, and reliable operation of energy infrastructure today and in the future, while also protecting consumers. The conference will serve as a public forum for the Commission and energy stakeholders to discuss a wide range of energy issues that the country faces going forward as it recovers from the emergency conditions created by, and the impacts of, COVID–19.

The agenda and list of panelists for this conference is attached. The conference will be open for the public to attend electronically. There is no fee for attendance. However, members of the public are encouraged to preregister online at: *https://www.ferc.gov/news-events/events/event-registration.* Information on this event will be posted on the Calendar of Events on the Commission's website, *www.ferc.gov,* prior to the event. The conference will be transcribed. Transcripts will be available for a fee from Ace Reporting (202–347–3700).

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

For more information about this technical conference, please contact:

Aileen Roder (Technical Information), Office of Energy Policy and Innovation, (202) 502–6735, *aileen.roder@ferc.gov*

Zeny Magos (Technical Information), Office of Energy Market Regulation, (202) 502–8244, *zeny.magos@ferc.gov*

Sarah McKinley (Logistical Information), Office of External Affairs, (202) 502–8004, *sarah.mckinley@ferc.gov*

Dated: July 1, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–14667 Filed 7–7–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–484–000]

ANR Pipeline Company; Notice of Application

Take notice that on June 22, 2020, ANR Pipeline Company (ANR), 700 Louisiana Street, Suite 700, Houston, Texas 77002, filed in Docket No. CP20–484–000 an application pursuant to section 7(c) of the Natural Gas Act (NGA) requesting authorization for its proposed Alberta Xpress Project (Project). Specifically, ANR proposes to: (1) Construct and operate one new greenfield compressor station in Evangeline Parish, Louisiana to create 165,000 Dekatherms (Dth) per day of incremental mainline capacity on ANR's Southeast Mainline; and (2) acquire a lease between ANR and Great Lakes Gas Transmission Limited Partnership. ANR has executed binding precedent agreements with two shipper to provide 165,000 Dth per day. The estimated cost of the project is $81.1 million.

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.

Any questions concerning this application may be directed to Richard Bralow, Sr. Legal Counsel, ANR Pipeline Company, 700 Louisiana Street, Suite 700, Houston, Texas 77002, by phone (832) 320–5177, or by email *Richard_bralow@tcenergy.com.*

Pursuant to section 157.9 of the Commission's rules (18 CFR 157.9),

within 90 days of this Notice, the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit five copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

As of the February 27, 2018 date of the Commission's order in Docket No. CP16–4–001, the Commission will apply its revised practice concerning out-of-time motions to intervene in any new NGA section 3 or section 7 proceeding.[1] Persons desiring to become a party to a certificate proceeding are to intervene in a timely manner. If seeking to intervene out-of-time, the movant is required to show good cause why the time limitation should be waived, and should provide justification by reference to factors set forth in Rule 214(d)(1) of the Commission's Rules and Regulations.[2]

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically 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.

Comment Date: 5:00 p.m. Eastern Time on July 22, 2020.

Dated: July 1, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–14663 Filed 7–7–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1585–016; ER10–1594–016; ER10–1617–016; ER10–1626–012; ER10–1628–016; ER10–1632–018; ER10–2480–011; ER12–60–018; ER16–1148–007; ER16–733–007; ER18–1960–003.

Applicants: Alabama Electric Marketing, LLC, Berkshire Power Company, LLC, California Electric Marketing, LLC, LQA, LLC, New Mexico Electric Marketing, LLC, Tenaska Energía de Mexico, S. de R. L. de C.V., Tenaska Pennsylvania Partners, LLC, Tenaska Power Management, LLC, Tenaska Power Services Co., Tenaska Virginia Partners, L.P., Texas Electric Marketing, LLC

Description: Updated Market Power Analysis of the Tenaska Northeast MBR Sellers.

Filed Date: 6/30/20.

Accession Number: 20200630–5491.

Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER10–1915–011; ER10–1963–011; ER10–3274–003; ER10–3275–003; ER10–3278–003; ER18–213–002; ER19–2557–002.

Applicants: Bayswater Peaking Facility, LLC, Capitol District Energy Center Cogeneration Associates, Forked River Power LLC, Jamaica Bay Peaking Facility, LLC, Missisquoi, LLC, Pawtucket Power Associates Limited Partnership, Pittsfield Generating Company, L.P.

Description: Updated Market Power Analysis for the Northeast Region of Bayswater Peaking Facility, LLC.

Filed Date: 6/30/20.

Accession Number: 20200630–5492.

Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER10–2437–015.

Applicants: Arizona Public Service Company.

Description: Notice of Change in Status of Arizona Public Service Company.

Filed Date: 6/30/20.

Accession Number: 20200630–5496.

Comments Due: 5 p.m. ET 7/21/20.

Docket Numbers: ER10–2906–014; ER10–2908–014; ER11–3460–012; ER11–4393–008; ER11–4669–007; ER11–4670–007; ER12–1301–010; ER12–709–006; ER14–477–002; ER19–1716–002.

Applicants: Morgan Stanley Capital Group Inc., MS Solar Solutions Corp., Morgan Stanley Energy Structuring, L.L.C., TAQA Gen X LLC, Red Oak Power, LLC, Bayonne Energy Center, LLC, Zone J Tolling Co., LLC, NaturEner Montana Wind Energy, LLC, NaturEner Power Watch, LLC, NaturEner Wind Watch, LLC.

Description: Updated Market Power Analysis for the Northeast Region of Morgan Stanley Capital Group Inc., *et al.*

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[1] *Tennessee Gas Pipeline Company, L.L.C.,* 162 FERC 61,167 at 50 (2018).

[2] 18 CFR 385.214(d)(1).

Filed Date: 6/30/20.
Accession Number: 20200630–5486.
Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER10–3115–007.
Applicants: Waterside Power, LLC.
Description: Updated Market Power Analysis for Waterside Power, LLC.
Filed Date: 6/30/20.
Accession Number: 20200630–5475.
Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER12–1923–006; ER10–2334–007; ER11–3406–007; ER11–3407–007; ER12–1865–008; ER12–1923–006; ER12–1925–006.
Applicants: Big Savage, LLC, Big Sky Wind, LLC, Highland North LLC, Howard Wind LLC, Mustang Hills, LLC, Patton Wind Farm, LLC.
Description: Triennial Market Power Update for the Northeast Region of Big Savage, LLC, *et al.*
Filed Date: 6/30/20.
Accession Number: 20200630–5474.
Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER13–342–015.
Applicants: CPV Shore, LLC.
Description: Market Power Update of CPV Shore, LLC.
Filed Date: 6/30/20.
Accession Number: 20200630–5478.
Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER13–343–011.
Applicants: CPV Maryland, LLC.
Description: Market Power Update of CPV Maryland, LLC.
Filed Date: 6/30/20.
Accession Number: 20200630–5476.
Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER13–1485–011; ER10–3230–011; ER10–3237–011; ER10–3239–011; ER10–3240–011; ER10–3253–011; ER14–1777–010; ER15–2722–007; ER18–1310–002; ER19–461–002.
Applicants: Wheelabrator Baltimore, L.P., Wheelabrator Bridgeport, L.P., Wheelabrator Concord Company, L.P., Wheelabrator Falls Inc., Wheelabrator Frackville Energy Company Inc., Wheelabrator Millbury Inc., Wheelabrator North Andover Inc., Wheelabrator Portsmouth Inc., Wheelabrator Saugus Inc., Wheelabrator Westchester, L.P.
Description: Updated Market Power Analysis for the Northeast Region of Wheelabrator Baltimore, L.P., *et al.*
Filed Date: 6/30/20.
Accession Number: 20200630–5472.
Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER16–700–005.
Applicants: CPV Towantic, LLC.
Description: Market Power Update of CPV Towantic, LLC.
Filed Date: 6/30/20.
Accession Number: 20200630–5480.
Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER16–701–004.
Applicants: CPV Valley, LLC.
Description: Market Power Update of CPV Valley, LLC.
Filed Date: 6/30/20.
Accession Number: 20200630–5482.
Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER17–1531–004.
Applicants: CPV Fairview, LLC.
Description: Market Power Update of CPV Fairview, LLC.
Filed Date: 6/30/20.
Accession Number: 20200630–5484
Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER19–2462–001; ER18–2264–004; ER18–552–003; ER19–289–004.
Applicants: Macquarie Energy LLC, Macquarie Energy Trading LLC, Clean Energy Future—Lordstown, LLC, Cleco Cajun LLC.
Description: Updated Market Power Analysis for the Northeast Region of Macquarie Energy LLC, *et al.*
Filed Date: 6/30/20.
Accession Number: 20200630–5494.
Comments Due: 5 p.m. ET 8/29/20.

Docket Numbers: ER20–1486–001.
Applicants: Southwest Power Pool, Inc.
Description: Tariff Amendment: 3621SO Empire District Electric GIA—Deficiency Response to be effective 3/19/2020.
Filed Date: 7/1/20.
Accession Number: 20200701–5237.
Comments Due: 5 p.m. ET 7/22/20.

Docket Numbers: ER20–1656–002.
Applicants: MidAmerican Energy Company.
Description: Tariff Amendment: Joint Pricing Zone Revenue Allocation Agreement-3rd Revised (Amended) to be effective 6/1/2020.
Filed Date: 6/30/20.
Accession Number: 20200630–5186.
Comments Due: 5 p.m. ET 7/10/20.

Docket Numbers: ER20–1965–001.
Applicants: Versant Power.
Description: Tariff Amendment: MBR Notice of Succession to Versant Power (Amended) to be effective 6/3/2020.
Filed Date: 7/1/20.
Accession Number: 20200701–5071.
Comments Due: 5 p.m. ET 7/22/20.

Docket Numbers: ER20–2190–001.
Applicants: Southwest Power Pool, Inc.
Description: Tariff Amendment: 3675 Doniphan Electric Coop NITSA and Cancellation of 1886 Westar NITSA to be effective 6/1/2020.
Filed Date: 7/1/20.
Accession Number: 20200701–5292.
Comments Due: 5 p.m. ET 7/22/20.

Docket Numbers: ER20–2280–000.
Applicants: Evergy Metro, Inc.
Description: § 205(d) Rate Filing: Electric Interconnection & Delivery Service Agreements & a Notice of Termination to be effective 9/1/2020.
Filed Date: 7/1/20.
Accession Number: 20200701–5004.
Comments Due: 5 p.m. ET 7/22/20.

Docket Numbers: ER20–2281–000.
Applicants: Evergy Kansas Central, Inc.
Description: § 205(d) Rate Filing: Notice of Termination to be effective 8/17/2020.
Filed Date: 7/1/20.
Accession Number: 20200701–5007.
Comments Due: 5 p.m. ET 7/22/20.

Docket Numbers: ER20–2282–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2020–07–01_SA 2951 Northern States Power-MDU 2nd Rev GIA (J316) to be effective 7/1/2020.
Filed Date: 7/1/20.
Accession Number: 20200701–5081.
Comments Due: 5 p.m. ET 7/22/20.

Docket Numbers: ER20–2283–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2020–07–01_SA 3517 NSP–MDU FSA (J316) to be effective 7/1/2020.
Filed Date: 7/1/20.
Accession Number: 20200701–5087.
Comments Due: 5 p.m. ET 7/22/20.

Docket Numbers: ER20–2284–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 2900R13 KMEA NITSA NOA; 1884R9, 1888R9 and 1890R9 Westar NITSA NOA Cancellation to be effective 6/1/2020.
Filed Date: 7/1/20.
Accession Number: 20200701–5208.
Comments Due: 5 p.m. ET 7/22/20.

Docket Numbers: ER20–2285–000.
Applicants: Homer City Generation, L.P.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 8/31/2020.
Filed Date: 7/1/20.
Accession Number: 20200701–5226.
Comments Due: 5 p.m. ET 7/22/20.

Docket Numbers: ER20–2286–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 2236R12 Golden Spread Electric Cooperative, Inc. NITSA NOA to be effective 6/1/2020.
Filed Date: 7/1/20.
Accession Number: 20200701–5238.
Comments Due: 5 p.m. ET 7/22/20.

Docket Numbers: ER20–2287–000.
Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3215R7 People's Electric Cooperative NITSA NOA to be effective 6/1/2020.

Filed Date: 7/1/20.

Accession Number: 20200701–5247.

Comments Due: 5 p.m. ET 7/22/20.

Docket Numbers: ER20–2288–000.

Applicants: Tatanka Ridge Wind, LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization, Request for Related Waivers to be effective 8/31/2020.

Filed Date: 7/1/20.

Accession Number: 20200701–5263

Comments Due: 5 p.m. ET 7/22/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

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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: July 1, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–14687 Filed 7–7–20; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1272; FRS 16907]

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.

DATES: Written comments should be submitted on or before September 8, 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: 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.

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 Number: 3060–1272.

Title: 3.7 GHz Band Space Station Operator Accelerated Relocation Elections and Transition Plans; 3.7 GHz Band Incumbent Earth Station Lump Sum Payment Elections.

Form Number: N/A.

Type of Review: Extension of a currently approved information collection.

Respondents: Business or other for profit entities.

Number of Respondents: 3,010 respondents; 3,010 responses.

Estimated Time per Response: 16 hours per eligible space station accelerated relocation election; 80–600 hours per eligible space station transition plan; 32 hours per incumbent earth station lump sum payment election.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Required to obtain or maintain benefits. Statutory authority for this information collection is contained in sections 1, 2, 4(i), 4(j), 5(c), 201, 302, 303, 304, 307(e), and 309 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.

Total Annual Burden: 109,680 hours.

Total Annual Costs: $900,000.

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. See 47 CFR 0.459.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: A request for extension of this information collection (no change in requirements) will be submitted to the Office of Management and Budget (OMB) after this 60-day comment period in order to obtain the full three-year clearance from OMB. On February 28, 2020, in furtherance of the goal of releasing more mid-band spectrum into the market to support and enable 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. The 3.7–4.2 GHz band currently is allocated in the United States exclusively for non-Federal use

on a primary basis for Fixed Satellite Service (FSS) and Fixed Service. 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 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 in the 3.7 GHz Service that is scheduled to occur later this year, with the 20 megahertz from 3.98–4.0 GHz reserved as a guard band.

The Commission adopted a robust transition schedule to achieve an expeditious relocation of FSS operations and ensure that a significant amount of spectrum is made available quickly for next-generation wireless deployments, while also ensuring effective accommodation of relocated incumbent users. The 3.7 GHz Report and Order establishes a deadline of December 5, 2025, for full relocation to ensure that all FSS operations are cleared in a timely manner, but provides an opportunity for accelerated clearing of the band by allowing incumbent space station operators, as defined in the 3.7 GHz Report and Order, to commit to voluntarily relocate on a two-phased accelerated schedule (with additional obligations and incentives for such operators), with a Phase I deadline of December 5, 2021, and a Phase II deadline of December 5, 2023.

The Commission concluded in the 3.7 GHz Report and Order that, before the public auction of overlay licenses commences, it is appropriate for potential bidders to know when they will get access to the spectrum in the 3.7–3.98 GHz band that is currently occupied by incumbent FSS space station operators and earth stations, as defined in the 3.7 GHz Report and Order, and to have an estimate of how much they may be required to pay for incumbent relocation costs and accelerated relocation payments should they become overlay licensees, as overlay licensees are required to pay for the reasonable relocation costs of incumbent space station and incumbent earth station operators that are required to clear the lower portion of the band.

Under this information collection, the Commission will collect information that will be used by the Commission to determine when, how, and at what cost existing operations in the lower portion of the 3.7–4.2 GHz band will be relocated to the upper portion of the band. Specifically, the Commission collect the following information from incumbents as adopted in the 3.7 GHz Report and Order:

Accelerated Relocation Elections

The Commission concluded in the 3.7 GHz Report and Order that overlay licensees would only value accelerated relocation if a significant majority of incumbents are cleared in a timely manner, and therefore determined that at least 80% of accelerated relocation payments must be accepted in order for the Commission to accept accelerated elections and require overlay licensees to pay accelerated relocation payments. The 3.7 GHz Report and Order calls for an eligible space station operator, as defined in the 3.7 GHz Report and Order, that chooses to commit to clear on the accelerated schedule in exchange for accelerated relocation payments to submit a written, public, irrevocable accelerated relocation election with the Commission by May 29, 2020, to permit the Commission to determine whether there are sufficient accelerated relocation elections to trigger early relocation and in turn provide bidders with adequate certainty regarding the clearing date and payment obligations associated with each license well in advance of the auction.

Transition Plans

The 3.7 GHz Report and Order requires each eligible space station operator to submit to the Commission by June 12, 2020, and make available for public review, a detailed transition plan describing the necessary steps and estimated costs for the eligible space station operator to complete the transition of existing operations in the lower portion of the 3.7–4.2 GHz band to the upper 200 megahertz of the band and its individual timeline for doing so consistent with the regular relocation deadline or by the accelerated relocation deadlines. An eligible space station operator that elects to receive accelerated relocation payments is responsible for relocating all of its associated incumbent earth stations and must outline the details of such relocation in the transition plan (unless an incumbent earth station owner elects to receive a lump sum payment and assumes responsibility for transitioning its own earth stations). Similarly, an incumbent space station operator that does not elect to receive accelerated relocation payments but nevertheless plans to assume responsibility for relocating its own associated incumbent earth stations must make that clear in its transition plan.

Incumbent Earth Station Lump Sum Payment Elections

The 3.7 GHz Report and Order provides an incumbent earth station operator with the option of accepting reimbursement payments for its reasonable relocation costs for the transition, or opting out of the formal relocation process and accepting a lump sum reimbursement payment for all of its incumbent earth stations based on the average, estimated costs of relocating all of their incumbent earth stations in lieu of actual relocation costs. The 3.7 GHz Report and Order directs the Wireless Telecommunications Bureau to announce the lump sum that will be available per incumbent earth station as well as the process for electing lump sum payments and requires that no later than 30 days after this announcement, an incumbent earth station operator that wishes to receive a lump sum payment make an irrevocable lump sum payment election that will apply to all of its earth stations in the contiguous United States.

This information collection will serve as the starting point for planning and managing the process of efficiently and expeditiously clearing of the lower portion of the band, so that this spectrum can be auctioned for flexible-use service licenses.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer Office of the Secretary.

[FR Doc. 2020–14694 Filed 7–7–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1070; FRS 16911]

Information Collections 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.

DATES: Written comments should be submitted on or before September 8, 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: 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.

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 Number: 3060–1070.

Title: Allocation and Service Rules for the 71–76 GHz, 81–86 GHz, and 92–95 GHz Bands.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions; and State, local, or Tribal Government.

Number of Respondents: 852 respondents; 11,342 responses.

Estimated Time per Response: 0.25 to 1.5 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement, and third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i), 303(f) and (r), 309, 316, and 332 of the Communications Act of 1934, as amended.

Total Annual Burden: 12,039 hours.

Total Annual Cost: $200,000.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality. The Commission has not granted assurances of confidentially to those parties submitting the information. In those cases where a respondent believes information requires confidentiality, the respondent can request confidential treatment and the Commission will afford such confidentiality for 20 days, after which the information will be available to the public.

Needs and Uses: The Commission is seeking an extension of this information collection in order to obtain the full three-year approval from OMB. There are no program changes to the reporting, recordkeeping and/or third-party disclosure requirements, but we are revising estimates based on the reduction of database managers, and the increase of renewals of the nationwide licensees. The recordkeeping, reporting, and third-party disclosure requirements will be used by the Commission to verify licensee compliance with the Commission rules and regulations, and to ensure that licensees continue to fulfill their statutory responsibilities in accordance with the Communications Act of 1934. The Commission's rules promote the private sector development and use of 71–76 GHz, 81–86 GHz, and 92–95 GHz bands (70/80/90 GHz bands). Such information has been used in the past and will continue to be used to minimize interference, verify that applicants are legally and technically qualified to hold license, and to determine compliance with Commission rules.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer Office of the Secretary.

[FR Doc. 2020–14695 Filed 7–7–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1080; FRS 16913]

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 September 8, 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: 3060–1080.

Title: Improving Public Safety Communications in the 800 MHz Band.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; and/or State, local or tribal governments.

Number of Respondents and Responses: 60 respondents; 2,665 responses.

Estimated Time per Response: 0.5 hours to 10 hours (4.5 hours average).

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154, 160, 251–254, 303, and 332.

Total Annual Burden: 9,039 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission will work with respondents to ensure that their concerns regarding the confidentiality of any proprietary or public safety-sensitive information are resolved in a manner consistent with the Commission's rules. See 47 CFR 0.459.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them. The information sought will assist 800 MHz licensees in preventing or resolving interference and enable the Commission to implement its rebanding program.

Under that program, certain licensees are being relocated to new frequencies in the 800 MHz band, with all rebanding costs paid by T-Mobile. The Commission's overarching objective in this proceeding is to eliminate interference to public safety communications. As demonstrated in the Commission's 2020 Report and Order in this rulemaking proceeding (FCC 20–61), the Commission is actively accelerating the conclusion of the 800 MHz rebanding program.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2020–14699 Filed 7–7–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0161 and OMB 3060–0685; FRS 16909]

Information Collections 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.

DATES: Written comments should be submitted on or before September 8, 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: 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.

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 Number: 3060–0161.

Title: Section 73.61, AM Directional Antenna Field Strength Measurements.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents and Responses: 2,268 respondents and 2,268 responses.

Estimated Time per Response: 4–50 hours.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 36,020 hours.

Total Annual Cost: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i) and 303 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The information collection requirements contained in *47 CFR 73.61* require that each AM station using directional antennas to make field strength measurement as often as necessary to ensure proper directional antenna system operation. Stations not having approved sampling systems make field strength measurements every three months. Stations with approved sampling systems must take field strength measurements as often as necessary. Also, all AM stations using directional signals must take partial proofs of performance as often as necessary. The FCC staff used the data in field inspections/investigations. AM licensees with directional antennas use

the data to ensure that adequate interference protection is maintained between stations and to ensure proper operation of antennas.

OMB Control Number: 3060–0685.

Title: Updating Maximum Permitted Rates for Regulated Services and Equipment, FCC Form 1210; Annual Updating of Maximum Permitted Rates for Regulated Cable Services, FCC Form 1240.

Form Number: FCC Form 1210 and FCC Form 1240.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, Local or Tribal Government.

Number of Respondents and Responses: 3,400 respondents; 5,350 responses.

Estimated Time per Response: 1 hour to 15 hours.

Frequency of Response: Annual reporting requirement; Quarterly reporting requirement; Third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 4(i) and 623 of Communications Act of 1934, as amended.

Total Annual Burden: 44,800 hours.

Total Annual Cost: $3,196,875.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: Cable operators use FCC Form 1210 to file for adjustments in maximum permitted rates for regulated services to reflect external costs. Regulated cable operators submit this form to local franchising authorities.

FCC Form 1240 is filed by cable operators seeking to adjust maximum permitted rates for regulated cable services to reflect changes in external costs.

Cable operators submit Form 1240 to their respective local franchising authorities (''LFAs'') to justify rates for the basic service tier and related equipment or with the Commission (in situations where the Commission has assumed jurisdiction).

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer Office of the Secretary.

[FR Doc. 2020–14698 Filed 7–7–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0783; FRS 16912]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before September 8, 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:* 3060–0783.

Title: Section 90.176, Coordination Notification Requirements on Frequencies Below 512 MHz or at 764–776/794–806 MHz.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 17 respondents; 4,420 responses.

Estimated Time per Response: 0.5 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection (IC) is contained in sections 47 U.S.C. 154(i), 161, 303(g), 303(r) and 332(c)(7) of the Communications Act of 1934, as amended.

Total Annual Burden: 2,210 hours.

Total Annual Cost: No cost.

Privacy Act 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 Office of Management and Budget (OMB) in order to obtain the full three-year clearance.

Section 90.176 requires each Private Land Mobile frequency coordinator to provide, within one business day, a listing of their frequency recommendations to all other frequency coordinators in their respective pool, and if requested, an engineering analysis.

Any method can be used to ensure this compliance with the ''one business day requirement'' and must provide, at a minimum, the name of the applicant; frequency or frequencies recommended; antenna locations and heights; and effective radiated power; the type(s) of emissions; the description of the service area; and the date and time of the recommendation. If a conflict in recommendations arises, the effected coordinators are jointly responsible for taking action to resolve the conflict, up to and including notifying the Commission that an application may have to be returned.

This requirement seeks to avoid situations where harmful interference is created because two or more coordinators recommend the same frequency in the same area at approximately the same time to different applicants.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2020–14696 Filed 7–7–20; 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 August 28, 2020.

DATES: *Applicable:* July 1, 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 Judge (''OCALJ'') is, effective July 1, 2020, suspending all in-person hearings, settlement judge conferences, and mediations until August 28, 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 August 28, 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: July 1, 2020.

Sarah L. Stewart,

Deputy General Counsel, Federal Mine Safety and Health Review Commission.

[FR Doc. 2020–14603 Filed 7–7–20; 8:45 am]

BILLING CODE 6735–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Temporary approval of information collection; notice, request for comment.

SUMMARY: The Board has temporarily revised the Capital Assessments and Stress Testing Reports (FR Y–14A/Q/M; OMB No. 7100–0341) pursuant to the authority delegated to the Board by the Office of Management and Budget (OMB), per OMB Regulations on Controlling Paperwork Burdens on the Public. The temporary revisions, which would collect data pertaining to certain aspects of the Coronavirus Aid, Relief, and Economic Security Act, information on firm activity associated with various Federal Reserve lending facilities, and information regarding emerging risks arising from the coronavirus disease 2019 (COVID–19) pandemic, are applicable to reports beginning with the July 31, 2020, or September 30, 2020, as of date. Additionally, the Board invites comment on a proposal to extend for three years, with revision, the FR Y–14A/Q/M reports in order to address questions related to the reporting of certain current expected credit losses (CECL) and capital data, which would be applicable to reports beginning with the December 31, 2020, as of date.

DATES: Comments must be submitted on or before September 8, 2020.

ADDRESSES: You may submit comments, identified by FR Y–14A, FR Y–14Q, or FR Y–14M, by any of the following methods:

- *Agency website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, if approved. These documents will also be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies. Pursuant to its delegated authority, the Board may temporarily approve a revision to a collection of information, without providing opportunity for public comment, if the Board determines that a change in an existing collection must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection or substantially interfere with the Board's

ability to perform its statutory obligation.

As discussed below, the Board has made certain temporary revisions to the FR Y–14A/Q/M information collection. The Board's delegated authority requires that the Board, after temporarily approving a collection, publish a notice soliciting public comment. Therefore, the Board is also inviting comment on a proposal to extend the FR Y–14A/Q/M information collection for three years, with these revisions.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Final Approval Under OMB Delegated Authority of the Temporary Revision of, and Proposal To Extend for Three Years, With Revision, of the Following Information Collection

Report title: Capital Assessments and Stress Testing Reports.

Agency form number: FR Y–14A/Q/M.

OMB control number: 7100–0341.

Frequency: Annually, quarterly, and monthly.

Respondents: These collections of information are applicable to bank holding companies (BHCs), U.S. intermediate holding companies (IHCs), and covered savings and loan holding companies (SLHCs) [1] with $100 billion or more in total consolidated assets, as based on: (i) The average of the firm's total consolidated assets in the four most recent quarters as reported quarterly on the firm's Consolidated Financial Statements for Holding Companies (FR Y–9C; OMB No. 7100–0128); or (ii) if the firm has not filed an FR Y–9C for each of the most recent four quarters, then the average of the firm's total consolidated assets in the most recent consecutive quarters as reported quarterly on the firm's FR Y–9Cs. Reporting is required as of the first day of the quarter immediately following the quarter in which the respondent meets this asset threshold, unless otherwise directed by the Board.

Estimated number of respondents: FR Y–14A/Q: 36; FR Y–14M: 34.[2]

Estimated average hours per response: FR Y–14A: 1,085 hours; FR Y–14Q: 2,142 hours; FR Y–14M: 1,072 hours; FR Y–14 On-going Automation Revisions: 480 hours; FR Y–14 Attestation On-going Attestation: 2,560 hours.

Estimated annual burden hours: FR Y–14A: 39,060 hours; FR Y–14Q: 308,448 hours; FR Y–14M: 437,376 hours; FR Y–14 On-going Automation Revisions: 17,280 hours; FR Y–14 Attestation On-going Attestation: 33,280 hours.

General description of report: This family of information collections is composed of the following three reports:

- The annual [3] FR Y–14A collects quantitative projections of balance sheet, income, losses, and capital across a range of macroeconomic scenarios and qualitative information on methodologies used to develop internal projections of capital across scenarios.[4]
- The quarterly FR Y–14Q collects granular data on various asset classes, including loans, securities, trading assets, and PPNR for the reporting period.
- The monthly FR Y–14M is comprised of three retail portfolio- and loan-level schedules, and one detailed address-matching schedule to supplement two of the portfolio and loan-level schedules.

The data collected through the FR Y–14A/Q/M reports provide the Board with the information needed to help ensure that large firms have strong, firm-wide risk measurement and management processes supporting their internal assessments of capital adequacy and that their capital resources are sufficient given their business focus, activities, and resulting risk exposures. The reports are used to support the Board's annual Comprehensive Capital Analysis and Review (CCAR) and Dodd-Frank Act Stress Test (DFAST) exercises, which complement other Board supervisory efforts aimed at enhancing the continued viability of large firms, including continuous monitoring of firms' planning and management of liquidity and funding resources, as well as regular assessments of credit, market and operational risks, and associated risk management practices. Information gathered in this data collection is also used in the supervision and regulation of respondent financial institutions. Respondent firms are currently required to complete and submit up to 17 filings each year: One annual FR Y–14A filing, four quarterly FR Y–14Q filings, and 12 monthly FR Y–14M filings. Compliance with the information collection is mandatory.

Current actions and proposed revisions: The Board has temporarily revised the FR Y–14A/Q/M reports to implement changes necessary in response to the coronavirus disease 2019 (COVID–19) pandemic. Specifically, the Board has temporarily revised the FR Y–14A/Q/M reports to collect data pertaining to certain aspects of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act),[5] as

[1] Covered SLHCs are those which are not substantially engaged in insurance or commercial activities. For more information, see the definition of ''covered savings and loan holding company'' provided in 12 CFR 217.2 and 12 CFR 238.2(ee). SLHCs with $100 billion or more in total consolidated assets become members of the FR Y–14Q and FR Y–14M panels effective June 30, 2020, and the FR Y–14A panel effective December 31, 2020. *See* 84 FR 59032 (November 1, 2019).

[2] The estimated number of respondents for the FR Y–14M is lower than for the FR Y–14Q and FR Y–14A because, in recent years, certain respondents to the FR Y–14A and FR Y–14Q have not met the materiality thresholds to report the FR Y–14M due to their lack of mortgage and credit activities. The Board expects this situation to continue for the foreseeable future.

[3] In certain circumstances, a BHC or IHC may be required to re-submit its capital plan. See 12 CFR 225.8(e)(4). Firms that must re-submit their capital plan generally also must provide a revised FR Y–14A in connection with their resubmission.

[4] On October 10, 2019, the Board issued a final rule that eliminated the requirement for firms subject to Category IV standards to conduct and publicly disclose the results of a company-run stress test. See 84 FR 59032 (Nov. 1, 2019). That final rule maintained the existing FR Y–14A/Q/M substantive reporting requirements for these firms in order to provide the Board with the data it needs to conduct supervisory stress testing and inform the Board's ongoing monitoring and supervision of its supervised firms. However, as noted in the final rule, the Board intends to provide greater flexibility to banking organizations subject to Category IV standards in developing their annual capital plans and consider further change to the FR Y–14A/Q/M forms as part of a separate proposal. See 84 FR 59032, 59063.

[5] Coronavirus Aid, Relief, and Economic Security Act, Public Law 116–136, 134 Stat. 281 (Mar. 27, 2020).

well as information on firm activity associated with the Paycheck Protection Program (PPP) [6] and Federal Reserve lending facilities, such as the Main Street Lending Program (MSLP),[7] that have been established to support markets and the broader economy during the ongoing COVID–19 pandemic. The Board has also temporarily revised the FR Y–14A/Q/M reports to receive FR Y–14Q, Schedule H (Wholesale) on a more frequent basis, as well as to make other revisions, to better understand the evolving effects of the COVID–19 pandemic on bank positions and the broader economy.

In addition, in response to various questions received from the industry following the publication of the final rule to change the current expected credit losses methodology (CECL) transition provisions,[8] the Board is proposing to revise the FR Y–14A to allow firms to accurately reflect in their reporting the greater flexibility on CECL implementation afforded in the interim final rule and to make minor revisions and clarifications to several capital items on the FR Y–14A and FR Y–14Q reports. The Board notes that the information associated with the temporary revisions to the FR Y–14A/Q/M reports are not available from other sources, such as the FR Y–9C.

Temporary Revisions to the FR Y–14A/Q/M

In response to the COVID–19 pandemic, the Board has temporarily revised the FR Y–14A/Q/M reports to change the submission frequency of one FR Y–14Q schedule, incorporate the reporting of loans in loss mitigation or forbearance programs, collect information on firm activity associated with the PPP, MSLP, and other Federal Reserve lending facilities. The revised submission frequency of FR Y–14Q, Schedule H (Wholesale) is effective beginning with the report as of July 31, 2020. All other FR Y–14Q and FR Y–14M temporary revisions are effective beginning with reports as of September 30, 2020. In addition, the FR Y–14Q instructions specify that attestations are not required for non-quarter-end submissions, or for new items temporarily added as part of this notice. The Board has determined that it must revise the FR Y–14Q and FR Y–14M quickly and that public participation in the approval process would defeat the purpose of the collection of information, as delaying the revisions would result in the collection of incomplete information, and would interfere with the Board's ability to perform its statutory duties pursuant to section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[9] These temporary revisions expire six months after the date of publication of this notice in the **Federal Register**, unless extended by the Board (*i.e.,* data associated with these temporary revisions are only required to be submitted up to and including data as of December 31, 2020—firms are not required to continue to submit data associated with these temporary revisions for any as of dates in 2021 without explicit reauthorization from the Board).

FR Y–14Q Reporting Frequency

Effective for data as of July 31, 2020, the Board has temporarily revised the submission frequency of FR Y–14Q, Schedule H (Wholesale) from a quarterly basis to a monthly basis for Category I–III firms. This schedule has month-end as-of dates and is due either 30 days after the as of date, or seven days after the FR Y–9C submission date (*i.e.,* at the same time as most of the FR Y–14Q), depending on whether the as of date aligns with a quarter-end date. In order to effectively understand and react to the potentially quickly evolving effects of the COVID–19 pandemic on bank positions and the broader economy, particularly with respect to corporate and commercial real estate exposures, the Board needs the information on this schedule on a more frequent basis. Note that Schedule H data submitted monthly may be used for supervisory purposes including, but not limited to, stress testing. In addition, the Board has revised the FR Y–14Q instructions to indicate the Board may require submission of the FR Y–14Q, or certain schedules or items on the FR Y–14Q, on a more frequent basis in times of crisis.

Loans in Loss Mitigation or Forbearance Programs

As described in the Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus Guidance,[10] the CARES Act, among other things, ''creates a forbearance program for federally backed mortgage loans, protects borrowers from negative credit reporting due to loan accommodations related to the National Emergency, and provides financial institutions the option to temporarily suspend certain requirements under U.S. generally accepted accounting principles (GAAP) related to troubled debt restructurings (TDR) for a limited period of time to account for the effects of COVID–19.'' In the Guidance, the Board and other regulatory agencies encouraged financial institutions to work prudently with borrowers who are or maybe unable to meet their contractual payment obligations because of the effects of COVID–19.

Because firms may hold a larger number of loans in forbearance programs and loans with other loss mitigation circumstances during the COVID–19 pandemic, the Board has temporarily revised certain FR Y–14Q and FR Y–14M schedules to add fields and options to existing fields to collect information on loans in forbearance programs and other loss mitigation circumstances.

FR Y–14Q, Schedule A (Retail)

In order to capture loss mitigation and forbearance loan balances, the Board has temporarily added the ''$ Loss mitigation and forbearance'' summary variable to the six retail schedules that do not currently capture this information. Specifically, the summary variable has been added to the following schedules:

- Schedule A.1 (International Auto Loan);
- Schedule A.3 (International Credit Card);
- Schedule A.4 (International Home Equity);
- Schedule A.5 (International First Lien Mortgage);
- Schedule A.6 (International Other Consumer Schedule); and
- Schedule A.7 (US Other Consumer).

Three retail schedules already have summary variables to capture information regarding loss mitigation and modified loans. However, in order to be consistent across Schedule A, the Board has temporarily replaced the following summary variables with the same ''$ Loss mitigation and forbearance'' summary variable as described above:

- Schedule A.2 (US Auto Loan), Field #26 (''$ Loss mitigation'');
- Schedule A.8 (International Small Business), Field #6 (''$ Modifications''); and
- Schedule A.9 (US Small Business), Field #6 (''$ Modifications'').

FR Y–14Q, Schedule H (Wholesale)

The Board has temporarily added the ''Modifications Flag'' item to Schedules H.1 (Corporate) and H.2 (Commercial

[6] *See* 85 FR 20387 (April 13, 2020).

[7] *https://www.federalreserve.gov/newsevents/pressreleases/monetary20200409a.htm.*

[8] *See* 85 FR 17723 (March 31, 2020).

[9] 12 U.S.C. 5365.

[10] *https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20200407a1.pdf.*

Real Estate) (items 109 and 70, respectively) to capture information on loans in loss mitigation or forbearance programs because of the COVID–19 pandemic. Prior to this revision, it was not possible to identify loans in these programs on these schedules. Loans in loss mitigation and forbearance programs have different risk characteristics than other loans reported on this schedule, and therefore need to be separately identified.

FR Y–14Q, Schedule J (Retail Fair Value Option/Held for Sale (FVO/HFS))

The Board has temporarily added Column J (Loss Mitigation) to Schedule J to capture information on FVO/HFS loans in loss mitigation programs. Loans in loss mitigation programs have different risk characteristics than other loans reported on this schedule, and therefore need to be separately identified.

FR Y–14M, Schedule B (Home Equity)

In order to capture information regarding loans in forbearance programs and for consistency with the corresponding item on FR Y–14M, Schedule A (First Lien), the Board has temporarily added an option (''9 = Forbearance plan'') to item 61 (''Workout Type Completed'').

Paycheck Protection Program (PPP)

On April 9, 2020, the Federal Reserve announced it would help facilitate the Small Business Administration's PPP by supplying liquidity to participating financial institutions through term financing backed by PPP loans to small businesses.[11] The PPP provides loans to small businesses so that they can keep their workers on the payroll. The Paycheck Protection Program Liquidity Facility (PPPLF) extends credit to eligible financial institutions that originate PPP loans, taking the loans as collateral at face value.

FR Y–14Q, Schedule A (Retail)

In order to identify loans fully guaranteed by the U.S. government, such as loans associated with the PPP, the Board has temporarily added the ''$ Under federally guaranteed programs'' (item 13) summary variable to Schedule A.9 (US Small Business). This summary variable is necessary as the credit risk characteristics of loans fully guaranteed under federal programs differ from other loans reported on Schedule A.9, and therefore these loans need to be reported separately from other small business exposures for appropriate evaluation during the stress test.

FR Y–14Q, Schedule H

In response to questions received from the industry, the Board has temporarily revised the instructions to Schedules H.1 and H.2 to explicitly exclude PPP loans. The Board does not need information for PPP loans on these schedules.

FR Y–14Q, Schedule M (Balances)

The Board has temporarily added item 2.b.(1),''Paycheck Protection Program (PPP) loans,'' to Schedule M.1. (Quarter-end Balances), to capture the balance of PPP loans. The Board has also temporarily added references to new item 2.b.(1) to Schedule M.2 (FR Y–9C Reconciliation). In addition, the Board temporarily has added language to the instructions for items 2.a, ''Graded C&I loans,'' and 2.b, ''Small business loans,'' requiring that PPP loans be excluded from these items. PPP loans have different risk characteristics than non-guaranteed loans, and therefore need to be separately identified.

Main Street Lending Program

On April 9, 2020, the Board announced the MSLP, which will enhance support for small and mid-sized businesses that were in good financial standing before the crisis by offering 4-year loans to companies employing up to 10,000 workers or with revenues of less than $2.5 billion.[12] Additionally, businesses with up to 15,000 employees or up to $5 billion in annual revenue are now eligible, compared to the initial program terms, which were for companies with up to 10,000 employees and $2.5 billion in revenue.[13] Principal and interest payments will be deferred for one year. Under the MSLP, banks will retain a share of loans, selling the remaining share to the Main Street facility.

FR Y–14Q, Schedule A

The Board has temporarily added the following items to Schedule A.9: item 14, ''$ Main Street New Loan Facility (MSNLF),'' item 15, ''$ Main Street Priority Loan Facility (MSPLF),'' and item 16, ''$ Main Street Expanded Loan Facility (MSELF).'' MSLP loans have different risk characteristics than other loans reported on this schedule, and therefore need to be separately identified.

FR Y–14Q, Schedule H

The Board has temporarily added the ''Extended Facility ID'' item to Schedules H.1 and H.2 (items 110 and 71, respectively). The Board has also temporarily added options to the ''Credit Facility Purpose'' on Schedule H.1 (item 25) and the ''Loan Purpose'' item on Schedule H.2 (item 22) to capture information on MSLP loans. Specifically, the Board temporarily has added the following options: ''MSLP New Loan Facility,'' ''MSLP Expanded Loan Facility,'' and ''MSLP Priority Loan Facility.'' MSLP loans have different risk characteristics than other loans reported on these schedules, and therefore need to be separately identified.

FR Y–14Q, Schedule K (Supplemental)

In order to capture MSLP loans that aren't reported on FR Y–14Q, Schedules A and H, the Board temporarily has added three columns to Schedule K: D.1, ''Main Street Loan Program New Loan Facility loans under $1M in committed balance,'' D.2, Main Street Loan Program Expanded Loan Facility loans under $1M in committed balance,'' and D.3, Main Street Loan Program Priority Loan Facility loans under $1M in committed balance.'' In addition, the Board has temporarily added language to the instructions for column D, ''Outstanding Balance of Commercial Real Estate (CRE) and Corporate loans under $1M in committed balance,'' requiring that firms exclude MSLP loans balances from this column.

Other Federal Reserve Lending Facilities

FR Y–14Q, Schedule B (Securities)

The Board temporarily has added an item (''COVID–19 facility'') to Schedule B.1 (Main Schedule) to capture securities that have been pledged under a Federal Reserve facility that supports the flow of credit during the COVID–19 pandemic (*e.g.,* Money Market Mutual Fund Liquidity Facility). This information is needed to determine the amount of protection provided by the put option positions associated with these facilities.

FR Y–14Q, Schedule F (Trading)

The Board temporarily has created new submission types for Schedule F dedicated to capturing information on trading assets that have been pledged to Federal Reserve lending facilities. The submission type would mirror the other submission types of the trading schedule and firms would complete the submission type in the same manner as for other submission types, as outlined

[11] *https://www.federalreserve.gov/newsevents/pressreleases/monetary20200409a.htm.*

[12] *https://www.federalreserve.gov/newsevents/pressreleases/monetary20200409a.htm.*

[13] *https://www.federalreserve.gov/newsevents/pressreleases/monetary20200430a.htm.*

in the Schedule F instructions, unless otherwise indicated. This information is needed to determine the amount of protection provided by the put option positions associated with these facilities.

Other Revisions Related to the COVID–19 Pandemic

FR Y–14Q, Schedule D (Regulatory Capital)

In order to provide capital relief related to CECL to align with the purpose of the interim CECL final rule and CARES Act, the Board temporarily has revised Schedule D to allow firms to apply the CECL transition provisions to reported values.

Proposed Revisions to the FR Y–14A/Q/M

As noted, the Board would collect the temporary items described above through the December 31, 2020, as-of date, unless the Board determines an extension is necessary. In addition, the Board is proposing to make several revisions to FR Y–14A, Supplemental Collection of CECL Information, and capital schedules across the FR Y–14A and FR Y–14Q, effective for the December 31, 2020, as-of date.

Supplemental Collection of CECL Information

In order to accurately reflect the CECL transition provision as modified by the interim CECL final rule, as well as the CARES Act, the Board proposes to revise the instructions to the Supplemental Collection of CECL Information schedule of the FR Y–14A. Since this schedule was designed to capture data surrounding the CECL transition provision before the interim CECL final rule, several items on the schedule need to be revised.

First, the Board proposes to revise the schedule to only require it to be reported one time by firms, as opposed to being reported repeatedly over the course of the CECL transition horizon. This revision is necessary since the interim CECL final rule revised the day one impact to include the CECL, deferred tax asset (DTA), and adjusted allowance for credit losses (AACL) transitional amounts. As a result of this change, the Board no longer needs information over the course of the CECL transition horizon.

Second, under the CARES Act, firms can delay adopting CECL until December 31, 2020, or until the end of the national emergency, whichever comes sooner. Therefore, firms may not have adopted CECL on the timetable expected prior to the COVID–19 pandemic. Given that firms may CECL adopt at different times throughout the year, the following items would be revised to require firms to report expected values if the firm adopts in the first quarter of a given year (*i.e.,* before the data are due in early April), and actual values if the firm adopted CECL in the second through the fourth quarters of a given year. The instructions would clarify that firms that adopt CECL in the second through fourth quarters of a given year would submit actual data in the reporting year (*e.g.,* if a firm adopts CECL in September of 2020, then it would report actual data for the December 31, 2020, FR Y–14A submission). This revision would apply to the following items:

- Item 3, ''Adoption of Current Expected Credit Loss Methodology—ASC Topic 326'';
- Item 4, ''Allowances for credit losses recognized upon the acquisition of purchased credit-deteriorated assets'';
- Item 5, ''Effect of adoption of current expected credit losses methodology on allowances for credit losses on loans and leases held for investment and held-to-maturity debt securities'';
- Item 6, ''Total allowance for credit losses'';
- Item 6a, ''Allowance for credit losses on loans and leases held for investment'';
- Item 6b, ''Allowance for credit losses on held-to-maturity securities''; and
- Item 6c, ''Allowance for credit losses on available-for-sale securities''.

Capital

Due to various questions received from the industry regarding reporting of several capital items, the Board proposes changes to these items.

On December 23, 2019, the Board finalized revisions to the FR Y–14A/Q/M reports.[14] As part of those revisions, the Board provided guidance on how firms should reflect the impact of the ''global market shock'' on items subject to adjustment or deduction from capital. However, the Board omitted FR Y–14A, Schedule A.1.d (Capital), item 68, ''Permitted offsetting short positions in relation to the specific gross holdings included above'' from this guidance. The Board is now proposing to allow firms to reflect the impact of the ''global market shock'' for this item.

FR Y–14A, Schedule A.1.d, already captures data for aggregate non-significant investments in the capital of unconsolidated financial entities, including the form of common stock, additional tier 1 capital, and additional tier 2 capital in item 64 (''Aggregate non-significant investments in the capital of unconsolidated financial institutions, including in the form of common stock, additional tier 1, and tier 2 capital''). However, in order to properly derive item 66 (''Amount of non-significant investments that exceed the 10 percent deduction threshold for non-significant investments''), the Board has determined that it needs to isolate the amount of aggregate non-significant investments in the capital of unconsolidated financial institutions in the form of common stock. Therefore, the Board proposes to renumber existing item 64 to item 64a, and add item 64b, ''Aggregate non-significant investments in the capital of unconsolidated financial institutions in the form of common stock.'' As a result, the Board also proposes to revise the derivation of item 66 to reference items 64a and 64b.

Finally, to ensure consistent reporting across firms, the Board proposes to revise the instructions for FR Y–14A, Schedule A.1.d, item 113 (''Valuation allowances related to DTAs arising from temporary differences'') and FR Y–14Q, Schedule D (Regulatory Capital), item 16 (''Valuation allowances related to DTAs arising from temporary differences'') to clarify that these items should be reported as positive values.

The Board proposes to extend the FR Y–14A/Q/M for three years, with the revisions discussed above, in order to permit continued accurate reporting.

Legal authorization and confidentiality: The Board has the authority to require BHCs to file the FR Y–14A/Q/M reports pursuant to section 5(c) of the Bank Holding Company Act (''BHC Act''), (12 U.S.C. 1844(c)), and pursuant to section 165(i) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (12 U.S.C. 5365(i)) as amended by section 401(a) and (e) of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA).[15] The Board has authority to require SLHCs to file the FR Y–14A/Q/M reports pursuant to section 10(b) of the Home Owners' Loan Act (12 U.S.C. 1467a(b)), as amended by section 369(8) and 604(h)(2) of the Dodd-Frank Act. Lastly, the Board has authority to require U.S. IHCs of FBOs to file the FR Y–14A/Q/M reports pursuant to section 5 of the BHC Act, as well as pursuant to sections 102(a)(1) and 165 of the Dodd-Frank Act (12 U.S.C. 5311(a)(1) and 5365).[16] In

[14] *See* 84 FR 70529 (December 23, 2019).

[15] Public Law 115–174, Title IV 401(a) and (e), 132 Stat. 1296, 1356–59 (2018).

[16] Section 165(b)(2) of the Dodd-Frank Act (12 U.S.C. 5365(b)(2)) refers to ''foreign-based bank

addition, section 401(g) of EGRRCPA (12 U.S.C. 5365 note) provides that the Board has the authority to establish enhanced prudential standards for foreign banking organizations with total consolidated assets of $100 billion or more, and clarifies that nothing in section 401 ''shall be construed to affect the legal effect of the final rule of the Board... entitled 'Enhanced Prudential Standard for [BHCs] and Foreign Banking Organizations' (79 FR 17240 (March 27, 2014)), as applied to foreign banking organizations with total consolidated assets equal to or greater than $100 million.'' [17] The FR Y–14A/Q/M reports are mandatory. The information collected in the FR Y–14A/Q/M reports is collected as part of the Board's supervisory process, and therefore, such information is afforded confidential treatment pursuant to exemption 8 of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(8)). In addition, confidential commercial or financial information, which a submitter actually and customarily treats as private, and which has been provided pursuant to an express assurance of confidentiality by the Board, is considered exempt from disclosure under exemption 4 of the FOIA (5 U.S.C. 552(b)(4)).[18]

Consultation outside the agency: There has been no consultation outside the agency.

Board of Governors of the Federal Reserve System, July 1, 2020.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2020–14613 Filed 7–7–20; 8:45 am]

BILLING CODE 6210–01–P

holding company.'' Section 102(a)(1) of the Dodd-Frank Act (12 U.S.C. 5311(a)(1)) defines ''bank holding company'' for purposes of Title I of the Dodd-Frank Act to include foreign banking organizations that are treated as bank holding companies under section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)). The Board has required, pursuant to section 165(b)(1)(B)(iv) of the Dodd-Frank Act (12 U.S.C. 5365(b)(1)(B)(iv)) certain foreign banking organizations subject to section 165 of the Dodd-Frank Act to form U.S. intermediate holding companies. Accordingly, the parent foreign-based organization of a U.S. IHC is treated as a BHC for purposes of the BHC Act and section 165 of the Dodd-Frank Act. Because Section 5(c) of the BHC Act authorizes the Board to require reports from subsidiaries of BHCs, section 5(c) provides additional authority to require U.S. IHCs to report the information contained in the FR Y–14A/Q/M reports.

[17] The Board's Final Rule referenced in section 401(g) of EGRRCPA specifically stated that the Board would require IHCs to file the FR Y–14A/Q/M reports. *See* 79 FR 17240, 17304 (March 27, 2014).

[18] Please note that the Board publishes a summary of the results of the Board's CCAR testing pursuant to 12 CFR 225.8(f)(2)(v), and publishes a summary of the results of the Board's DFAST stress testing pursuant to 12 CFR 252.46(b) and 12 CFR 238.134, which includes aggregate data. In addition, under the Board's regulations, covered companies must also publicly disclose a summary of the results of the Board's DFAST stress testing. *See* 12 CFR 252.58; 12 CFR 238.146. The public disclosure requirement contained in 12 CFR 252.58 for covered BHCs and covered IHCs is separately accounted for by the Board in the Paperwork Reduction Act clearance for FR YY (OMB No. 7100–0350) and the public disclosure requirement for covered SLHCs is separately accounted for in by the Board in the Paperwork Reduction Act clearance for FR LL (OMB No. 7100–NEW).

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of 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(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

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 August 6, 2020.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23219. Comments can also be sent electronically to *Comments.applications@rich.frb.org:*

1. *Pinnacle Bankshares Corporation, AltaVista, Virginia;* to acquire voting shares of Virginia Bank Bankshares, Inc., Danville, Virginia, and thereby indirectly acquire Virginia Bank and Trust Company, Danville, Virginia.

B. Federal Reserve Bank of Minneapolis (Chris P. Wangen, Assistant Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Security Financial Services Corporation, Durand, Wisconsin; to acquire Jackson County Bank, Black River Falls, Wisconsin.

Board of Governors of the Federal Reserve System, July 2, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–14704 Filed 7–7–20; 8:45 am]

BILLING CODE 6210–01–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 public portions of 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(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* 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 July 22, 2020.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Christopher S. Grant, as Trust Director of The Martin Grandchildren's Trust, the William C. Martin GRAT Remainder Trust f/b/o William S. Martin, and the William C. Martin GRAT Remainder Trust f/b/o Michael C. Martin, all of Ann Arbor, Michigan;* to join the Martin Family Control Group and to acquire voting shares of Arbor

Bancorp, Inc., and thereby indirectly acquire voting shares of Bank of Ann Arbor, both of Ann Arbor, Michigan.

Board of Governors of the Federal Reserve System, July 1, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–14622 Filed 7–7–20; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[Notice–PBS–2020–06; Docket No. 2020–0002; Sequence No. 23]

Notice of Availability and Announcement of Meeting for the Chet Holifield Federal Building Draft Environmental Impact Statement, Laguna Niguel, California

AGENCY: Public Buildings Service (PBS), General Services Administration (GSA).

ACTION: Notice of Availability; Announcement of Meeting.

SUMMARY: This notice announces the availability of the Draft Environmental Impact Statement (DEIS), which examines the potential impacts of a proposal by the General Services Administration (GSA) to address long-term housing for the tenants of the Chet Holifield Federal Building (CHFB). The building is owned and managed by GSA and is occupied by various federal agency tenants, with the United States Citizenship and Immigration Services (USCIS) serving as the largest tenant. The DEIS describes the reason the project is being proposed, the alternatives being considered, the potential impacts of each of the alternatives on the existing environment, and avoidance, minimization, and/or mitigation measures related to those alternatives. GSA is serving as the lead agency in this undertaking, and acting on behalf of its tenants at this facility.

DATES: GSA will hold a virtual public meeting for the DEIS on Tuesday, August 4, 2020 from 4:00 p.m. to 6:00 p.m., Pacific Time (PT). Interested parties are encouraged to join and provide comments on the DEIS. The public comment period for the DEIS ends Friday, September 4, 2020. After this date, GSA will prepare the Final EIS.

ADDRESSES: Comments will be accepted during the meeting, by mail, and by email. Questions or comments concerning the DEIS should be directed to:

- *Email: osmahn.kadri@gsa.gov.*
- *Postal Mail/Commercial Delivery:* Potomac-Hudson Engineering, Inc., ATTN: CHFB Draft EIS, 77 Upper Rock Circle Suite 302, Rockville, MD 20850.

All comments received written or oral will become public and part of the Administrative Record.

Further information, including an electronic copy of the DEIS, may be found online on the following website: *https://www.gsa.gov/ChetHNEPA.*

FOR FURTHER INFORMATION CONTACT: Osmahn A. Kadri, Regional Environmental Quality Advisor/NEPA Project Manager, GSA, at 415–522–3617. Please also call this number if special assistance is needed to attend and participate in the public meeting.

SUPPLEMENTARY INFORMATION: The CHFB is located on a 92-acre site in Laguna Niguel, California, between Los Angeles and San Diego, and approximately 4 miles from the Pacific Ocean coastline. Construction of the building was completed in 1971 by the Aerospace and Systems Group of North American Rockwell Corporation, although it was never occupied by them. The building and site were transferred to the Federal Government in March of 1974. Since that time the CHFB has been utilized as office space for government agencies. The USCIS is currently the largest tenant in the CHFB, with 12 other agencies also currently located the building. There are currently approximately 3,000 employees working in the building.

The purpose of the Proposed Action is to accommodate the long-term office space requirements for the current tenants located at the CHFB that would meet applicable building code, accessibility, and security standards. The purpose is also to make such accommodations primarily within the Orange County, California market in a cost-effective manner that would minimize personnel relocations and disruptions to the federal tenants and their agency missions.

The project is needed because the current working space does not meet GSA's current federal building, accessibility, and security standards. There have been no modifications to the CHFB since the 1980s, other than some energy-related modifications. Most of the building's infrastructure is beyond its useful life and deficiencies have been documented in all major mechanical and electrical systems, including life-safety, fire protection, and fire sprinkler systems. Additionally, numerous issues exist, including the presence of asbestos containing materials and the need to improve the building's response to future seismic events.

The DEIS considers two ''action'' alternatives and one ''no action'' alternative. One action alternative consists of relocation of current tenants into lease space primarily throughout the Orange County, California market. Some tenants may be relocated outside of Orange County. The existing CHFB and surrounding government property would be reported as excess and turned over to the GSA Real Property Utilization Disposal Division for disposal.

The other action alternative consists of construction of a new federal office building directly south of the CHFB on a 27.15-acre portion of the existing 92-acre site for the USCIS, and relocating all other tenants into lease space primarily within the Orange County market. The existing building and the remainder of the property not retained for construction of the new federal office building (approximately 64.85 acres) would be turned over to the GSA Real Property Utilization Disposal Division for disposal.

Future development of the site is not part of GSA's Proposed Action, nor would it be within the control of GSA. If the property remains in federal ownership following disposal out of GSA ownership, the appropriate level of NEPA analysis would be required by a future federal proponent. If the property is transferred out of federal ownership, the City of Laguna Niguel would require the new owner to complete the appropriate level of documentation under the California Environmental Quality Act (CEQA), and all necessary land use approvals would be issued for any proposed future use of the site. Development of the site and compliance with all federal, state, and local laws and regulations would be the responsibility of the future landowner, not GSA.

The ''no action'' alternative assumes that tenants would remain within the existing CHFB and no new construction or relocation would occur. Minor repairs would occur as needed and maintenance and operation of the existing facilities would continue.

Public Comments: GSA will host a virtual public meeting during the public comment period as listed under **DATES** to solicit public comment. The purpose of the meeting is to collect public comments on the DEIS. The virtual public meeting will begin with presentations on the National Environmental Policy Act (NEPA) process and the proposed project. A copy of the presentation slideshow will be made available prior to the meeting at *https://www.gsa.gov/ChetHNEPA.*

Following the presentations, there will be a moderated session during which members of the public can provide oral comments on the DEIS. Commenters will be allowed three minutes to provide comments. Comments will be recorded. Refer to the end of this notice for instructions on how to access the online public meeting.

Virtual Public Meeting Information: Members of the public may join the DEIS public meeting by entering the following information—Meeting ID: 986 1911 2163; Password: CHFBEIS, using any of the below methods. Note that the meeting is best viewed through the Zoom app, and attendees are encouraged to download the app at the Zoom website (*https://zoom.us*) or on their mobile device, and test their connection prior to the meeting to ensure best results.

- From their personal computer by launching the Zoom app (if already installed), and clicking 'Join a Meeting' and entering the above Meeting ID and Password. Attendees should follow the prompts to input their name and email address to access the meeting.
- From their personal computer, by going to the Zoom website at *http://zoom.us/join,* entering the Meeting ID and Password, and following the prompts to download and install the Zoom app.
- From their mobile device through the Zoom mobile app, by entering the above Meeting ID and Password.
- For attendees who do not have the Zoom app or do not wish to download the app, visit *http://zoom.us/join* using your computer's browser, enter the Meeting ID, and click the 'Join from your browser' link that is displayed on the landing page. Then, follow the prompts to enter your name and the meeting Password.

Whether joining through the Zoom app or web browser, attendees should follow the prompts to connect their computer audio. Attendees are encouraged to connect through the 'Computer Audio' tab and click 'Join Audio by Computer' under the 'Join Audio' button on the bottom of their screen. Users who do not have a computer microphone and wish to provide public comment during the meeting may connect by following the prompts under the 'Phone Call' tab under the 'Join Audio' button.

For members of the public who do not have access to a personal computer, they may join the meeting audio by dialing the following number: 669–900–9128. When prompted, enter the following information: Meeting ID—986 1911 2163, followed by the pound (#) key; press pound (#) again when prompted for a participant ID; then enter Password—629071 followed by the pound (#) key. Note, dialing in to the meeting is only necessary if you are not accessing the meeting through your computer or mobile app, or if you would like to provide oral comments during the meeting but do not have a computer microphone. The public meeting will be recorded, and all comments provided will become part of the formal record.

Jared Bradley,

Director, Portfolio Management Division, Pacific Rim Region, Public Buildings Service.

[FR Doc. 2020–14710 Filed 7–7–20; 8:45 am]

BILLING CODE 6820–YF–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–R–153]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by September 8, 2020.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–R–153 Medicaid Drug Use Review (DUR) Program

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before

submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicaid Drug Use Review (DUR) Program; *Use:* States must provide for a review of drug therapy before each prescription is filled or delivered to a Medicaid patient. This review includes screening for potential drug therapy problems due to therapeutic duplication, drug-disease contraindications, drug-drug interactions, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse/misuse. Pharmacists must make a reasonable effort to obtain, record, and maintain Medicaid patient profiles. These profiles must reflect at least the patient's name, address, telephone number, date of birth/age, gender, history, *e.g.,* allergies, drug reactions, list of medications, and pharmacist's comments relevant to the individual's drug therapy.

The States must conduct RetroDUR which provides for the ongoing periodic examination of claims data and other records in order to identify patterns of fraud, abuse, inappropriate or medically unnecessary care. Patterns or trends of drug therapy problems are identified and reviewed to determine the need for intervention activity with pharmacists and/or physicians. States may conduct interventions via telephone, correspondence, or face-to-face contact.

Annual reports are submitted to CMS for the purposes of monitoring compliance and evaluating the progress of States' DUR programs. The information submitted by States is reviewed and results are compiled by CMS in a format intended to provide information, comparisons, and trends related to States' experiences with DUR. States benefit from the information and may enhance their programs each year based on State reported innovative practices that are compiled by CMS from the DUR annual reports. *Form Number:* CMS–R–153 (OMB control number: 0938–0659); *Frequency:* Yearly, quarterly, and occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 51; *Total Annual Responses:* 663; *Total Annual Hours:* 41,004. (For policy questions regarding this collection contact Mike Forman at 410–786–2666.)

Dated: July 2, 2020.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2020–14714 Filed 7–7–20; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10116]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by September 8, 2020.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number_, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10116 Medicare Program: Conditions for Payment of Power Mobility Devices, including Power Wheelchairs and Power-Operated Vehicles

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare

Program: Conditions for Payment of Power Mobility Devices, including Power Wheelchairs and Power-Operated Vehicles; *Use:* We are renewing our request for approval for the collection requirements associated with the final rule, CMS–3017–F (71 FR 17021), which published on April 5, 2006, and required a face-to-face examination of the beneficiary by the physician or treating practitioner, a written prescription, and receipt of pertinent parts of the medical record by the supplier within 45 days after the face-to-face examination that the durable medical equipment (DME) suppliers maintain in their records and make available to CMS and its agents upon request. *Form Number:* CMS–10116 (OMB control number: 0938–0971); *Frequency:* Yearly; *Affected Public:* Business or other for-profits; *Number of Respondents:* 55,700; *Number of Responses:* 55,700; *Total Annual Hours:* 11,140. (For policy questions regarding this collection contact Rachel Katonak at 410–786–2118).

Dated: July 2, 2020.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2020–14701 Filed 7–7–20; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Family Violence Prevention and Services Program (OMB #0970–0280)

AGENCY: Family and Youth Services Bureau, Administration on Children, Youth and Families, Administration for Children and Families (ACF), HHS.

ACTION: Request for public comment.

SUMMARY: The Administration on Children, Youth and Families, Family and Youth Services Bureau plans to extend data collection for the Family Violence Prevention and Services Program (OMB #0970–0280; Expiration Date: March 31, 2021). No changes are proposed to the existing information collection.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation (OPRE), 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION: *Description:* The Family Violence Prevention and Services Act (FVPSA) Program has a legislative requirement for grantees to report on activities carried out throughout their grant period and provide an evaluation on the effectiveness of the activities in achieving the purposes of the grant. Grantees must collect unduplicated data and only share non-personally identifying information, in the aggregate, regarding services to their clients in order to comply with federal, state, or tribal reporting, evaluation, or data collection requirements, 42 U.S.C. 10406(c)(5)(D). Client-level data shall not be shared with a third party, regardless of encryption, hashing, or other data security measures, without a written, time-limited release as described in 42 U.S.C. 10406(c)(5).

Respondents: FVPSA-funded grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
State FVPSA Grant Performance Progress Report	52	1	10	520
Tribal FVPSA Grant Performance Progress Report	150	1	10	1,500
State Domestic Violence Coalition Performance Progress Report	56	1	10	560

Estimated Total Annual Burden Hours: 2,580.

Authority: The Family Violence Prevention and Services Act, 42 U.S.C. 10401.

John M. Sweet, Jr.,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–14673 Filed 7–7–20; 8:45 am]

BILLING CODE 4184–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Refugee Data Submission System for Formula Funds Allocations (ORR–5) (OMB #0970–0043)

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing to extend approval for data collection using the current Refugee Data Submission System for Formula Funds Allocations (ORR–5) until January 31, 2021, and revise the current form for use after Fiscal Year (FY) 2020. The revised form will collect additional client-level data.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research,

and Evaluation (OPRE), 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: ORR–5 is designed to satisfy the statutory requirements of the Immigration and Nationality Act (INA). Section 412(a)(3) of INA (8 U.S.C. 1522(a)(3)) requires that the Director of ORR make a periodic assessment of the needs of refugees for assistance and services and the resources available to meet those needs. ORR proposes an extension with no changes to the current form until January 31, 2021, to ensure continuous information collection for FY 2020. ORR also proposes revisions to the current form for use after FY 2020. Revisions include collecting additional client-level data elements on the ORR–5 at multiple points in time, which will allow the ORR Director to better understand client goals, services utilized, and the outcomes achieved by the population ORR serves. New data elements include additional demographics, primary goals identified and referrals made to work toward self-sufficiency, progress made toward achieving said goals, and employment status of employable refugees 12 months post-enrollment. The data collected will inform evidence-based policy making and program design. These revisions also enable ORR to monitor implementation of the requirements put forth in Policy Letter 19–07.

Respondents: States, Replacement Designees, and the District of Columbia.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Refugee Data Submission for Formula Funds Allocations (ORR–5)—Current (through January 31, 2021)	50	1	22	1,100	* 367
Refugee Data Submission for Formula Funds Allocations (ORR–5)—Revised	50	3	42	6,300	2,100

* Burden is annualized over the full 3-year request period, but this form will be complete within the 1st year.

Estimated Total Annual Burden Hours: 2,467.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 8 U.S.C. 1522(a)(3).

John M. Sweet Jr,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–14674 Filed 7–7–20; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Reallotment of FY 2020 Funds

AGENCY: Administration on Disabilities (AoD), Administration for Community Living (ACL), U.S. Department of Health and Human Services (HHS).

ACTION: Notice of reallotment of FY 2020 funds.

SUMMARY: AOD intends to reallot funds under the authority of Section 122(e) and Section 142(a)(1) of the Development Disabilities Assistance and Bill of Rights Act of 2000 (Pub. L. 106–402). AOD will be reallotting FY 2020 funds awarded to the State Council on Developmental Disabilities (SCDD) located within the Commonwealth of Puerto Rico. This determination is based on the limited reported expenditures and requests for reimbursement over the last several years from the SCDD in the Commonwealth of Puerto Rico. The Puerto Rico SCDD will have up to $1.8 million rescinded and proportionately redistributed to the remaining SCDDs. SCDDs that receive FY 2020 realloted funds will have through the end of FY 2020 to obligate the funds and until the end of FY 2022 to liquidate the funds. Realloted funds for the SCDDs must be used according to the terms as outlined in the FY 2020 Notice of Award for each program.

DATES: Funds will be realloted after August 14, 2020 and before September 30, 2020.

FOR FURTHER INFORMATION CONTACT: Allison Cruz, Office of Intellectual and Developmental Disabilities, Administration on Disabilities, Administration for Community Living, 330 C St. SW, Washington, DC 20201. Telephone (202) 795–7408. Email *allison.cruz@acl.hhs.gov.* Please note the telephone number is not toll free. This document will be made available in alternative formats upon request. Written correspondence can be sent to Administration for Community Living, U.S. Department of Health and Human Services, 330 C St. SW, Washington, DC 20201.

SUPPLEMENTARY INFORMATION: The Development Disabilities Assistance and Bill of Rights Act of 2000 (Pub. L. 106–402) states: ''If the Secretary determines that an amount of an allotment to a State for a period (of a fiscal year or longer) will not be required by the State during the period for the purpose for which the allotment was made, the Secretary may reallot the amount.''

Dated: June 26, 2020.

Julie E. Hocker,

Commissioner, Administration on Disabilities.

[FR Doc. 2020–14616 Filed 7–7–20; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–2256]

Request for Nominations for Individuals and Consumer Organizations for Advisory Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting that any consumer organizations interested in participating in the selection of voting and/or nonvoting consumer representatives to serve on its advisory committees or panels notify FDA in writing. FDA is also requesting nominations for voting and/or nonvoting consumer representatives to serve on advisory committees and/or panels for which vacancies currently exist or are expected to occur in the near future. Nominees recommended to serve as a voting or nonvoting consumer representative may be self-nominated or may be nominated by a consumer organization.

DATES: Any consumer organization interested in participating in the selection of an appropriate voting or nonvoting member to represent consumer interests on an FDA advisory committee or panel may send a letter or email stating that interest to FDA (see **ADDRESSES**) by August 7, 2020, for vacancies listed in this notice. Concurrently, nomination materials for prospective candidates should be sent to FDA (see **ADDRESSES**) by August 7, 2020. Nominations will be accepted for current vacancies and for those that will or may occur through December 31, 2020.

ADDRESSES: All statements of interest from consumer organizations interested in participating in the selection process should be submitted electronically to *ACOMSSubmissions@fda.hhs.gov* or by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002.

Consumer representative nominations should be submitted electronically by logging into the FDA Advisory Committee Membership Nomination Portal: *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm* or by mail to Advisory Committee Oversight and Management Staff, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002. Additional information about becoming a member of an FDA advisory committee can also be obtained by visiting FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: *For questions relating to participation in the selection process:* Kimberly Hamilton, Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002, 301–796–8220, *kimberly.hamilton@fda.hhs.gov.*

For questions relating to specific advisory committees or panels, contact the appropriate Contact Person listed in table 1.

TABLE 1—ADVISORY COMMITTEE CONTACTS

Contact person	Committee/panel
Kathleen Hayes, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 6307C, Silver Spring, MD 20993–0002, 301–796–7864, *Kathleen.Hayses@fda.hhs.gov*.	Allergenic Products Advisory Committee.
LaTonya Bonner, Center for Drugs Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2428, Silver Spring, MD 20992–0002, 301–796–2855, *Latoya.Bonner@fda.hhs.gov*.	Dermatologic and Ophthalmic Drugs Advisory Committee.
Philip Bautista, Center for Drugs Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2430, Silver Spring, MD 20992–0002, 240–762–8729, *Philip.Bautista@fda.hhs.gov*.	Drug Safety and Risk Advisory Committee.
Kalyani Bhatt, Center for Drugs Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2438, Silver Spring, MD 20993–0002, 301–796–9005, *Kalyani.Bhatt@fda.hhs.gov*.	Psychopharmacologic Drugs Advisory Committee.
Patricio Garcia, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5216, Silver Spring, MD 20993–0002, 301–796–6875, *Patricio.Garcia@fda.hhs.gov*.	Clinical Chemistry and Clinical Toxicology Devices Panel, Gastroenterology and Urology Devices Panel, Obstetrics and Gynecology Devices Panel.
James Swink, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5211 Silver Spring, MD 20993–0002, 301–796–7047, *James.Swink@fda.hhs.gov*.	Circulatory Systems Devices Panel, Dental Products Devices Panel, National Mammography Advisory Committee, Radiological Devices Panel.
Aden Asefa, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5214, Silver Spring, MD 20993–0002, 301–796–0400, *Aden.Asefa@fda.hhs.gov*.	Immunology Devices Panel; Microbiology Devices Panel.

SUPPLEMENTARY INFORMATION: FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore, encourages nominations of appropriately qualified candidates from these groups.

FDA is requesting nominations for voting and/or nonvoting consumer representatives for the vacancies listed in table 2:

TABLE 2—COMMITTEE DESCRIPTIONS, TYPE OF CONSUMER REPRESENTATIVE VACANCY, AND APPROXIMATE DATE NEEDED

Committee/panel/areas of expertise needed	Type of vacancy	Approximate date needed
Allergenics Advisory Committee—Knowledgeable in the fields of allergy, immunology, pediatrics, internal medicine, biochemistry, and related specialties.	1—Voting	August 2020.
Dermatologic and Ophthalmic Advisory Committee—Knowledgeable in the fields of dermatology, ophthalmology, internal medicine, pathology, immunology, epidemiology or statistics, and other related professions.	1—Voting	Immediately.

TABLE 2—COMMITTEE DESCRIPTIONS, TYPE OF CONSUMER REPRESENTATIVE VACANCY, AND APPROXIMATE DATE NEEDED—Continued

Committee/panel/areas of expertise needed	Type of vacancy	Approximate date needed
Drug Safety and Risk Management Advisory Committee—Knowledgeable in risk communication, risk management, drug safety, medical, behavioral, and biological sciences as they apply to risk management, and drug abuse.	1—Voting	Immediately.
Psychopharmacologic Drugs Advisory Committee—Knowledgeable in the fields of psychopharmacology, psychiatry, epidemiology or statistics, and related specialties.	1—Voting	Immediately.
Clinical Chemistry and Clinical Toxicology Devices Panel—Doctor of Medicine or philosophy with experience in clinical chemistry (e.g., cardiac markers), clinical toxicology, clinical pathology, clinical laboratory medicine, and endocrinology.	1—Non-Voting	Immediately.
Gastroenterology and Urology Devices Panel—Gastroenterologists, urologists and nephrologists.	1—Non-Voting	Immediately.
Obstetrics and Gynecology Devices Panel—Experts in perinatology, embryology, reproductive endocrinology, pediatric gynecology, gynecological oncology, operative hysteroscopy, pelviscopy, electro-surgery, laser surgery, assisted reproductive technologies, contraception, postoperative adhesions, and cervical cancer and colposcopy; biostatisticians and engineers with experience in obstetrics/gynecology devices; urogynecologists; experts in breast care; experts in gynecology in the older patient; experts in diagnostic (optical) spectroscopy; experts in midwifery; labor and delivery nursing.	1—Non-Voting	Immediately.
Dental Products Device Panel—Dentists, engineers and scientists who have expertise in the areas of dental implants, dental materials, periodontology, tissue engineering, and dental anatomy.	1—Non-Voting	Immediately.
National Mammography Advisory Committee—Physician, practitioner, or other health professional whose clinical practice, research specialization, or professional expertise includes a significant focus on mammography.	1—Non-Voting	Immediately.
Circulatory Systems Devices Panel—Interventional cardiologists, electrophysiologists, invasive (vascular) radiologists, vascular and cardiothoracic surgeons, and cardiologists with special interest in congestive heart failure.	1—Non-Voting	Immediately.
Immunology Devices Panel—Persons with experience in medical, surgical, or clinical oncology, internal medicine, clinical immunology, allergy, molecular diagnostics, or clinical laboratory medicine.	1—Non-Voting	Immediately.
Microbiology Devices Panel—Clinicians with an expertise in infectious disease, e.g., pulmonary disease specialists, sexually transmitted disease specialists, pediatric infectious disease specialists, experts in tropical medicine and emerging infectious diseases, mycologists; clinical microbiologists and virologists; clinical virology and microbiology laboratory directors, with expertise in clinical diagnosis and in vitro diagnostic assays, e.g., hepatologists; molecular biologists	1—Non-Voting	Immediately.
Radiology Devices Panel—Physicians with experience in general radiology, mammography, ultrasound, magnetic resonance, computed tomography, other radiological subspecialties and radiation oncology; scientists with experience in diagnostic devices, radiation physics, statistical analysis, digital imaging and image analysis.	1—Non-Voting	Immediately.

I. Functions and General Description of the Committee Duties

A. Allergenics Advisory Committee

Reviews and evaluates available data concerning the safety, effectiveness, and adequacy of labeling of marketed and investigational allergenic biological products or materials that are administered to humans for the diagnosis, prevention, or treatment of allergies and allergic disease as well as the affirmation or revocation of biological product licenses, on the safety, effectiveness, and labeling of the products, on clinical and laboratory studies of such products, on amendments or revisions to regulations governing the manufacture, testing and licensing of allergenic biological products, and on the quality and relevance of FDA's research programs.

B. Dermatologic and Ophthalmic Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of dermatologic and ophthalmic disorders.

C. Drug Safety and Risk Management Advisory Committee

Risk management, risk communication, and quantitative evaluation of spontaneous reports for drugs for human use and for any other product for which FDA has regulatory responsibility. Scientific and medical evaluation of all information gathered by the Department of Health and Human Services (HHS) and the Department of Justice with regard to safety, efficacy, and abuse potential of drugs or other substances, and recommends actions to be taken by HHS with regard to the marketing, investigation, and control of such drugs or other substances.

D. Psychopharmacologic Drugs Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human products for use in the practice of psychiatry and related fields.

E. Certain Panels of the Medical Devices Advisory Committee

Reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, advises on the classification or reclassification of devices into one of three regulatory categories; advises on any possible risks to health associated with the use of devices; advises on formulation of product development protocols; reviews premarket approval applications for medical devices; reviews guidelines and guidance documents; recommends exemption of certain devices from the application of portions of the Federal Food, Drug, and Cosmetic Act; advises on the necessity to ban a device; and responds to requests from the Agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices. With the exception of the Medical Devices Dispute Resolution Panel, each panel,

according to its specialty area, may also make appropriate recommendations to the Commissioner of Food and Drugs on issues relating to the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

The Dental Products Panel also functions at times as a dental drug panel. The functions of the dental drug panel are to evaluate and recommend whether various prescription drug products should be changed to over-the-counter status and to evaluate data and make recommendations concerning the approval of new dental drug products for human use.

The Medical Devices Dispute Resolution Panel provides advice to the Commissioner on complex or contested scientific issues between FDA and medical device sponsors, applicants, or manufacturers relating to specific products, marketing applications, regulatory decisions and actions by FDA, and Agency guidance and policies. The Panel makes recommendations on issues that are lacking resolution, are highly complex in nature, or result from challenges to regular advisory panel proceedings or Agency decisions or actions.

II. Criteria for Members

Persons nominated for membership as consumer representatives on committees or panels should meet the following criteria: (1) Demonstrate an affiliation with and/or active participation in consumer or community-based organizations, (2) be able to analyze technical data, (3) understand research design, (4) discuss benefits and risks, and (5) evaluate the safety and efficacy of products under review. The consumer representative should be able to represent the consumer perspective on issues and actions before the advisory committee; serve as a liaison between the committee and interested consumers, associations, coalitions, and consumer organizations; and facilitate dialogue with the advisory committees on scientific issues that affect consumers.

III. Selection Procedures

Selection of members representing consumer interests is conducted through procedures that include the use of organizations representing the public interest and public advocacy groups. These organizations recommend nominees for the Agency's selection. Representatives from the consumer health branches of Federal, State, and local governments also may participate in the selection process. Any consumer organization interested in participating in the selection of an appropriate voting or nonvoting member to represent consumer interests should send a letter stating that interest to FDA (see **ADDRESSES**) within 30 days of publication of this document.

Within the subsequent 30 days, FDA will compile a list of consumer organizations that will participate in the selection process and will forward to each such organization a ballot listing at least two qualified nominees selected by the Agency based on the nominations received, together with each nominee's current curriculum vitae or résumé. Ballots are to be filled out and returned to FDA within 30 days. The nominee receiving the highest number of votes ordinarily will be selected to serve as the member representing consumer interests for that particular advisory committee or panel.

IV. Nomination Procedures

Any interested person or organization may nominate one or more qualified persons to represent consumer interests on the Agency's advisory committees or panels. Self-nominations are also accepted. Nominations must include a current, complete résumé or curriculum vitae for each nominee and a signed copy of the ''Acknowledgement and Consent'' form available at the FDA Advisory Committee Nomination Portal (see **ADDRESSES**), and a list of consumer or community-based organizations for which the candidate can demonstrate active participation.

Nominations must also specify the advisory committee(s) or panel(s) for which the nominee is recommended. In addition, nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will ask potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflicts of interest. Members will be invited to serve for terms up to 4 years.

FDA will review all nominations received within the specified timeframes and prepare a ballot containing the names of qualified nominees. Names not selected will remain on a list of eligible nominees and be reviewed periodically by FDA to determine continued interest. Upon selecting qualified nominees for the ballot, FDA will provide those consumer organizations that are participating in the selection process with the opportunity to vote on the listed nominees. Only organizations vote in the selection process. Persons who nominate themselves to serve as voting or nonvoting consumer representatives will not participate in the selection process.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: July 2, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–14715 Filed 7–7–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1330]

Cardiovascular and Renal Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Cardiovascular and Renal Drugs Advisory Committee. This notice is being published less than 15 days prior to the date of the meeting. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document

DATES: The meeting will be held on July 15, 2020, from 8 a.m. to 5 p.m.

ADDRESSES: Please note that due to the impact of this COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2020–N–1330. The docket will close on July 14, 2020. Submit either electronic or written comments on this public meeting by July 14, 2020. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before July 14, 2020. The *https://www.regulations.gov* electronic filing system will accept

comments until 11:59 p.m. Eastern Time at the end of July 14, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Comments received on or before July 10, 2020, will be provided to the committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–N–1330 for ''Cardiovascular and Renal Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday. Please call 240–402–7500 ahead of the meeting time to verify access.

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

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT:

Joyce Yu, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, Fax: 301–847–8533, email: *CRDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. On July 15, 2020, the committee will discuss new drug application (NDA) 22231, terlipressin, lyophilized powder for solution for injection, submitted by Mallinckrodt Pharmaceuticals, for the proposed indication of treatment of hepatorenal syndrome Type 1.

FDA regrets that it was unable to publish this notice 15 days prior to the Cardiovascular and Renal Drugs Advisory Committee meeting due to technical issues. Because the Agency believes there is a need to bring these issues to public discussion and qualified members of the committee were available at this time and already scheduled to participate in the meeting, the Agency concluded that it was in the public interest to hold this meeting without the customary 15-day public notice.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference meeting room will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending

before the committee. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before July 10, 2020, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before July 8, 2020. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by July 9, 2020.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Joyce Yu (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 2, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–14719 Filed 7–7–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request, Information Collection Request Title: The Maternal, Infant, and Early Childhood Home Visiting Program Pay for Outcomes Supplemental Information Request, 0906–XXXX, NEW

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit a Supplemental Information Request (SIR), described below, to the Office of Management and Budget (OMB). Prior to submitting the SIR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the SIR.

DATES: Comments on this SIR should be received no later than September 8, 2020.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, 14N136B, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: *Information Collection Request Title:* The Maternal, Infant, and Early Childhood Home Visiting Program (MIECHV) Pay for Outcomes Supplemental Information Request, OMB No. 0906–XXXX, New.

Abstract: HRSA is requesting approval to collect information in response to a SIR, which will include eligible entities' plans for implementation and evaluation of Pay for Outcomes (PFO) initiatives to be applied for through the MIECHV Program. The Bipartisan Budget Act of 2018 (Pub. L. 115–123) added subsection (c)(3) to Section 511 of the Social Security Act, 42 U.S.C. 711. The new provision authorizes MIECHV Program funding recipients to use up to 25 percent of the funds awarded under subsection 511(c)(1) ''to enable eligible entities to deliver services under early childhood home visitation programs'' for ''outcomes or success payments related to a pay for outcomes initiative that will not result in a reduction of funding for services delivered by the entity under a childhood home visitation program under this section while the eligible entity develops or operates such an initiative.'' Subsection 511(j)(3)(B) further requires that ''funds made available to an eligible entity under this section for a fiscal year (or portion of a fiscal year) for a pay for outcomes initiative shall remain available for expenditure by the eligible entity for not more than 10 years after the funds are so made available.''

Eligible entities may propose to use MIECHV funds for outcomes or success payments related to a PFO initiative in response to the upcoming fiscal year 2021 MIECHV Notice of Funding Opportunity and in succeeding fiscal years pending availability of future funds, and will submit their plans (henceforth referred to as a PFO SIR Response) in response to the forthcoming SIR.

Need and Proposed Use of the Information: Congress, through enactment of the Social Security Act, Title V, Section 511 (42 U.S.C. 711), as amended, established the MIECHV Program. The MIECHV Program is designed to: (1) Strengthen and improve the programs and activities carried out under Title V of the Social Security Act; (2) improve coordination of services for at risk communities; and (3) identify and provide comprehensive services to improve outcomes for families who reside in at risk communities. The MIECHV Program, authorized by section 511 of the Social Security Act, 42 U.S.C. 711, and administered by HRSA, in partnership with the Administration for Children and Families, supports voluntary, evidence-based home visiting services during pregnancy and to parents with young children up to kindergarten entry. States, territories, tribal entities, and in certain circumstances, nonprofit organizations are eligible to receive funding through MIECHV and have the flexibility, within the parameters of the authorizing statute, to tailor the program to serve the specific needs of their communities.

Section 50603 of the Bipartisan Budget Act of 2018 (Pub. L. 115–123) amended section 511 of the Social Security Act, and provides new authority for MIECHV awardees to use up to 25 percent of MIECHV grant funds awarded under section 511(c) for outcomes or success payments related to

a PFO initiative. HRSA considers PFO initiatives to be an innovative approach to funding home visiting service delivery, which may result in social benefit, as well as cost savings or cost avoidance to the public sector.

In response to the forthcoming SIR, MIECHV awardees planning to use MIECHV grant funds for outcomes or success payments related to a PFO initiative will be required to submit a PFO SIR Response outlining how their plans will meet all of the applicable statutory requirements and identifying what specific MIECHV funds (*e.g.,* fiscal year 2021 formula funding) they propose to use to (1) develop and implement their PFO initiative; and (2) make PFO outcomes or success payments based on the planned PFO initiative.

Regarding a PFO initiative, the MIECHV authorizing statute requires the following:

(1) A PFO initiative may not result in a reduction of funding for services delivered by the entity under a childhood home visitation program under this section while the eligible entity develops or operates such an initiative (section 711(c)(3)); and

(2) The PFO initiative for which outcome or success payments may be made must include:

(a) A feasibility study that describes how the proposed intervention is based on evidence of effectiveness;

(b) A rigorous, third-party evaluation that uses experimental or quasi-experimental design or other research methodologies that allow for the strongest possible causal inferences to determine whether the initiative has met its proposed outcomes as a result of implementation;

(c) An annual, publicly available report on the progress of the initiative; and

(d) A requirement that payments are made to the recipient of the grant, contract, or cooperative agreement only when agreed upon outcomes are achieved, excluding payments made to a third party conducting the evaluation. *See* 42 U.S.C. 711(k)(4).

The forthcoming SIR will provide further instructions to awardees in proposing a PFO initiative and submitting the required information to HRSA. Awardees are not required to propose or implement a PFO initiative, but if they wish to do so, they must submit a PFO SIR Response describing how their PFO initiative will meet all of the applicable statutory requirements. HRSA will use the information collected through the PFO SIR Response to ensure that MIECHV awardees proposals to use grant funds for PFO initiatives meet statutory requirements and to provide technical assistance to awardees. The implementation of a PFO initiative is not intended to disrupt current services or negatively impact communities that have benefited from home visiting programs and must not result in a reduction of funding for home visiting services.

Likely Respondents: MIECHV Program awardees that are states, territories, and, where applicable, nonprofit organizations providing home visiting services within states.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions and supporting materials; to collect and analyze data and information to develop the PFO SIR Response; engage with stakeholders and coordinate with state level partners; and to draft and submit the PFO SIR Response. The table below summarizes the total annual burden hours estimated for this SIR.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Instrument	Number of respondents	Number of responses per respondent	Total responses	Average burden hours per response	Total burden hours
MIECHV PAY FOR OUTCOMES SIR	15	1	15	92	1,380
Total	15		15		1,380

HRSA specifically requests comments on (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.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2020–14658 Filed 7–7–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–0379]

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 August 7, 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-New-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: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (Online Customer Surveys).

Type of Collection: Father Generic ICR.

OMB No. 0990–0379—Office within OS—Specific program collecting the data (is applicable)

Abstract: This collection of information is necessary to enable the Agency to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving service delivery. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with the Agency's programs. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders.

Type of respondent; frequency (annual, quarterly, monthly, etc.); and the affected public (individuals, public or private businesses, state or local governments, etc.) (Individuals, public or private businesses, state or local governments, etc.)

ANNUALIZED BURDEN HOUR TABLE

Forms (if necessary)	Number of respondents	Number of responses per respondents	Average burden per response	Total burden hours
Website Customer Satisfaction Survey	3,000,000	1	10/60	500,000

Terry Clark,

Office of the Secretary, Asst. Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2020–14595 Filed 7–7–20; 8:45 am]

BILLING CODE 4150–25–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel PAR19–202: High impact, Interdisciplinary Science in NIDDK Research Areas (RC2 Clinical Trial Optional)—Kidney and Urological Diseases.

Date: September 1, 2020.

Time: 11:00 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Video Meeting).

Contact Person: Najma S. Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7349, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 2, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14708 Filed 7–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed 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: Center for Scientific Review Special Emphasis Panel Small Business: Microbial (non-HIV) Diagnostics and Detection of Infectious Agents, Food and Waterborne Pathogens, and Methods in Microbial Sterilization, Disinfection and Bioremediation.

Date: July 15, 2020.

Time: 12:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Gagan Pandya, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, RM 3200, MSC 7808, Bethesda, MD 20892, 301–435–1167, *pandyaga@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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 2, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14709 Filed 7–7–20; 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 a meeting of the Board of Scientific Counselors, NIAAA.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Alcohol Abuse and Alcoholism, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAAA.

Date: September 15–16, 2020.

Time: 8:15 a.m. to 4:30 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 5625 Fishers Lane, Rockville, MD 20852 (Virtual Meeting).

Contact Person: David M. Lovinger, Ph.D., Deputy Scientific Director, Office of the Scientific Director, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5625 Fishers Lane, Room TS–13A, Rockville, MD 20852, 301–443–2445, *lovindav@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: July 1, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14610 Filed 7–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Special Emphasis Panel: Cancer Immunopathology and Immunotherapy.

Date: July 23, 2020.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Zhang-Zhi Hu, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6186, MSC 7804, Bethesda, MD 20892, (301) 437–8135, *huzhuang@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR–19–345: NIDA Program Project Grant Applications.

Date: July 30, 2020.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Shiv A Prasad, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, *prasads@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Population Sciences and Epidemiology Special Emphasis Panel.

Date: August 4, 2020.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Andrew Louden, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3137, Bethesda, MD 20817, 301–435–1985, *loudenan@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Topics in Virology.

Date: August 4, 2020.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Marci Scidmore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 301–435–1149, *marci.scidmore@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 2, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14705 Filed 7–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Frederick National Laboratory Advisory Committee to the National Cancer Institute.

The meeting will be held as a virtual meeting and open to the public. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The meeting will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*).

Name of Committee: Frederick National Laboratory Advisory Committee to the National Cancer Institute.

Date: July 13, 2020.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: Ongoing, new, and COVID–19 activities at the Frederick National Laboratory for Cancer Research.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Rockville, MD 20850 (Virtual Meeting).

Contact Person: Caron A. Lyman, Ph.D., Executive Secretary, National Cancer

Institute, National Institutes of Health, 9609 Medical Center Drive, Room 7W126, Bethesda, MD 20892–9750, 240–276–6348, *lymanc@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to scheduling difficulties.

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: *http://deainfo.nci.nih.gov/advisory/fac/fac.htm,* where an agenda, instructions for access, and any additional information for the meeting will be posted when available.

(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: July 1, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14609 Filed 7–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; 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 Advancing Translational Sciences Special Emphasis Panel Clinical Trial Readiness for Rare Diseases R21 & R03.

Date: October 1–2, 2020.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1080, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Jing Chen, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1080, Bethesda, MD 20892–4874, *chenjing@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: July 2, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14707 Filed 7–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Alzheimer's Disease, Vascular Cognitive Impairment, Contribution of Vision to the Disorders.

Date: August 3, 2020.

Time: 9:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Samuel C Edwards, Ph.D., Chief, BDCN IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel RFA–OD–20–012: Informatics, Coordination and Service Center for the Mutant Mouse Resource and Research Centers (U42).

Date: August 5, 2020.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Allen Richon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7892, Bethesda, MD 20892, 301–379–9351, *allen.richon@nih.hhs.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 2, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14706 Filed 7–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; Career Development (Ks), Conference support (R13), and Research Education (R25) Review.

Date: July 24, 2020.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John P Holden, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707

Democracy Blvd., Suite 920, Bethesda, MD 20892, (301) 496–8775, *john.holden@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, HHS)

Dated: July 1, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14611 Filed 7–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cerebrovascular Disorders.

Date: July 31, 2020.

Time: 10:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Seetha Bhagavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 237–9838, *bhagavas@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Juvenile Protective Factors and Their Effects on Aging.

Date: July 31, 2020.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Inese Z. Beitins, M.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7892, Bethesda, MD 20892, (301) 435–1034, *beitinsi@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Vascular and Hematology Special Emphasis Panel.

Date: August 3, 2020.

Time: 2:00 p.m. to 5:45 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Larry Pinkus, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214 *pinkusl@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 1, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14608 Filed 7–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0316]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0008

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0008, Regattas and Marine Parades; without change.

Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before September 8, 2020.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2020–0316] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Consistent with the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, the Coast Guard is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and

related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2020–0316], and must be received by September 8, 2020.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Information Collection Request

Title: Regattas and Marine Parades.

OMB Control Number: 1625–0008.

Summary: 46 U.S.C. 70041 authorizes the Coast Guard to issue regulations to promote the safety of life on navigable waters during regattas or marine parades. Title 33 CFR 100.15 promulgates the rules for providing notice of, and additional information for permitting regattas and marine parades (marine events) to the Coast Guard.

Need: The Coast Guard needs to determine whether a marine event may present a substantial threat to the safety of human life on navigable waters and determine which measures are necessary to ensure the safety of life during the events. Sponsors must notify the Coast Guard of the efficient means for the Coast Guard to learn of the events and address environmental impacts.

Forms: CG–4423, Application for Marine Event.

Respondents: Sponsors of marine events.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden is 3,750 hours per year. The estimated burden hours is reduced from 5,271 to 3,750 due to the increase of respondents submitting applications online as well as increased accuracy in tracking Marine Event Permit activities in the Marine Information for Safety and Law Enforcement (MISLE) database.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: July 1, 2020.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2020–14657 Filed 7–7–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0016]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until September 8, 2020.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0016 in the body of the letter, the agency name and Docket ID USCIS–2006–0070. Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2006–0070. USCIS is limiting communications for this Notice as a result of USCIS's COVID–19 response actions.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2006–0070 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(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 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:* Application for Relief under Former Section 212(c) of the Immigration and Nationality Act.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–191; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS and EOIR use the information on the form to properly assess and determine whether the applicant is eligible for a waiver under former section 212(c) of INA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–191 is 116 and the estimated hour burden per response is 1.75 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 203 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $59,740.

Dated: July 2, 2020.

Samantha L Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2020–14669 Filed 7–7–20; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2020–N095; FXES11130100000–201–FF01E00000]

Endangered Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation and survival of endangered species under the Endangered Species Act of 1973, as amended. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before August 7, 2020.

ADDRESSES: *Document availability and comment submission:* Submit requests for copies of the applications and related documents and submit any comments by one of the following methods. All requests and comments should specify the applicant name and application number (*e.g.,* Dana Ross TE–08964A–2):

- *Email: permitsR1ES@fws.gov.*
- *U.S. Mail:* Marilet Zablan, Program Manager, Restoration and Endangered Species Classification, Ecological Services, U.S. Fish and Wildlife Service, Pacific Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181.

FOR FURTHER INFORMATION CONTACT: Colleen Henson, Regional Recovery Permit Coordinator, Ecological Services, (503) 231–6131 (phone); *permitsR1ES@fws.gov* (email). Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications for permits under section 10(a)(1)(A) of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permits would allow the applicants to conduct activities intended to promote recovery of species that are listed as endangered under the ESA.

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of ''take'' includes such activities as pursuing, harassing, trapping, capturing, or collecting, in addition to hunting, shooting, harming, wounding, or killing.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. These activities often include such prohibited actions as capture and collection. Our regulations implementing section 10(a)(1)(A) for these permits are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies.

Application No.	Applicant, city, state	Species	Location	Take activity	Permit action
TE–40123A	U.S. Army Garrison, Pohakuloa Training Area, Hilo, HI.	Band-rumped storm-petrel (*Oceanodroma castro*).	Hawaii	Harass by survey/monitor with detector dog, nest cameras, and acoustic recording devices; predator control; and salvage.	Amend.

Application No.	Applicant, city, state	Species	Location	Take activity	Permit action
TE–76800D	G. Curt Fiedler, University of Guam, Mangilao, GU.	Fragile tree snail (*Samoana fragilis*), Guam tree snail (*Partula radiolata*), Humped tree snail (*Partula gibba*).	Commonwealth of the Northern Mariana Islands and Guam.	Harass by survey/monitor; capture; handle; measure; photograph; collect mucus; mark/recapture; and salvage.	New.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue a permit to the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Eric Hein,

Acting Assistant Regional Director—Ecological Services, Pacific Region.

[FR Doc. 2020–14654 Filed 7–7–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–AKR–ANIA–CAKR–DENA–GAAR–KOVA–LACL–WRST–30283; PPAKAKROR4, PPMPRLE1Y.LS0000]

Request for Nominations for the National Park Service Alaska Region Subsistence Resource Commission Program

AGENCY: National Park Service, Interior.

ACTION: Request for nominations.

SUMMARY: The National Park Service (NPS) is seeking nominations for individuals willing to represent subsistence users on the following Subsistence Resource Commissions (SRC): The Aniakchak National Monument SRC, the Cape Krusenstern National Monument SRC, the Denali National Park SRC, the Gates of the Arctic National Park SRC, the Lake Clark National Park SRC, the Kobuk Valley National Park SRC, and the Wrangell-St. Elias National Park SRC.

DATES: Nominations must be postmarked by October 6, 2020.

ADDRESSES: Nominations should be sent to: Joshua T. Ream, Ph.D., (Xíxch'i Toowóo), Subsistence Program Manager, National Park Service, Alaska Regional Office, 240 W. 5th Avenue, Anchorage, AK 99501, or email at *joshua_ream@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Joshua T. Ream, Ph.D., (Xíxch'i Toowóo), Subsistence Program Manager, National Park Service, Alaska Regional Office, 240 W. 5th Avenue, Anchorage, AK 99501, or email at *joshua_ream@nps.gov,* or via telephone at (907) 644–3596.

SUPPLEMENTARY INFORMATION: The NPS SRC program is authorized under section 808 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3118). The SRCs hold meetings to develop NPS subsistence program recommendations and advise on related regulatory proposals and resource management issues.

Each SRC is composed of nine members: (a) Three members appointed by the Secretary of the Interior; (b) three members appointed by the Governor of the State of Alaska; and (c) three members appointed by a Regional Advisory Council (RAC), established pursuant to 16 U.S.C. 3115, which has jurisdiction within the area in which the park is located. Each of the three members appointed by the RAC must be a member of either the RAC or a local advisory committee within the region who also engages in subsistence uses within the Park or National Monument.

We are now seeking nominations for those three members of each of the SRCs listed above. These members are to be appointed by the Secretary of the Interior.

Members will be appointed for a term of three years. Members of the SRC serve without compensation. However, while away from their homes or regular places of business in the performance of services for the SRC, and as approved by the Designated Federal Officer (DFO), members may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed such expenses under Section 5703 of Title 5 of the United States Code.

SRC meetings will take place at such times as designated by the DFO. Members are expected to make every effort to attend all meetings. Members may not appoint deputies or alternates.

We are seeking nominations for members to represent subsistence users on each of the seven SRCs listed above. All those interested in serving as members, including current members whose terms are expiring, must follow the same nomination process. Nominations should be typed and should include a resume providing an adequate description of the nominee's qualifications, including information that would enable the Department of the Interior to make an informed decision regarding meeting the membership requirements of the SRC, and to permit the Department to contact a potential member.

Authority: 5 U.S.C. Appendix 2.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2020–14596 Filed 7–7–20; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–652 and 731–TA–1524–1526 (Preliminary)]

Silicon Metal from Bosnia and Herzegovina, Iceland, Kazakhstan, and Malaysia; Institution of Anti-Dumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–652 and 731–TA–1524–1526 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of silicon metal from Bosnia and Herzegovina, Iceland, and Malaysia, provided for in subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value, and imports of silicon metal from Kazakhstan that are alleged to be subsidized by the Government of Kazakhstan. Unless the Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by August 14, 2020. The Commission's views must be transmitted to Commerce within five business days thereafter, or by August 21, 2020.

DATES: June 30, 2020.

FOR FURTHER INFORMATION CONTACT: Lawrence Jones ((202) 205–3358), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to a petition filed on June 30, 2020, by Globe Specialty Metals, Inc., Beverly, Ohio, and Mississippi Silicon LLC, Burnsville, Mississippi.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission is conducting its Title VII (antidumping and countervailing duty) preliminary phase staff conferences through submissions of written opening remarks and written testimony, staff questions and written responses to those questions, and postconference briefs. Requests to appear at the conference should be emailed to *preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before July 17, 2020. A nonparty who has testimony that may aid the Commission's deliberations may request permission to participate by submitting a short statement. Please note the Secretary's Office will accept only electronic filings during 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.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 24, 2020, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written opening remarks and testimony to the Commission on or before July 17, 2020. Staff questions will be provided to the parties on July 21, 2020, and written responses should be submitted to the Commission on or before July 24, 2020. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract

personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.
Issued: July 1, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–14625 Filed 7–7–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–680]

Importer of Controlled Substances Application: Usona Institute

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 August 7, 2020. Such persons may also file a written request for a hearing on the application on or before August 7, 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 request 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 May 21, 2020, Usona Institute, 2780 Woods Hollow Road, Room 2412, Fitchburg, Wisconsin 53711–5370, applied to be registered as an importer of the following basic class(es) of controlled substances:

Controlled substance	Drug code	Schedule
5-Methoxy-N-N-dimethyltryptamine.	7431	I
Dimethyltryptamine ..	7435	I
Psilocybin	7437	I
Psilocyn	7438	I

The institute plans to import the listed controlled substances for potential formulation development for substances to be used in institute-sponsored research.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2020–14624 Filed 7–7–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–679]

Importer of Controlled Substances Application: Galephar Pharmaceutical Research, 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 August 7, 2020. Such persons may also file a written request for a hearing on the application on or before August 7, 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 June 22, 2020, Galephar Pharmaceutical Research, Inc., 100 Carr 198 Industrial Park, Juncos, Puerto Rico 00777–3873, applied to be registered as an importer of the following basic class(es) of a controlled substance:

Controlled substance	Drug code	Schedule
Hydromorphone	9150	II

The company plans to import the listed controlled substance in finished dosage form for analytical purpose only.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2020–14614 Filed 7–7–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–681]

Importer of Controlled Substances Application: Xcelience

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 August 7, 2020. Such persons may also file a written request for a hearing on the application on or before August 7, 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 May 28, 2020, Xcelience, 4901 West Grace Street, Tampa, Florida 33607–3805, applied to be registered as an Importer of the following basic class(es) of controlled substances:

Controlled substance	Drug code	Schedule
Psilocybin	7437	I
Amphetamine	1100	II

The company plans to import drug code 7437 (Psilocybin), as bulk and drug code 1100 (Amphetamine), as finished dosage form for clinical trials, research, and analytical purposes. No other activity for drug code 1100 is authorized for this registration. Approval of permit

applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of the Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2020–14623 Filed 7–7–20; 8:45 am]

BILLING CODE P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 20–03]

Renewal of the MCC Advisory Council and Call for Nominations

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Federal Advisory Committee Act, the Millennium Challenge Corporation (''MCC'') has renewed the charter for the MCC Advisory Council (''Advisory Council'') and is hereby soliciting representative nominations for the 2020–2022 term. The Advisory Council serves MCC in an advisory capacity only and provides insight regarding (i) innovations in relevant sectors including technology, infrastructure and blended finance; (ii) perceived risks and opportunities in MCC partner countries; and (iii) evolving approaches to working in developing country contexts. The Advisory Council provides a platform for systematic engagement with the private sector and contributes to MCC's mission—to reduce poverty through sustainable, economic growth. MCC uses this advice, information, and recommendations to inform compact development and implementation, and broaden public and private sector partnerships for more impact and leverage. The MCC Vice President of the Department of Compact Operations affirms that the Advisory Council is necessary and in the public interest. The Advisory Council is seeking members representing a diverse group of private sector organizations with expertise in infrastructure, business and finance and technology, particularly in the countries and regions where MCC operates. Additional information about MCC and its portfolio can be found at *www.mcc.gov.*

DATES: Nominations for Advisory Council members must be received on or before 5 p.m. EDT on August 12, 2020. Further information about the nomination process is included below. MCC plans to host the first meeting of the 2020–2022 term of the MCC Advisory Council in Fall 2020. The Advisory Council will meet at least two times a year in Washington, DC or via video/teleconferencing. Members who are unable to attend in-person meetings may have the option to dial-in via video/teleconferencing.

SUPPLEMENTARY INFORMATION: The Advisory Council shall consist of not more than twenty-five (25) individuals who are recognized thought leaders, business leaders and experts representing US companies, the business community, advocacy organizations, non-profit organizations, foundations, and sectors including infrastructure, information and communications technology (''ICT''), and finance, as well as the environment and sustainable development. Qualified individuals may self-nominate or be nominated by any individual or organization. To be considered for the Advisory Council, nominators should submit the following information:

- Name, title, organization and relevant contact information (including phone, mailing address, and email address) of the individual under consideration;
- A letter, on organization letterhead, containing a brief description of why the nominee should be considered for membership;
- Short biography of nominee including professional and academic credentials;

Please do not send company, trade association, or organization brochures or any other information. Materials submitted should total two pages or less. Should more information be needed, MCC staff will contact the nominee, obtain information from the nominee's past affiliations, or obtain information from publicly available sources.

All members of the Advisory Council will be independent of the agency, representing the views and interests of their respective industry or area of expertise, and not as Special Government employees. All members shall serve without compensation.

Nominees selected for appointment to the Advisory Council will be notified by return email and receive a letter of appointment. A selection team comprised of representatives from several MCC departments will review the nomination packages. The selection team will make recommendations regarding membership to the MCC Vice President of the Department of Compact Operations based on criteria including:

(1) Professional or academic expertise, experience, and knowledge; (2) stakeholder representation; (3) availability and willingness to serve; (4) skills working collaboratively on committees and advisory panels; and (5) professional recommendations, if any (recommendations are optional). Based upon the selection team's recommendations, the MCC Vice President of the Department of Compact Operations will select representatives. In the selection of members for the Advisory Council, MCC will seek to ensure a balanced representation and consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the Advisory Council. Nominations are open to all individuals without regard to race, color, religion, sex, gender, national origin, age, mental or physical disability, marital status, or sexual orientation. MCC also encourages geographic diversity in the composition of the Advisory Council.

FOR FURTHER INFORMATION CONTACT: Nominators are asked to send all nomination materials by email to *MCCAdvisoryCouncil@mcc.gov.* While email is strongly preferred, nominators may send nomination materials by mail to 1099 14th St NW Suite 700, Washington, DC 20005. Requests for additional information can also be directed to Jennifer Rimbach, 202.521.3932, *MCCAdvisoryCouncil@mcc.gov.*

Dated: July 1, 2020.

Jeanne M. Hauch,

VP/General Counsel and Corporate Secretary.

[FR Doc. 2020–14662 Filed 7–7–20; 8:45 am]

BILLING CODE 9211–03–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Mathematical and Physical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Mathematical and Physical Sciences (#66).

Date and Time: August 5, 2020; 12:30 p.m. to 4:45 p.m.; August 7, 2020; 12:30 p.m. to 4:30 p.m.

Place: NSF, 2415 Eisenhower Avenue, Alexandria, VA 22314 (*Virtual attendance only*).

To attend the virtual meeting, please send your request for the virtual

meeting link to Kathleen McCloud at the following email address: *kmccloud@nsf.gov*.

Type of Meeting: Open.

Contact Person: Leighann Martin, National Science Foundation, 2415 Eisenhower Avenue, Room C 9000, Alexandria, Virginia 22314; Telephone: 703/292–4659.

Summary of Minutes: Minutes and meeting materials will be available on the MPS Advisory Committee website at *http://www.nsf.gov/mps/advisory.jsp* or can be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to MPS programs and activities.

Agenda

Wednesday, August 5, 2020

- Call to Order and Official Opening of the Meeting—Sean Jones, Acting Assistant Director, MPS
- FACA and COI Briefing—Clark Cooper/Kathleen McCloud, MPS
- Approval of Prior Meeting Minutes—Catherine Hunt, MPSAC Chair
- UPDATE: MPS—Sean Jones, Acting Assistant Director, MPS
- CHE COV Report Presentation—Peter K. Dorhout, Kansas State University
- CHE COV Report discussion and vote on acceptance—Catherine Hunt, MPSAC Chair
- MPS and the Living World Subcommittee: Revised name, revised charge, short discussion—Linda Sapochak, Jennifer Lewis, Catherine Hunt
- Industries of the Future (IotF): Artificial Intelligence—Erwin Gianchandi, Deputy Assistant Director, CISE
- Preparation for Meeting with NSF Director and COO
- Closing remarks and adjourn for the day

Friday, August 7, 2020

- Call to Order and Official Opening of the 2nd Day—Sean Jones, Acting Assistant Director, MPS
- Industries of the Future (IotF): Quantum Information Science—Denise Caldwell
- Current Events (COVID–19 and other social issues affecting NSF): Presentation and discussion—Steve Meacham (OD/OIA), NSF Recovery Task Force
- Legislative and Public Affairs that Affect MPS: Presentation and discussion—Amanda Greenwell, Office of Legislative and Public Affairs
- The Budget Process: Presentation and discussion—Caitlyn Fife, Budget Division, Office of Budget, Finance, and Award Management (BFA/BD)
- Meeting and discussion with NSF Director and COO
- Adjourn—Sean Jones, Acting Assistant Director, MPS

Dated: July 2, 2020.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2020–14672 Filed 7–7–20; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 72–1025 and 50–029; NRC–2020–0152]

Independent Spent Fuel Storage Installation; Yankee Atomic Electric Company

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption, in response to an May 2, 2019, request from Yankee Atomic Electric Company (YAEC or licensee), from NRC's requirement to comply with the terms, conditions, and specifications in Amendment No. 8 of the NAC International, Inc. (NAC)—Multi-Purpose Canister (MPC) System Certificate of Compliance (CoC) No. 1025, Appendix A ''Technical Specifications for NAC–MPC System,'' Technical Specifications (TS) A.5.1 ''Training Program'' and A.5.4 ''Radioactive Effluent Control Program'' at the Yankee Nuclear Power Station (YNPS) independent spent fuel storage installation (ISFSI) in Rowe, Massachusetts. These exemptions would relieve YAEC from the requirements to: Develop training modules under the systems approach to the training (SAT) program that include comprehensive instructions for the operation and maintenance of the ISFSI, except for the NAC–MPC System; and submit an annual report specifying the quantity of each of the principal radionuclides released to the environment in liquid and in gaseous effluents during the previous 12 months of operation.

DATES: This exemption takes effect on July 8, 2020.

ADDRESSES: Please refer to Docket ID NRC–2020–0152 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2020–0152. 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 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. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.

FOR FURTHER INFORMATION CONTACT: Nishka Devaser, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5196; email: *Nishka.Devaser@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The licensee, YAEC, is the holder of Facility Operating License No. DPR–3, which authorizes operation of the YNPS ISFSI in Rowe, Massachusetts, pursuant to part 50 of title 10 of the *Code of Federal Regulations* (10 CFR). The facility is in decommissioned status. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the NRC now or hereafter in effect.

Under subpart K of 10 CFR part 72, a general license has been issued for the storage of spent fuel in an ISFSI at power reactor sites to persons authorized to possess or operate nuclear power reactors under 10 CFR part 50. Under the terms of the general license, YAEC stores fifteen NAC–MPC canisters with spent fuel that are registered under Amendment No. 5 of the NAC–MPC CoC No. 1025. On February 5, 2019, the NRC issued Amendment Nos. 7 and 8 to CoC No. 1025 for the NAC–MPC System.

II. Request/Action

The licensee has requested an exemption from Amendment No. 8 to the NAC–MPC System CoC No. 1025, Appendix A, TS A.5.1 ''Training Program'' and from TS A.5.4 ''Radioactive Effluent Control Program.'' YAEC seeks an exemption from (1) the requirement to develop a SAT that includes comprehensive instructions for the operation and maintenance of the ISFSI and (2) the requirement to submit an annual report specifying the quantity of each of the principal radionuclides released to the environment in liquid and in gaseous effluents during the previous 12 months of operation. YAEC does not seek an exemption from the requirement to develop a SAT concerning the NAC–MPC system nor does it seek exemption from the requirements associated with the NAC–MPC effluent reporting program. YAEC has also requested an exemption from the requirements of § 72.212(a)(2), § 72.212(b)(3), § 72.212(b)(5)(i), § 72.212(b)(11), and § 72.214 that require compliance with the terms, conditions, and specifications of CoC No. 1025, Amendment No. 8.

- § 72.212(a)(2) states that the general license is limited to storage of spent fuel in casks approved under the provisions of 10 CFR part 72;
- § 72.212(b)(3) states that the general licensee must ensure that each cask used by the general licensee conforms to the terms, conditions, and specifications of a CoC or an amended CoC listed in § 72.214 (the NAC–MPC CoC No. 1025 is listed in § 72.214);
- § 72.212(b)(5)(i) requires that the general licensee perform written evaluations, before use and before applying the changes authorized by an amended CoC to a cask loaded under the initial CoC or an earlier amended CoC, which establish that the casks, once loaded with spent fuel or once the changes authorized by an amended CoC have been applied, will conform to the terms, conditions, and specifications of a CoC or an amended CoC listed in § 72.214;
- § 72.212(b)(11) states, in part, that the licensee shall comply with the terms, conditions, and specifications of the CoC and, for those casks to which the licensee has applied the changes of an amended CoC, the terms, conditions, and specifications of the amended CoC; and
- § 72.214 lists the approved spent fuel storage casks, which includes CoC No. 1025 and Amendment No. 8.

The NRC has previously granted the same exemption to YAEC from the requirements of CoC No. 1025, Amendment No. 4, dated June 6, 2006 (ADAMS Accession No. ML061570027) and CoC No. 1025, Amendment No. 5, dated July 15, 2010 (ADAMS Accession No. ML102020239).

III. Discussion

Pursuant to § 72.7, the Commission may, upon application by any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations of 10 CFR part 72 provided the exemptions are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

A. The Exemption Is Authorized by Law

This exemption would permit the registration of YAEC's fifteen NAC–MPC canisters storing spent nuclear fuel to Amendment No. 8 of the CoC No. 1025 for the NAC–MPC System without (1) requiring the licensee to develop training modules under its SAT that includes comprehensive instructions for the operation and maintenance of the ISFSI, except for the NAC–MPC System and (2) requiring the licensee to submit an annual report specifying the quantity of each of the principal radionuclides released to the environment in liquid and in gaseous effluents during the previous 12 months of operation, except for the NAC–MPC System.

The provisions in 10 CFR part 72 from which the licensee is requesting an exemption require the licensee to comply with the terms, conditions, and specifications of the CoC. Section 72.7 allows the NRC to grant exemptions from the requirements of 10 CFR part 72. As explained below, the proposed exemption will not endanger life or property, or the common defense and security, and is otherwise in the public interest. Issuance of this exemption is consistent with the Atomic Energy Act of 1954, as amended, and not otherwise inconsistent with NRC's regulations or other applicable laws. Therefore, the exemption is authorized by law.

B. The Exemption Is Will Not Endanger Life or Property or the Common Defense and Security

This exemption would relieve the licensee from (1) meeting Appendix A ''Technical Specifications for NAC–MPC System,'' TS A.5.1 ''Training Program,'' which requires the development of training modules under its SAT that include comprehensive instructions for the operation and maintenance of the ISFSI, except for the NAC–MPC System and (2) meeting Appendix A ''Technical Specifications for NAC–MPC System,'' TS A.5.4 ''Radioactive Effluent Control Program,'' which requires submission of an annual report specifying the quantity of each of the principal radionuclides released to the environment in liquid and in gaseous effluents during the previous 12 months of operation. The NRC approved the use of the NAC–MPC System in CoC No. 1025 on April 10, 2000. This constituted NRC approval of the conditions for use in storing spent fuel under the general license provisions of § 72.210.

The NRC evaluated the impact to public health and safety that would result from granting the proposed action. The approval of the proposed action would not increase the probability or consequences of accidents, no changes would be made to the types of effluents released offsite, and there would be no increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action. Additionally, the proposed action would not involve any construction or other ground disturbing activities, would not change the footprint of the existing ISFSI, and would have no other significant non-radiological impacts. In this regard, and as the ISFSI is located on previously disturbed land, it is extremely unlikely that approval of the proposed action would create any significant impact on the aquatic or terrestrial habitat near the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or to essential fish habitat covered by the Magnuson-Stevens Act. Similarly, approval of the proposed action is not the type of activity that has the potential to cause effects on historic or cultural properties, assuming such properties are present at the site of the YNPS ISFSI. On this basis, the staff concludes that the proposed exemption does not pose an increased risk to public health and safety and therefore the exemption will not endanger life or property or the common defense and security.

C. The Exemption Is Otherwise in the Public Interest

As noted above, this exemption was previously approved in 2006 and reapproved in 2010. Continuing to apply the exemptions would provide for consistent and efficient regulation of the NAC–MPC System at the YNPS ISFSI. Further, the alternative of denying the exemption request would impose an administrative burden on YAEC and the NRC that would not provide a significant safety benefit. The requested exemption does not change the

fundamental design, components, contents, or safety features of the storage system. Therefore, granting the exemption is otherwise in the public interest.

D. Environmental Consideration

The NRC staff also considered in the review of this exemption request whether there would be any significant environmental impacts associated with the exemption. The NRC staff determined that this proposed action fits a category of actions that do not require an environmental assessment or environmental impact statement. Specifically, the exemption meets the categorical exclusion in § 51.22(c)(25).

Granting an exemption from requirements of § 72.212(a)(2), § 72.212(b)(3), § 72.212(b)(5)(i), § 72.212(b)(11), and § 72.214 and from the training program requirement in the TS at Appendix A, Section A.5.1 relieves the licensee only from the requirement to develop training modules under its SAT, that include comprehensive instructions for the operation and maintenance of the ISFSI, except for the NAC–MPC System. A categorical exclusion for education, training, experience, qualification, requalification or other employment suitability requirements is provided under § 51.22(c)(25)(vi)(E) if the criteria in § 51.22(c)(25)(i)–(v) are also satisfied. In its review of the exemption request, the NRC staff determined, as discussed above, that, under §§ 51.22(c)(25)(i)–(v): (i) Granting the exemption does not involve a significant hazards consideration because granting the exemption neither reduces a margin of safety, creates a new or different kind of accident from any accident previously evaluated, nor significantly increases either the probability or consequences of an accident previously evaluated; (ii) granting the exemption would not produce a significant change in either the types or amounts of any effluents that may be released offsite because the requested exemption neither changes the effluents nor produces additional avenues of effluent release; (iii) granting the exemption would not result in a significant increase in either occupational radiation exposure or public radiation exposure because the requested exemption neither introduces new radiological hazards nor increases existing radiological hazards; (iv) granting the exemption would not result in a significant construction impact because there are no construction activities associated with the requested exemption; and (v) granting the exemption would not increase either the potential or consequences from radiological accidents. Accordingly, this exemption meets the criteria for a categorical exclusion in § 51.22(c)(25)(vi)(E).

Granting the exemption from the requirements of § 72.212(a)(2), § 72.212(b)(3), § 72.212(b)(5)(i), § 72.212(b)(11), and § 72.214 and the reporting requirements of Appendix A, Section A.5.4 relieves the licensee only from the requirement to submit an annual report specifying the quantity of each of the principal radionuclides released to the environment in liquid and in gaseous effluents during the previous 12 months of operation, except for the NAC–MPC System. A categorical exclusion for reporting requirements is provided under § 51.22(c)(25)(vi)(B) if the criteria in § 51.22(c)(25)(i)–(v) are also satisfied. In its review of the exemption request, the NRC staff determined, as discussed above, that, under §§ 51.22(c)(25)(i)–(v): (i) Granting the exemption does not involve a significant hazards consideration because granting the exemption neither reduces a margin of safety, creates a new or different kind of accident from any accident previously evaluated, nor significantly increases either the probability or consequences of an accident previously evaluated; (ii) granting the exemption would not produce a significant change in either the types or amounts of any effluents that may be released offsite because the requested exemption neither changes the effluents nor produces additional avenues of effluent release; (iii) granting the exemption would not result in a significant increase in either occupational radiation exposure or public radiation exposure because the requested exemption neither introduces new radiological hazards nor increases existing radiological hazards; (iv) granting the exemption would not result in a significant construction impact because there are no construction activities associated with the requested exemption; and (v) granting the exemption would not increase either the potential or consequences from radiological accidents. Accordingly, this exemption meets the criteria for a categorical exclusion in § 51.22(c)(25)(vi)(B).

IV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS accession No.
YAEC Letter to NRC, ''Request for Exemption from Certain Requirements of 10 CFR 72.212 and 10 CFR 72.214 for the Yankee Nuclear Power Station Independent Spent Fuel Storage Installation,'' May 2, 2019.	ML19176A075.
NRC Letter to NAC, ''Amendment Nos. 7 and 8 to Certificate of Compliance No. 1025 for the NAC-Multi Purpose Canister Storage System,'' February 5, 2019.	ML19038A256.
NRC Letter to YAEC, ''Exemption from 10 CFR 72.212 and 72.214 for Dry Spent Fuel Storage Activities Yankee Atomic Independent Spent Fuel Storage Installation,'' June 6, 2006.	ML061570027.
NRC Letter to YAEC, ''Exemption from 10 CFR 72.212 and 72.214 for Dry Spent Fuel Storage Activities Yankee Atomic Independent Spent Fuel Storage Installation,'' July 15, 2010.	ML102020239.
YAEC Letter to NRC, ''Yankee Atomic Electric Company Adoption of NAC–MPC System Amendment 5 Certificate of Compliance and Canister Registration,'' July 28, 2011.	ML11216A137.
NRC Letter to CYAPCO, ''Issuance of Exemption from NAC International Certificate of Compliance No. 1025 Fuel Specification and Loading Conditions at the Yankee Nuclear Power Station Independent Spent Fuel Storage Installation,'' February 18, 2016.	ML16033A150.
NRC Letter to NAC, ''Certificate of Compliance for the NAC International, Inc. Multi-Purpose Canister System,'' March 17, 2000.	ML003704040.
NRC Letter to NAC, ''Amendment No. 3 to Certificate of Compliance No. 1025 for the NAC International, Inc. Multi-Purpose Canister (NAC–MPC) System,'' October 8, 2003.	ML032820200.
NRC Letter to NAC, ''Amendment No. 4 to Certificate of Compliance No. 1025 for the NAC International, Inc. Multi-Purpose Canister (NAC–MPC) System,'' October 27, 2004.	ML043020224.
NRC Letter to NAC, ''Amendment No. 5 to Certificate of Compliance No. 1025 for the NAC International, Inc. Multi-Purpose Canister (NAC–MPC) System,'' September 19, 2007.	ML072700041.

V. Conclusion

Based on the foregoing considerations, the NRC staff has determined that, pursuant to § 72.7, 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 NRC grants the licensee an exemption from the requirements of § 72.212(a)(2), § 72.212(b)(3), § 72.212(b)(5)(i), § 72.212(b)(11), and § 72.214 only with regard to meeting the requirements of Appendix A, TS A.5.1 and TS A.5.4 of CoC No. 1025.

This exemption is effective upon issuance.

Dated: July 2, 2020.

For the Nuclear Regulatory Commission.

John B. McKirgan,

Chief, Storage and Transportation Licensing Branch, Division of Fuel Management, Office of Nuclear Material Safety, and Safeguards.

[FR Doc. 2020–14651 Filed 7–7–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0164]

Information Collection: Medical Use of Byproduct Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Medical Use of Byproduct Material.''

DATES: Submit comments by August 7, 2020. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: 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 Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0164 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0164. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2019–0164 on this website.
- *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 supporting statement and burden spreadsheet are available in ADAMS under Accession Nos. ML20128J890 and ML20128J891.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, 10 CFR part 35, ''Medical Use of Byproduct Material.''

The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on February 26, 2020 (85 FR 11125).

1. *The title of the information collection:* 10 CFR part 35, ''Medical Use of Byproduct Material.''
2. *OMB approval number:* 3150–0010.
3. *Type of submission:* Extension.
4. *The form number if applicable:* Not applicable.
5. *How often the collection is required or requested:* Reports of medical events, doses to an embryo/fetus or nursing child, or leaking source are reportable on occurrence. A specialty board certifying entity desiring to be recognized by the NRC must submit a one-time request for recognition and infrequently revise the information.
6. *Who will be required or asked to respond:* Physicians and medical institutions holding an NRC license authorizing the administration of byproduct material or radiation from this material to humans for medical use. A specialty board certification entity desiring to have its certifying process and board certificate recognized by NRC.
7. *The estimated number of annual responses:* 299,266 (292,182 reporting responses + 7,019 recordkeepers + 65 third party disclosure responses).
8. *The estimated number of annual respondents:* 7,021 (856 NRC licensees + 6,163 Agreement State licensees + 2 specialty board certification entity).
9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 1,166,695 hours (69,391 reporting + 1,097,177 recordkeeping + 127 third party disclosure).
10. *Abstract:* 10 CFR part 35, ''Medical Use of Byproduct Material,'' contains NRC's requirements and provisions for the medical use of byproduct material and for issuance of

specific licenses authorizing the medical use of this material. These requirements and provisions provide for the radiation safety of workers, the general public, patients, and human research subjects. Part 35 contains mandatory requirements that apply to NRC licensees authorized to administer byproduct material or radiation to humans for medical use. These requirements also provide voluntary provisions for specialty boards to apply to have their certification processes recognized by the NRC so that their board certified individuals can use the certifications as proof of training and experience.

Dated: July 2, 2020.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2020–14656 Filed 7–7–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0159]

Design Limits, Loading Combinations, Materials, Construction and Testing of Concrete Containments

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft regulatory guide (DG), DG–1372, ''Design Limits, Loading Combinations, Materials, Construction and Testing of Concrete Containments.'' This draft guide is proposed Revision 4 of regulatory guide (RG) 1.136 of the same name. It updates the guidance for materials, design, construction, fabrication, examination, and testing of concrete containments in nuclear power plants through endorsement, with exceptions, of the 2019 edition of the American Society of Mechanical Engineers Boiler & Pressure Vessel Code, Section III, Division 2 (American Concrete Institute Standard 359–19), ''Code for Concrete Containments.''

DATES: Submit comments by September 8, 2020. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

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

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0159. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: George Thomas, Office of Nuclear Reactor Regulation, telephone: 301–415–6181, email: *George.Thomas@nrc.gov;* and Edward O'Donnell, Office of Nuclear Regulatory Research, telephone: 301–415–3317, email: *Edward.ODonnell@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0159 when contacting the NRC about the availability of information regarding this action. You may obtain publicly-available information related to this action, by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0159.
- *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.* DG–1372 is available in ADAMS under Accession No. ML20105A215 and the regulatory analysis for DG–1372 is available in ADAMS under Accession No. ML20105A216.

B. Submitting Comments

Please include Docket ID NRC–2020–0159 in your comment submission. The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *https://www.regulations.gov* as well as enters the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Additional Information

The NRC is issuing for public comment a draft guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses.

The DG, titled ''Design Limits, Loading Combinations, Materials, Construction and Testing of Concrete Containments,'' is a proposed revision temporarily identified by its task number, DG–1372. It is proposed revision 4 of RG 1.136 of the same name. The guide proposes revised guidance to meet regulatory requirements for materials, design, construction, fabrication, examination, and testing of concrete containments in nuclear power plants.

This revision of the guide endorses, with exceptions, the 2019 edition of the American Society of Mechanical Engineers (ASME) Boiler & Pressure Vessel Code (B&PV), Section III, Division 2 (American Concrete Institute Standard 359–19), ''Code for Concrete Containments.'' This revision of the guide also addresses the acceptability of the Section III Code Cases related to

Division 2 of the ASME B&PV Code, Section III.

The staff is also issuing for public comment a draft regulatory analysis (ADAMS Accession No. ML20105A216). The staff developed a draft regulatory analysis to assess the value of issuing or revising a regulatory guide as well as alternative courses of action.

III. Backfitting, Forward Fitting, and Issue Finality

This regulatory guide provides guidance for materials, design, construction, fabrication, examination, and testing of concrete containments in nuclear power plants through endorsement, with exceptions, of the 2019 edition of the American Society of Mechanical Engineers Boiler & Pressure Vessel Code, Section III, Division 2 (American Concrete Institute Standard 359 19), ''Code for Concrete Containments.'' The issuance of this regulatory guide does not constitute backfitting as defined in section 50.109 of title 10 of the *Code of Federal Regulations* (CFR), ''Backfitting,'' and as described in NRC Management Directive 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests,'' or affect issue finality of any approval issued under 10 CFR part 52, ''Licenses, Certificates, and Approvals for Nuclear Power Plants,'' because, as explained in this regulatory guide, licensees are not required to comply with the positions set forth in this regulatory guide.

Dated: July 1, 2020.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2020–14645 Filed 7–7–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0091]

Leakage Tests on Packages for Shipment of Radioactive Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 2 to Regulatory Guide (RG) 7.4, ''Leakage Tests on Packages for Shipment of Radioactive Material.'' This RG (Revision 2) endorses the methods and procedures developed by the Standards Committee on Packaging and Transportation of Radioactive and Nonnuclear Hazardous Materials, N14 Subcommittee of the American National Standards Institute (ANSI) in ANSI N14.5–2014, ''American National Standard for Radioactive Materials—Leakage Tests on Packages for Shipment,'' dated June 19, 2014.

DATES: Revision 2 to RG 7.4 is available on July 8, 2020.

ADDRESSES: Please refer to Docket ID NRC–2019–0091 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0091. 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.

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FOR FURTHER INFORMATION CONTACT: JoAnn Ireland, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–6950, email: *JoAnn.Ireland@nrc.gov* and Harriet Karagiannis, Office of Nuclear Regulatory Research, telephone: 301–415–2493, email: *Harriet.Karagiannis@nrc.gov,* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC issues RGs to describe methods that are acceptable to the staff for implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses. Regulatory guides are not NRC regulations and compliance with them is not required. Methods and solutions that differ from those set forth in RGs are acceptable if supported by a basis for the issuance or continuance of a permit or license by the Commission.

Revision 2 of RG 7.4 was issued with a temporary identification of Draft Regulatory Guide, DG–7010. RG 7.4 (Revision 2) endorses an update to ANSI N14.5–2014, ''American National Standard for Radioactive Materials—Leakage Tests on Packages for Shipment,'' that has new information, corrections, and clarifications, to ensure integrity of radioactive material containers and to minimize the distribution of contamination to the environment.

II. Additional Information

The NRC published a notice of the availability of DG–7010 in the **Federal Register** on April 8, 2019 (84 FR 13969) for a 60-day public comment period. The public comment period closed on June 7, 2019, and the NRC received four comment documents. Public comments on DG–7010 and the staff responses to the public comments are available in ADAMS under Accession No. ML19240B379. Revision 2 to RG 7.4 and the regulatory analysis may be found in ADAMS under Accession Nos. ML19240B383 and ML20034F254, respectively.

III. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting, Forward Fitting, and Issue Finality

As discussed in Section D, ''Implementation,'' of RG 7.4, the NRC staff does not intend to use the guidance in this regulatory guide to support NRC staff actions in a manner that would constitute backfitting as that term is defined in section 50.109 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Backfitting,'' and as described in NRC Management Directive 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests,'' nor does the NRC staff intend to use the guidance to affect the issue finality of an approval under 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' The staff also does not intend to use the guidance to support NRC staff

actions in a manner that constitutes forward fitting as that term is defined and described in Management Directive 8.4.

Dated: July 1, 2020.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2020–14621 Filed 7–7–20; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33917; 812–15073]

Keystone Private Income Fund and Keystone National Group, LLC

July 1, 2020.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(a)(2), 18(c) and 18(i) of the Act, and for an order pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares of beneficial interest with varying sales loads and to impose asset-based distribution and/or service fees.

APPLICANTS: Keystone Private Income Fund (the ''Initial Fund'') and Keystone National Group, LLC (the ''Adviser'').

FILING DATES: The application was filed on October 7, 2019, and amended on January 13, 2020, and April 23, 2020.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving Applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on July 27, 2020, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: c/o Joshua Deringer, by email to *joshua.deringer@faegredrinker.com;* Adviser, c/o Brad Allen, by email to *ballen@keystonenational.net.*

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 551–6871, or Daniele Marchesani, Assistant Chief Counsel, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

APPLICANTS' REPRESENTATIONS:

1. The Initial Fund is a Delaware statutory trust that is registered under the Act as a non-diversified, closed-end management investment company. The Initial Fund's primary investment objective will be to produce current income by investing in a wide range of private credit-oriented or other cash flow producing investments, including corporate loans and credit facilities, equipment leasing transactions, real estate backed loans, corporate and consumer receivables, and other specialty finance opportunities or income-producing assets.

2. The Adviser, a Delaware limited liability company, is registered as an investment adviser under the Investment Advisers Act of 1940, as amended (the ''Advisers Act''). The Adviser will serve as investment adviser to the Initial Fund.

3. Applicants seek an order to permit the Initial Fund to issue multiple classes of shares of beneficial interest with varying sales loads and to impose asset-based distribution and/or service fees and early repurchase fees.

4. Applicants request that the order also apply to any continuously offered registered closed-end management investment company that has been previously organized or that may be organized in the future for which the Adviser, or any entity controlling, controlled by, or under common control with the Adviser, or any successor in interest to any such entity,[1] acts as investment adviser and which provides periodic liquidity with respect to its shares pursuant to rule 13e–4 under the Securities Exchange Act of 1934 (each, a ''Future Fund'' and together with the Initial Fund, the ''Funds'').[2]

5. The Initial Fund initially will register with five initial classes of shares, Class I Shares, Class A Shares, Class D Shares, Class Y Shares, and Class Z Shares, each with its own fee and expense structure. Additional offerings by any Fund relying on the order may be on a private placement or public offering basis. The Initial Fund will only offer one class of shares, Class Y Shares, until receipt of the requested relief. Shares of the Initial Fund will be sold only to persons who are ''accredited investors,'' as defined in Regulation D under the Securities Act of 1933, and ''qualified clients,'' as defined in the Advisers Act. The Funds will offer their Shares continuously at a price based on net asset value. Shares of the Funds will not be listed on any securities exchange nor quoted on any quotation medium. The Funds do not expect there to be a secondary trading market for their shares.

6. Applicants state that, from time to time, the Initial Fund may create additional classes of shares, the terms of which may differ between Class I Shares, Class A Shares, Class D Shares, Class Y Shares, and Class Z Shares pursuant to and in compliance with rule 18f–3 under the Act.

7. Applicants state that shares of a Fund may be subject to an early repurchase fee (''Early Repurchase Fee'') at a rate of no greater than 2% of the shareholder's repurchase proceeds if the interval between the date of purchase of the shares and the valuation date with respect to the repurchase of those shares is less than one year.[3] Any Early Repurchase Fee will apply equally to all classes of shares of a Fund, in compliance with section 18 of the Act and rule 18f–3 thereunder. To the extent a Fund determines to waive, impose scheduled variations of, or eliminate any Early Repurchase Fee, it will do so in compliance with the requirements of rule 22d–1 under the Act as if the Early

[1] A successor in interest is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[2] Any Fund relying on this relief in the future will do so in compliance with the terms and conditions of the application. Applicants represent that each entity presently intending to rely on the requested relief is listed as an applicant.

[3] Applicants state that an Early Repurchase Fee charged by a Fund is not the same as a contingent deferred sales load (''CDSL'') assessed by an open-end fund pursuant to rule 6c–10 under the Act, as CDSLs are distribution-related charges payable to a distributor, whereas the Early Repurchase Fee is payable to the Fund to compensate long-term shareholders for the expenses related to shorter term investors, in light of the Fund's generally longer-term investment horizons and investment operations.

Repurchase Fee were a CDSL and as if the Fund were an open-end investment company and the Fund's waiver of, scheduled variation in, or elimination of, any such Early Repurchase Fee will apply uniformly to all shareholders of the Fund regardless of class. Applicants state that the Initial Fund intends to impose an Early Repurchase Fee of 2%.

8. Applicants represent that any asset-based service and/or distribution fees for each class of shares of the Funds will comply with the provisions of the FINRA Rule 2341(d) (''FINRA Sales Charge Rule'').[4] Applicants also represent that each Fund will disclose in its prospectus the fees, expenses and other characteristics of each class of shares offered for sale by the prospectus, as is required for open-end multiple class funds under Form N–1A. As is required for open-end funds, each Fund will disclose its expenses in shareholder reports, and describe any arrangements that result in breakpoints in or elimination of sales loads in its prospectus.[5] In addition, applicants will comply with applicable enhanced fee disclosure requirements for fund of funds, including registered funds of hedge funds.[6]

9. Each of the Funds will comply with any requirements that the Commission or FINRA may adopt regarding disclosure at the point of sale and in transaction confirmations about the costs and conflicts of interest arising out of the distribution of open-end investment company shares, and regarding prospectus disclosure of sales loads and revenue sharing arrangements, as if those requirements applied to the Fund. In addition, each Fund will contractually require that any distributor of the Fund's shares comply with such requirements in connection with the distribution of such Fund's shares.

APPLICANTS' LEGAL ANALYSIS:

Multiple Classes of Shares

1. Section 18(a)(2) of the Act provides that a closed-end investment company may not issue or sell a senior security that is a stock unless certain requirements are met. Applicants state that the creation of multiple classes of shares of the Funds may violate section 18(a)(2) because the Funds may not meet such requirements with respect to a class of shares that may be a senior security.

2. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of shares of the Funds may be prohibited by section 18(c), as a class may have priority over another class as to payment of dividends because shareholders of different classes would pay different fees and expenses.

3. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that multiple classes of shares of the Funds may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) from sections 18(a)(2), 18(c) and 18(i) to permit the Funds to issue multiple classes of shares.

5. Applicants submit that the proposed allocation of expenses relating to distribution and voting rights among multiple classes is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit a Fund to facilitate the distribution of its securities and provide investors with a broader choice of shareholder services. Applicants assert that the proposed closed-end investment company multiple class structure does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f–3 under the Act. Applicants state that each Fund will comply with the provisions of rule 18f–3 as if it were an open-end investment company.

Asset-Based Distribution and/or Service Fees

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b–1 under the Act. Applicants request an order under section 17(d) and rule 17d–1 under the Act to the extent necessary to permit the Fund to impose asset-based distribution and/or service fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules applied to closed-end investment companies, which they believe will resolve any concerns that might arise in connection with a Fund financing the distribution of its shares through asset-based distribution fees.

3. For the reasons stated above, applicants submit that the exemptions requested under section 6(c) are necessary and appropriate in the public interest and are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants also state that the Funds' imposition of asset-based distribution and/or service fees is consistent with the provisions, policies and purposes of the Act and does not involve participation on a basis different from or less advantageous than that of other participants.

[4] Any reference to the FINRA Sales Charge Rule includes any successor or replacement to the FINRA Sales Charge Rule.

[5] *See* Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, Investment Company Act Release No. 26372 (Feb. 27, 2004) (adopting release) (requiring open-end investment companies to disclose fund expenses in shareholder reports); and Disclosure of Breakpoint Discounts by Mutual Funds, Investment Company Act Release No. 26464 (June 7, 2004) (adopting release) (requiring open-end investment companies to provide prospectus disclosure of certain sales load information).

[6] Fund of Funds Investments, Investment Company Act Rel. Nos. 26198 (Oct. 1, 2003) (proposing release) and 27399 (Jun. 20, 2006) (adopting release). *See* also Rules 12d1–1, *et seq.* of the Act.

APPLICANTS' CONDITION:

Applicants agree that any order granting the requested relief will be subject to the following condition:

Each Fund relying on the order will comply with the provisions of rules 6c–10, 12b–1, 17d–3, 18f–3, 22d–1, and, where applicable, 11a–3 under the Act, as amended from time to time, as if those rules applied to closed-end management investment companies, and will comply with the FINRA Sales Charge Rule, as amended from time to time, as if that rule applied to all closed-end management investment companies.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14633 Filed 7–7–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89212; File No. SR–MIAX–2020–20]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 518, Complex Orders

July 1, 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 June 25, 2020, Miami International Securities Exchange, LLC (''MIAX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 518, Complex Orders.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/* at MIAX's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 518, Complex Orders, to adopt a new Complex Auction-on-Arrival-Only (''cAOAO'') order type and to amend relevant portions of the rule to accurately describe the behavior and operation of a cAOAO order.

Currently, the Exchange offers a Complex Auction-on-Arrival or ''cAOA'' order that is a complex order designated to be placed into a Complex Auction upon receipt or upon evaluation. Complex orders that are not designated as cAOA will, by default, not initiate a Complex Auction upon arrival, but except as described in Exchange Rule 518 will be eligible to participate in a Complex Auction that is in progress when such complex order arrives or if placed on the Strategy Book may participate in or may initiate a Complex Auction, following evaluation conducted by the System.[3] Complex orders that are designated as cIOC[4] or cAOC[5] are not eligible for cAOA designation, and their evaluation will not result in the initiation of a Complex Auction either upon arrival or if eligible when resting on the Strategy Book.[6] Any unexecuted balance of a cAOA order remaining upon the completion of the auction process is eligible[7] to be placed on the Strategy Book.

The Exchange now proposes to adopt a new Complex Auction-on-Arrival-Only or ''cAOAO'' order type. A cAOAO order is a complex order that will be placed into an auction as described in Rule 518(d) if eligible, and cancelled if not eligible. Any unexecuted balance of a cAOAO order remaining upon the completion of the auction process is also cancelled. Similar to Immediate-or-Cancel orders, the cAOAO order type is designed to assist Members[8] in achieving an expeditious execution by exposing eligible Complex Orders for potential price improvement before cancelling any unexecuted balance.

Example 1

Suppose the following market in complex strategy ABC:

MIAX dcMBBO:[9] 1.00–1.10 (10 × 10)

A cAOAO order is entered to buy 20 @ 1.07.

A Request For Response (RFR) message is sent identifying the complex strategy, the price, quantity of matched complex quotes and/or orders at that price, imbalance quantity and side of the market of the Complex Auction-eligible order, in accordance to Rule 518(d)(2).[10]

During the Response Time Interval, the following RFR Responses[11] are received:

[3] *See* Exchange Rule 518(b)(2)(i); The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[4] A Complex Immediate-or-Cancel or ''cIOC'' order is a complex order that is to be executed in whole or in part upon receipt. Any portion not so executed is cancelled. *See* Exchange Rule 518(b)(4).

[5] A Complex Auction-or-Cancel or ''cAOC'' order is a complex limit order used to provide liquidity during a specific Complex Auction with a time in force that corresponds with that of the event. cAOC orders are not displayed to any market participant, and are not eligible for trading outside of the event. A cAOC order with a size greater than the aggregate auctioned size (as defined in Rule 518(d)(4)) will be capped for allocation purposes at the aggregate auctioned size. *See* Exchange Rule 518(b)(3).

[6] *See* Exchange Rule 518(b)(2)(ii); The ''Strategy Book'' is the Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(a)(17).

[7] Any unexecuted portion of a Complex Auction-eligible order remaining at the end of the Response Time Interval will either be: (A) Evaluated to determine if it may initiate another Complex Auction; or (B) placed on the Strategy Book and ranked pursuant to subparagraph (c)(3) of Exchange Rule 518. *See* Exchange Rule 518(d)(5)(ii).

[8] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[9] The dcMBBO is calculated using the best displayed price for each component of a complex strategy from the Simple Order Book. For stock-option orders, the dcMBBO for a complex strategy will be calculated using the Exchange's best displayed bid or offer in the individual option component(s) and the NBBO in the stock component. *See* Exchange Rule 518(a)(8).

[10] An auction is commenced as the cAOAO order satisfies the URIP requirement described in Exchange Rule 518(c)(5)(i).

[11] Members may submit a response to the RFR message (an ''RFR Response'') during the Response Time Interval. RFR Responses may be submitted in $0.01 increments. RFR Responses must be a cAOC order or a cAOC eQuote as defined in

Continued

Response 1: Sell 10 @1.07
Response 2: Sell 5 @1.06

At the conclusion of the Response Time Interval, the cAOAO order trades 15 @1.07.

The remaining quantity of 5 contracts from the cAOAO order is then cancelled.

The Exchange also proposes to amend subsection (b), Types of Complex Orders, to adopt a new Complex Auction-on-Arrival Only Order type to be included among other complex order types that may be submitted to the Exchange as provided by Exchange Rule 518(b)(1). Certain provisions in current Exchange Rule 518 that apply to cAOA orders would similarly apply to cAOAO orders. Therefore, the Exchange proposes to amend the Rule to incorporate cAOAO orders as necessary. Specifically, the Exchange proposes to amend subsection (c)(6) to provide that complex orders may be submitted as market orders and may be designated as cAOA or cAOAO. Additionally, the Exchange proposes to amend subsection (c)(6)(i) to provide that complex market orders designated as cAOA or cAOAO may initiate a Complex Auction upon arrival or join a Complex Auction in progress. Finally, the Exchange proposes to amend subsection (c)(6)(ii) to provide that complex market orders not designated as cAOA or cAOAO will trade immediately with any contra-side complex orders or quotes, or against the individual legs, up to an including the dcMBBO, and may be subject to the managed interest process described in subparagraph (c)(4) of Exchange Rule 518, and the evaluation process described in subparagraph (c)(5) of Exchange Rule 518.

The Exchange also proposes to amend subsection (d)(1) to provide that, in order to initiate a Complex Auction upon receipt, a Complex Auction-eligible order must be designated as cAOA or cAOAO and must meet the criteria described in Interpretations and Policies .03(b) of Exchange Rule 518 regarding the URIP.[12] A complex order not designated as cAOA or cAOAO (*i.e.,* a complex order considered by default to be ''do not auction on arrival'' by the System) may (i) join a Complex Auction in progress at the time of receipt; (ii) become a Complex Auction-eligible order after resting on the Strategy Book and may then automatically join a Complex Auction then in effect for the complex strategy; or (iii) initiate a Complex Auction if it meets the criteria described in Interpretations and Policies .03(a) of Exchange Rule 518 regarding the IIP or .03(c) of Exchange Rule 518 regarding the RIP. Complex orders processed through a Complex Auction may be executed without consideration to prices of the same complex interest that might be available on other exchanges.

The Exchange also proposes to amend subsection (d)(9) to provide that a complex order not designated as cAOA or cAOAO will either be (i) executed in full at a single price or at multiple prices up to its limit price, with remaining contracts placed on the Strategy Book; (ii) executed until the order exhausts the opposite side dcMBBO, at which time the order will be placed on the Strategy Book and evaluated for Complex Auction eligibility, or (iii) cancelled.

The Exchange believes the proposed changes will allow the Exchange to effectively implement the proposed cAOAO order type.

The Exchange will announce the implementation date of the proposed rule change by Regulatory Circular to be published no later than 90 days following the operative date of the proposed rule. The implementation date will be no later than 90 days following the issuance of the Regulatory Circular.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act[13] in general, and furthers the objectives of Section 6(b)(5) of the Act[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that its proposal to adopt a cAOAO order type promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest. The Exchange believes it is reasonable to provide an opportunity for investors to seek to have their complex orders exposed for an opportunity for price improvement and to also provide investors the option to have such orders canceled if they are not filled. The Exchange believes its proposal to amend other portions of Exchange Rule 518 to accurately describe the operation and behavior of a cAOAO order benefits investors and the public interest by providing information that investors can use to ascertain the suitability of an order type relative to their investment objectives.

The Exchange believes its proposed rule change promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by providing an opportunity for investors to have their complex orders exposed for an opportunity for price improvement. Furthermore, the Exchange believes that it is appropriate to give Members the option to have such orders canceled if they are not eligible to be posted.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition but will rather promote inter-market competition as the Exchange is proposing an order type that already exists on at least one other options exchange.[15] The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. The Exchange believes the proposed rule change will enhance competition among the various markets for Complex Order execution, potentially resulting in more active Complex Order trading on all exchanges.

The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition as the Rules of the Exchange apply

Interpretations and Policies .02 of Exchange Rule 518 and may be submitted on either side of the market. *See* Exchange Rule 518(d)(4).

[12] Upon receipt of a complex order when the complex strategy is open, the System will calculate an Upon Receipt Improvement Percentage (''URIP'') value, which is a defined percentage of the current dcMBBO bid/ask differential. Such percentage will be defined by the Exchange and communicated to Members via Regulatory Circular. If a Complex Auction-eligible order is priced equal to, or improves, the URIP value and is also priced to improve other complex orders and/or quotes resting at the top of the Strategy Book, the complex order will be eligible to initiate a Complex Auction. *See* Interpretations and Polices .03(b) of Exchange Rule 518.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] *See* Nasdaq ISE Exchange Rules, Options 3, Section 14(b)(14).

equally to all Exchange Members, and any Member of the Exchange may use the cAOAO order type.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(6) [17] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2020–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2020–20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2020–20 and should be submitted on or before July 29, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14630 Filed 7–7–20; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89213; File No. SR–MIAX–2020–11]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Order Approving a Proposed Rule Change To Amend Exchange Rule 518, Complex Orders, To Adopt New Interpretation and Policy .08, Related Futures Cross Orders

July 1, 2020.

I. Introduction

On May 11, 2020, Miami International Securities Exchange, LLC (''MIAX'' 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 provide for the trading of Related Futures Cross (''RFC'') orders. The proposed rule change was published for comment in the **Federal Register** on May 20, 2020.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to amend MIAX Rule 518, Complex Orders, to adopt new Interpretation and Policy .08 to provide for the trading of RFC orders. An RFC order is comprised of a SPIKES options [4] combo coupled with a contra-side order or orders totaling an equal number of SPIKES option combo orders, which is identified to MIAX as being part of an exchange of option contracts for related futures positions.[5] For purposes of proposed MIAX Rule 518(a), an exchange of option contracts for related futures positions is a transaction entered into by market participants seeking to swap option positions with related futures positions

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 88872 (May 14, 2020), 85 FR 30779 (''Notice'').

[4] The SPIKES Index (''SPIKES'' or ''Index'') measures expected 30-day volatility of the SPDR S&P 500 ETF Trust (''SPY''). *See* Securities Exchange Act Release No. 84417 (October 12, 2018), 83 FR 52865 (October 18, 2018) (File No. SR–MIAX–2018–14) (approving the listing and trading of SPIKES Index options).

[5] *See* proposed MIAX Rule 518, Interpretation and Policy .08(a). For purposes of proposed MIAX Rule 518(a), a SPIKES options combo is a two-legged order with one leg to purchase (sell) SPIKE calls and another leg to sell (purchase) the same number of SPIKE puts with the same expiration date and strike price. *See* proposed MIAX Rule 518, Interpretation and Policy .08(a)(4).

with related exposures.[6] A related futures position is a position in a futures contract with either the same underlying as, or a high degree of price correlation to, the underlying of the option combo in the RFC order so that the execution of the option combos in the RFC order would serve as an appropriate hedge for the related future positions.[7] In an exchange of contracts for related positions, one party(ies) must be the buyer(s) of (or the holder(s) of) the long market exposure associated with the options positions and the seller(s) of corresponding futures contracts and the other party(ies) must be the seller(s) of (or holder(s) of) the short market exposure associated with the options positions and the buyer(s) of the corresponding futures contracts.[8] The quantity of the option contracts executed as part of the RFC order must correlate to the quantity represented by the related futures position portion of the exchange.[9] The transaction involving the related futures position of the exchange must comply with all applicable rules of the designated contract market on which the futures are listed for trading.[10] An RFC order may be executed only during Regular Trading Hours and contemporaneously with the execution of the related futures position portion of the exchange.[11] The Exchange notes that the proposal is limited to a single class of a proprietary product listed only on the Exchange.[12]

To execute an RFC order, an Electronic Exchange Member (''EEM'') [13] must submit the RFC order to the System, which may execute automatically on entry without exposure.[14] An EEM may execute an RFC order only if: (i) Each option leg executes at a price that complies with MIAX Rule 518(c), provided that no option leg executes at the same price as a Priority Customer Order in the Simple Book; (ii) each option leg executes at a price at or between the NBBO for the applicable series; and (iii) the execution price is better than the price of any complex order resting in the Strategy Book, unless the RFC order is a Priority Customer Order and the resting complex order is a non-Priority Customer Order, in which case the execution price may be the same as or better than the price of the resting complex order.[15] The System cancels an RFC order if it cannot execute.[16]

Because there currently are no futures on the SPIKES Index, market participants that wish to hedge a position in SPIKES options using futures must use a highly correlated related instrument, such as VIX futures.[17] The Exchange notes that although SPIKES is highly correlated to VIX, there is some basis risk between the two products, which can be exacerbated during times of market volatility.[18] As described more fully in the Notice, a market participant that has hedged a SPIKES options position with VIX futures could eliminate the basis risk in that position by exchanging the VIX futures position for a hedge comprised of SPIKES option combos, a synthetic equivalent to the VIX futures position that does not carry basis risk.[19] A market participant seeking to reduce margin and capital requirements could exchange a position in SPIKES options combos for a corresponding VIX futures position.[20] The Exchange proposes to adopt RFC orders to facilitate these trades.[21] The Exchange has put in place a regulatory review plan to ensure that RFC orders are executed in conjunction with an exchange of contracts for related positions as required by the proposed rule.[22]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act,[23] and the rules and regulations thereunder applicable to a national securities exchange.[24] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[25] 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, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and that the rules are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. RFC orders would allow market participants trading SPIKES options to eliminate basis risk by exchanging a VIX futures hedge for SPIKES options combos, or to manage capital and margin requirements by exchanging positions in SPIKES options combos with corresponding positions in VIX futures, as described above. The Commission notes that an RFC order may execute automatically without exposure only if: (i) Each option leg executes at a price that complies with MIAX Rule 518(c), provided that no option leg executes at the same price as a Priority Customer Order in the Simple Book; (ii) each option leg executes at a price at or between the NBBO for the applicable series; and (iii) the execution price is better than the price of any complex order resting in the Strategy Book, unless the RFC order is a Priority Customer Order and the resting complex order is a non-Priority Customer Order, in which case the execution price may be the same as or better than the price of the resting complex order.[26] In addition, the transaction involving the related futures position of an RFC order must comply with all applicable rules of the designated contract market on which the futures are listed for trading.[27] The Exchange has put in place a regulatory review plan to ensure that RFC orders are executed in conjunction with an exchange of

[6] *See* proposed MIAX Rule 518(a)(5).

[7] *See* proposed MIAX Rule 518(a)(5)(a).

[8] *See* proposed MIAX Rule 518(a)(5)(b).

[9] *See id.*

[10] *See* proposed MIAX Rule 518(a)(7).

[11] *See* proposed MIAX Rule 518(a)(6).

[12] *See* Notice, 85 FR at 30781.

[13] An EEM is a Trading Permit who is not a Market Maker. EEMs are deemed ''members'' under the Exchange Act. The System is the automated trading system used by the Exchange for the trading of securities. *See* MIAX Rule 100.

[14] *See* proposed MIAX Rule 518(a)(1). The Exchange notes that a Qualified Contingent Cross Order is similarly executed as a clean cross. *See* Notice, 85 FR at 30781, n. 14 (citing MIAX Rule 516(j)). *See also* MIAX Rules 515(h)(4) (execution of Complex Qualified Contingent Cross (''cQCC'') Orders) and 518(b)(6) (defining cQCC Orders).

[15] *See* proposed MIAX Rule 518(a)(2).

[16] *See id.*

[17] MIAX notes that SPIKES is over 99% correlated to VIX. VIX futures trade on the Chicago Futures Exchange. *See* Notice, 85 FR at 30779–80.

[18] Basis risk is the financial risk that offsetting investments in a hedging strategy will not experience price changes in entirely opposite directions from each other. This imperfect correlation between two investments creates the potential for excess gains or losses in a hedging strategy, thus adding risk to the position. *See* Notice, 85 FR at 30779, n. 6. The Exchanges notes that the SPIKES settlement value is determined using the opening prices on MIAX of SPY options that expire in 30 days, while the VIX settlement value is determined using the opening prices on the Cboe Exchange of SPX options that expire in 30 days. Although SPY and SPX are highly correlated, variances in supply and demand can cause the settlement prices of the SPIKES and VIX Indexes to diverge. *See* Notice, 85 FR at 30779–80.

[19] *See id.*

[20] *See id.* at 30780.

[21] *See id.*

[22] *See id.* at 30781.

[23] 15 U.S.C. 78f.

[24] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78f(b)(5).

[26] *See* proposed MIAX Rules 518(a)(1) and (2). The Commission notes that cQCC Orders also may execute automatically upon entry. *See* MIAX Rule 518(b)(6).

[27] *See* proposed MIAX Rule 518(a)(7).

contracts for related positions as required by the proposed rule.[28]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–MIAX–2020–11) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14631 Filed 7–7–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89206; File No. SR–MIAX–2020–19]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 518, Complex Orders and Exchange Rule 515A, MIAX Price Improvement Mechanism (''PRIME'') and PRIME Solicitation Mechanism

July 1, 2020.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 22, 2020, Miami International Securities Exchange, LLC (''MIAX Options'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 518, Complex Orders; and Exchange Rule 515A, MIAX Price Improvement Mechanism (''PRIME'') and PRIME Solicitation Mechanism.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/* at MIAX Options' principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Interpretations and Policies .05 of Exchange Rule 518 to exclude cPRIME orders from the Complex MIAX Options Price Collar Protection provided to complex orders as described in paragraph (f)(1) of the Rule. Additionally, the Exchange proposes to amend Interpretations and Policies .12 of Exchange Rule 515A to remove the provision that precludes last priority in allocation from being available to Initiating Members[3] that submit cPRIME Agency Orders.

Background

In October of 2016, the Exchange adopted rules governing the trading in, and detailing the functionality of the MIAX Options System[4] in the handling of, complex orders on the Exchange.[5] In order to further support the trading of complex orders on the Exchange, the Exchange adopted an additional price protection feature for complex orders, the Complex MIAX Price Collar (''MPC'') in February of 2017.[6] The MPC price protection feature is designed to help maintain a fair and orderly market by helping to mitigate the potential risk of executions at prices that are extreme and potentially erroneous.

More specifically, the MPC price protection feature is an Exchange-wide price protection mechanism under which a complex order or eQuote to sell will not be displayed or executed at a price that is lower than the opposite side cNBBO[7] at the time the MPC is assigned by the System (*i.e.,* upon receipt or upon opening) by more than a specific dollar amount expressed in $0.01 increments (the ''MPC Setting''), and under which a complex order or eQuote to buy will not be displayed or executed at a price that is higher than the opposite side cNBBO offer at the time the MPC is assigned by the System by more than the MPC Setting (each the ''MPC Price'').[8] All complex orders, together with cAOC eQuotes and cIOC eQuotes (as defined in Interpretations and Policies .02(c)(1) and (2) of Exchange Rule 518) (collectively, ''eQuotes''), are subject to the MPC price protection feature.[9]

In July of 2017 the Exchange adopted three new complex order types: Complex Customer Cross (''cC2C''), Complex Qualified Contigent Cross (''cQCC''), and cPRIME,[10] which, by definition, became subject to the MPC price protection. In August of 2017, the Exchange amended its rules to remove these three new complex order types from certain pre-existing price protection features available on the Exchange.[11] Specifically, the Exchange modified Interpretation and Policy .05(d) of Rule 518 to state that the Implied Away Best Bid or Offer (''ixABBO'') Price Protection feature is not available for cPRIME Orders, cC2C Orders, and cQCC Orders. In its filing the Exchange stated that the ixABBO protection will not be available because this type of protection isn't necessary for these new complex order types. Specifically, with respect to cPRIME Orders, a cPRIME Agency Order is received by the Exchange accompanied by, and guarantees an execution against, a contra-side order at a single price or

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[28] *See* Notice, 85 FR at 30781.

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An ''Initiating Member'' initiates a PRIME Auction. *See* Exchange Rule 515A(a)(1). The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[4] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[5] *See* Securities Exchange Act Release No. 79072 (October 7, 2016), 81 FR 71131

(October 14, 2016) (SR–MIAX–2016–26).

[6] *See* Securities Exchange Act Release No. 80089 (February 22, 2017), 82 FR 12153 (February 28, 2017) (SR–MIAX–2017–06).

[7] The cNBBO is calculated using the NBBO for each component of a complex strategy to establish the best net bid and offer for a complex strategy. For stock-option orders, the cNBBO for a complex strategy will be calculated using the NBBO in the individual option component(s) and the NBBO in the stock component. *See* Exchange Rule 518(a)(2).

[8] *See* Exchange Rule 518 Interpretations and Policies .05(f).

[9] *See* Exchange Rule 518. Interpretations and Policies 05(f)(1).

[10] *See* Securities Exchange Act Release No. 81131 (July 12, 2017), 82 FR 32900 (July 18, 2017) (SR–MIAX–2017–19).

[11] *See* Securities Exchange Act Release No. 81229 (July 27, 2017), 82 FR 36023 (August 2, 2017) (SR–MIAX–2017–34).

at multiple prices with a ''stop'' price outside of which the cPRIME Agency Order, the contra-side order, and auction responses will not be executed.'' [12]

The Exchange also excluded cPRIME orders, cC2C Orders and cQCC Orders from the MIAX Order Monitor for Complex Orders (''cMOM'') stating in its filing, ''that cPRIME Orders, cC2C Orders and cQCC Orders are all guaranteed an execution at a price or prices determined by the participants, and cPRIME Orders are subject to further price improvement. Therefore, the cMOM price protection feature isn't necessary for these complex order types, and thus these complex orders types will not be rejected based upon cMOM price parameters.'' [13]

For similar reasons, the Exchange now proposes to exclude cPRIME Orders [14] from the MPC protection by amending Interpretations and Policies .05(f)(1) of Exchange Rule 518 to provide that, all complex orders (excluding cPRIME Orders), together with AOC eQuotes and cIOC eQuotes (as defined in Interpretations and Policies .02(c)(1) and (c) of Exchange Rule 518) (collectively ''eQuotes''), are subject to the MPC price protection feature.

A cPRIME Order is a paired order with an established minimum execution price that must meet certain defined internal criteria to be eligible to participate in a cPRIME Auction. Specifically, the initiating price for a cPRIME Agency Order must be better than (inside) the icMBBO [15] for the strategy and any other complex orders on the Strategy Book.[16] The System will reject cPRIME Agency Orders submitted with an initiating price that is equal to or worse than (outside) the icMBBO or any other complex orders on the Strategy Book.[17] As a result, MPC protection for cPRIME orders is not necessary, and in certain occasions, prevents orders that are otherwise eligible for participation in the cPRIME process from being accepted by the Exchange.

The following examples demonstrate the current behavior as compared to the proposed behavior.

Current cPRIME Evaluation Subject to MPC Protection

Example 1 The auction start price (''ASP'') of a Complex PRIME order cannot be outside the MPC opposite the Agency side

MIAX Price Collar Value (MPCV) = 0.25
cMBBO 3.00×4.00
cNBBO 3.00×3.50
MPC = $(3.00 - 0.25) \times (3.50 + 0.25) = 2.75 \times 3.75$

An incoming cPRIME order is received where the ASP of the Agency order is to buy complex strategies at a price of 3.80. Because the ASP of the Agency order to buy at 3.80 is outside the opposite side MPC of 3.75 (cNBO plus the MPCV); the cPRIME order is rejected.

Proposed cPRIME Evaluation Subject to MPC Protection

Example 2 The auction start price of a Complex PRIME order CAN be outside the MPC opposite the Agency side

MIAX Price Collar Value (MPCV) = 0.25
cMBBO 3.00×4.00
cNBBO 3.00×3.50
MPC = $(3.00 - 0.25) \times (3.50 + 0.25) = 2.75 \times 3.75$

An incoming cPRIME order is received where the ASP of the Agency order is to buy complex strategies at a price of 3.80. Although the ASP of the Agency order to buy at 3.80 is outside the opposite side MPC of 3.75 (cNBO plus the MPCV); the cPRIME order is accepted and initiates an auction.

Proposed cPRIME Evaluation Subject to MPC Protection When Inside the icMBBO

Example 3 The auction start price of a Complex PRIME order CAN be outside the MPC opposite the Agency side, and accepted if inside the icMBBO

MIAX Price Collar Value (MPCV) = 0.25
Strategy +1A+1B
Option A MBBO [18] 1.00×1.50
Option B MBBO 2.00×2.50
icMBBO $1(1.00 + 2.00) \times 1(1.50 + 2.50) = 3.00 \times 4.00$
Option A NBBO 1.00×1.30
Option B NBBO 2.00×2.20
cNBBO $1(1.00 + 2.00) \times 1(1.30 + 2.20) = 3.00 \times 3.50$
MPC = $(3.00 - 0.25) \times (3.50 + 0.25) = 2.75 \times 3.75$

An incoming cPRIME order is received where the ASP of the Agency order is to buy complex strategies at a price of 3.80. Although the ASP of the Agency order to buy at 3.80 is permitted outside the opposite side MPC of 3.75 (cNBO plus the MPCV), it is inside the icMBBO of 3.00×4.00; therefore the cPRIME order is accepted and initiates an auction.

Proposed cPRIME Evaluation Subject to MPC Protection When Outside the icMBBO

Example 4 The auction start price of a Complex PRIME order CAN be outside the MPC opposite the Agency side, but is rejected if outside the icMBBO [19]

MIAX Price Collar Value (MPCV) = 0.25
Strategy +1A+1B
Option A MBBO 1.00×1.50
Option B MBBO 2.00×2.25
icMBBO $1(1.00 + 2.00) \times 1(1.50 + 2.25) = 3.00 \times 3.75$
Option A NBBO [20] 1.00×1.30
Option B NBBO 2.00×2.20
cNBBO $1(1.00 + 2.00) \times 1(1.30 + 2.20) = 3.00 \times 3.50$
MPC = $(3.00 - 0.25) \times (3.50 + 0.25) = 2.75 \times 3.75$

An incoming cPRIME order is received where the ASP of the Agency order is to buy complex strategies at a price of 3.80. Although the ASP of the Agency order to buy at 3.80 is permitted outside the opposite side MPC of 3.75 (cNBO plus the MPCV), it is outside the icMBBO of 3.00×3.75; therefore the cPRIME order is rejected.

The Exchange also proposes to amend Exchange Rule 515A to allow last priority in allocation for Initiating Members that submit cPRIME Agency Orders. Currently subsection (v) of Interpretations and Policies .12(c) provides that the order allocations provisions contained in Rule 515(A)(a)(2(iii) shall apply to cPRIME Auctions, provided that: (A) All references to contracts shall be deemed to be references to complex strategies as defined in Rule 518(a)(6); and (B) the last priority allocation option described

[12] *See id.*

[13] *See id.*

[14] The Exchange notes that while cPRIME, cQCC, and cC2C Orders are all paired orders, the proposal is limited in scope to cPRIME Orders only.

[15] The Implied Complex MIAX Best Bid or Offer or ''icMBBO'' is a calculation that uses the best price from the Simple Order Book for each component of a complex strategy including displayed and non-displayed interest. For stock-option orders, the icMBBO for a complex strategy will be calculated using the best price (whether displayed or non-displayed) on the Simple Order Book in the individual option component(s), and the NBBO in the stock component. *See* Exchange Rule 518(a)(11).

[16] The ''Strategy Book'' is the Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(a)(17).

[17] *See* Exchange Rule 515A. Interpretations and Policies .12(a)(i).

[18] The term ''MBBO'' means the best bid or offer on the Simple Order Book on the Exchange. *See* Exchange Rule 518(a)(13).

[19] The initiating price for a cPRIME Agency Order must be better than (inside) the icMBBO for the strategy and any other complex orders on the Strategy Book. The System will reject cPRIME Agency Orders submitted with an initiating price that is equal to or worse than (outside) the icMBBO or any other complex orders on the Strategy Book. *See* Exchange Rule 515A. Interpretations and Policies .12(a)(i).

[20] The term ''NBBO'' means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from the appropriate Securities Information Processor (''SIP''). *See* Exchange Rule 518(a)(14).

in Rule 515A(a)(2)(iii)(L) is not available for Initiating Members that submit cPRIME Agency Orders. In its filing to adopt cPRIME functionality [21] the Exchange stated that the last priority in allocation option described in Rule 515(A)(a)(2)(iii)(L) [22] is not available for Initiating Members that submit cPRIME Agency Orders. As, at that time, the Exchange did not believe that there was significant Member demand for the use of the last priority in allocation option in cPRIME Auctions, therefore there was no need to include it in the allocation model then in use for cPRIME Auctions.

The Exchange now believes that there is significant Member demand for the use of the last priority in allocation option in cPRIME Auctions, and proposes to amend its current rule to remove the provision which makes it unavailable for Initiating Members that submit cPRIME Agency Orders. The Exchange proposes to remove subsection (c)(v)(B) of Interpretations and Policies .12 in its entirety. New proposed subsection (c)(v) will provide that, the order allocation provisions contained in Rule 515A(a)(2)(iii) [23] shall apply to cPRIME Auctions, provided that all references to contracts shall be deemed to be references to complex strategies as defined in Rule 518(a)(6).

The Exchange will announce the implementation date of the proposed rule change by Regulatory Circular to be published no later than 90 days following the operative date of the proposed rule. The implementation date will be no later than 90 days following the issuance of the Regulatory Circular.

2. Statutory Basis

MIAX Options believes that its proposed rule change is consistent with Section 6(b) of the Act [24] in general, and furthers the objectives of Section 6(b)(5) of the Act [25] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes its proposal to exclude cPRIME Orders from the Complex MIAX Options Price Collar Protection promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system, and in general, protects investors and the public interest by allowing otherwise eligible orders to benefit from submission to the cPRIME mechanism. The Exchange believes that, if not excluded, such protection feature could unnecessarily impede certain transactions in this order type that is submitted with contra-side participation and guaranteed executions for the Agency side. The Agency side of a cPRIME Order is effectively executed when received (and, in the case of cPRIME Orders, subject to price improvement) because it is a paired order with a guaranteed execution. The Exchange believes that accepting these orders, rather than rejecting them, protects investors that have established crossing orders at a specific execution price, and in the case of cPRIME Orders, allows the opportunity for further price improvement.

The Exchange believes that its proposal to allow Initiating Members that submit cPRIME Agency Orders to the Exchange to elect to have last priority in allocation promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by offering an additional allocation choice which could result in an increase of cPRIME Agency Orders, and resultant executions. The Exchange believes offering last priority in allocation gives the Initiating Member additional flexibility and control over cPRIME Agency Orders which will benefit investors by increasing the opportunity for option orders to receive an execution.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that the proposal to exclude cPRIME Orders from the Exchange's MPC price protection promotes inter-market competition by enabling MIAX Options to better compete for this type of order flow with other exchanges that have similar functionality in place.[26] Additionally, offering a last in priority allocation option to Initiating Members that submit cPRIME Agency orders allows the Exchange to compete with other option exchanges that offer similar functionality.[27]

The Exchange does not believe that its proposal will impose any burden on intra-market competition as all Members of the Exchange that submit cPRIME Orders will benefit equally from the Exchange's proposal. The proposed rule change is intended to promote competition by ensuring that unnecessary price protections which would preclude executions on the Exchange are removed, thus enabling MIAX Options participants to execute more complex orders on the Exchange. Additionally, offering Initiating Members that submit cPRIME Agency Orders an additional allocation choice gives Members more flexibility and control over their orders and may result in the submission of more cPRIME Orders which would benefit competition on the Exchange.

For all the reasons stated, 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, and believes the proposed changes will in fact enhance competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A)

[21] *See supra* note 10.

[22] If the Initiating Member elected to have last priority in allocation when submitting an Agency Order to initiate an Auction against a single-price submission, the Initiating Member will be allocated only the amount of contracts remaining, if any, after the Agency Order is allocated to all other responses at the single price specified by the Initiating Member.

[23] Exchange Rule 515A(a)(2)(iii)(L) provides, ''[i]f the Initiating Member elected to have last priority in allocation when submitting an Agency Order to initiate an Auction against a single-price submission, the Initiating Member will be allocated only the amount of contracts remaining, if any, after the Agency Order is allocated to all other responses at the single price specified by the Initiating Member.''

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

[26] *See* Cboe Exchange Rule 5.38.

[27] *See* Cboe Exchange Rule 5.38(e)(4).

of the Act [28] and Rule 19b–4(f)(6) [29] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2020–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2020–19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2020–19 and should be submitted on or before July 29, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14629 Filed 7–7–20; 8:45 am]

BILLING CODE 8011–01–P

[28] 15 U.S.C. 78s(b)(3)(A).

[29] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89211; File No. SR–ICEEU–2020–002]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment No. 1, Relating to the ICE Clear Europe Investment Management Procedures and Treasury and Banking Services Policy

July 1, 2020.

I. Introduction

On May 13, 2020, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4,[2] a proposed rule change to amend its Investment Management Procedures (the ''Procedures'') and its Treasury and Banking Services Policy, which would be renamed the Liquidity and Investment Management Policy (the ''Policy''). The proposed rule change was published for comment in the **Federal Register** on May 26, 2020.[3] The Commission did not receive comments regarding the proposed rule change. On June 9, 2020, ICE Clear Europe filed Partial Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on Partial Amendment No. 1 from interested persons and, for the reasons discussed below, is approving the proposed rule change, as modified by Partial Amendment No. 1 (hereinafter the ''proposed rule change'') on an accelerated basis.

II. Description of the Proposed Rule Change

As discussed below, the proposed rule change would amend the Procedures and the Policy following findings of an annual review conducted by ICE Clear Europe.[5] The Procedures explain ICE Clear Europe's permitted investments and related concentration limits when investing ICE Clear Europe's cash, while the Policy set outs the overall principles that ICE Clear Europe applies to investing its cash. Broadly speaking, the amendments would expand the Procedures and the Policy to: (i) Apply them to investments of ICE Clear Europe's contributions to default resources (referred to below as ''skin in the game'') and capital that ICE Clear Europe maintains pursuant to applicable regulatory requirements (referred to below as ''regulatory capital''); (ii) facilitate ICE Clear Europe's use of central bank deposits; (iii) allow ICE Clear Europe to invest in additional types of instruments and rely on ICE Clear Europe's authorized investments in periods of insufficient market supply; (iv) permit ICE Clear Europe to use additional the types of collateral in reverse repurchase agreements; and (v) revise the process for monitoring, escalating, and remediating breaches, as well as the description of ICE Clear Europe's investment activities and board risk appetites.

In addition, the proposed rule change would make two minor changes to the Policy. As mentioned above, the proposed rule change would rename it the Liquidity and Investment Management Policy. The proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change, Security-Based Swap Submission or Advance Notice Relating to the ICE Clear Europe Investment Management Procedures and Treasury and Banking Services Policy (to be renamed Liquidity and Investment Management Policy), Exchange Act Release No. 88907 (May 19, 2020); 85 FR 31571 (May 26, 2020) (SR–ICEEU–2020–002).

[4] Partial Amendment No.1 amended the Procedures, which are confidential Exhibit 5A to the filing, to specify that the ICE Clear Europe Treasury and Finance teams would conduct daily monitoring of investments against concentration limits and investment criteria.

[5] Capitalized terms not otherwise defined herein have the meanings assigned to them in the Procedures, the Policy, or the ICE Clear Europe rulebook, as applicable.

change would also delete the statement that the Policy constitutes ICE Clear Europe's liquidity risk management framework for purposes of EMIR. ICE Clear Europe is making this change because, for purposes of EMIR, its liquidity risk management framework also includes ICE Clear Europe's Liquidity Risk Management Procedures. Thus, this statement is incorrect.

A. Applying the Procedures and the Policy to Investments of ICE Clear Europe's Skin in the Game and Regulatory Capital

The proposed rule change would amend the Procedures and the Policy so that both documents cover investment of ICE Clear Europe's skin in the game and regulatory capital. Currently, the Procedures state that their overall purpose is to set out the investments that are permitted when investing or securing cash received from Clearing Members and to set out constraints on those investments such as concentration limits, credit ratings, and maturity limits, as well as any additional considerations in times of insufficient market supply of approved investments. The proposed rule change would amend this slightly to state that the Procedures address permitted investments and related concentration limits when investing or securing cash received from Clearing Members as well as when investing or securing ICE Clear Europe's skin in the game and regulatory capital.

Next, the proposed rule change would rename Subsection 2.1 of the Procedures from Investment Management Objectives to Investment Management Objective and further amend this section to state that ICE Clear Europe's investment management objective is to safeguard the principal of the cash (which would include ICE Clear Europe's skin in the game and regulatory capital) rather than Clearing Members' cash, as currently stated. Consistent with expanding the scope of the Procedures to cover investments of ICE Clear Europe's skin in the game and regulatory capital, ICE Clear Europe is making this change so the Procedures as amended would not be limited to safeguarding Clearing Members' cash.

Next, the proposed rule change would specify in the Procedures the instruments in which ICE Clear Europe would be permitted to invest its skin in the game and regulatory capital. With respect to skin in the game, the proposed rule change would specify that the table of authorized investments applicable to investments of Clearing Member cash would also apply to skin in the game, and thus ICE Clear Europe would be allowed to invest its skin in the game in the same manner as it invests Clearing Member cash, as discussed further below.

With respect to regulatory capital, the proposed rule change would add a table of authorized investments to the Procedures that would apply to investments of ICE Clear Europe's regulatory capital. This table would list the instruments in which ICE Clear Europe may invest its regulatory capital. For each instrument, the table would further specify: (i) The maximum issuer or counterparty concentration limits; (ii) the maximum portfolio concentration limits; (iii) the maximum maturity; and (iv) the minimum credit ratings of the instrument or allowed issuers of the instrument. Under this proposed new table, ICE Clear Europe would be able to invest its regulatory capital in direct purchases of US, UK, and EU sovereign bonds and US, UK, and EU government agency bonds, each with a maximum maturity of 90 days. The US and UK sovereign and government agency bonds would have no issuer concentration limit and a portfolio concentration limit of 20% (for sovereign bonds) and 25% (for government agency bonds) of the total USD or GBP balance, as applicable, in a single issue. The EU sovereign and government agency bonds would have a maximum counterparty concentration limit of 25% of the Euro balance in a single issuer. The proposed new table would further require that US sovereign bonds issued by the US government, UK sovereign bonds be issued by the UK government, and EU sovereign bonds be issued by the German, French, Belgian or Dutch governments. The minimum credit ratings for all government agency bonds would be AA – from at least two rating organizations.

Finally, the proposed rule change would amend the Policy consistent with these changes to the Procedures. Specifically, in Section 1 of the Policy, the proposed rule change would amend the statement that the Policy sets out the principles applied to the cash and collateral management functions of ICE Clear Europe for Clearing Member assets by deleting the specific reference to Clearing Member assets. As amended, the purpose of the Policy would be to set out the principles applied to the cash and collateral management functions of ICE Clear Europe. The proposed rule change is thus amending the scope of the policy so that it is not limited to Clearing Member assets, which is necessary given that the Procedures, as amended, would apply to ICE Clear Europe's investment of its skin in the game and regulatory capital. Similarly, the proposed rule change would amend Section 2 of the Policy to clarify that ICE Clear Europe's investment management functions include investing ICE Clear Europe's skin in the game and regulatory capital, consistent with the change to the Procedures described above. Finally, the proposed rule change would amend Section 3.3.1 of the Policy, which currently refers to ICE Clear Europe's investment management objective of safeguarding the principal of Clearing Members' cash, to refer to safeguarding the principal of the cash, because use of the general term ''cash'' would include ICE Clear Europe's skin in the game and regulatory capital.

B. Facilitating Use of Central Bank Deposits and Other Amendments to Investment Considerations

The proposed rule change would amend the list of overall investment considerations found in Section 2 of the Procedures to facilitate ICE Clear Europe's use of central bank deposits and make other updates. The overall investment considerations are a list of criteria that ICE Clear Europe considers when making investments. Currently, the overall investment considerations are that investments may only be made with Approved Financial Institutions (including investment agents and investment counterparties); at least 50% of the investable portfolio in each currency should be invested in overnight reverse repurchase agreements; the portfolio of non-overnight investments should have a variety of maturity dates; funds from customers of Futures Commission Merchant (''FCM'') Clearing Members must be segregated from those of other Clearing Members, be held in Permitted Depositories, and only invested in overnight reverse repos and direct purchases of US sovereign obligations; and purchased securities are intended to be held until maturity in order to minimize the impact of market risk. The proposed rule change would amend this list of investment considerations to add a statement that investments must be denominated in Euros, Great British Pounds, or Dollars, which currencies would match the investments permitted under the Procedures. The proposed rule change would also delete the requirement that at least 50% of the investable portfolio in each currency should be invested in overnight reverse repurchase agreements and replace it with a requirement that no more than 5% of the investible funds should be held as unsecured cash each calendar month. ICE Clear Europe is making this change to facilitate its use of central bank accounts to hold cash, which would be considered secured and thus

outside of the 5% limit. Moreover, the proposed rule change would amend the requirement regarding investment of funds from customers of FCM Clearing Members to change the wording slightly by, for example, changing ''O/N'' to ''overnight'' and changing ''Obligations'' to ''Bonds.'' Finally, the proposed rule change would shorten the wording of the requirement regarding holding purchased securities but would retain the substance that ICE Clear Europe intends to hold purchased securities until maturity.

C. Allowing ICE Clear Europe to Invest in Additional Types of Instruments and Relying on ICE Clear Europe's Authorized Investments in Periods of Insufficient Market Supply

The proposed rule change would amend the Procedures to expand the investments in which ICE Clear Europe may invest Clearing Member cash and would, as discussed above, allow ICE Clear Europe to invest its skin in the game in these same instruments. Currently the Procedures contain a table that lists each instrument in which ICE Clear Europe may invest Clearing Member cash. This table then describes, for each instrument for investment: (i) The maximum issuer or counterparty concentration limits; (ii) the maximum portfolio concentration limits; (iii) the maximum maturity; and (iv) the minimum credit ratings of the instrument or allowed issuers of the instrument. The proposed rule change would retain this table and the permitted investments currently listed there: Reverse repurchase agreements; US, UK, and EU sovereign obligations; central bank obligations; and commercial bank obligations. The proposed rule change would revise the table by expanding it to cover investments of skin in the game and adding US, UK, and EU government agency bonds as instruments for investment. The proposed rule change would specify the maximum issuer or counterparty concentration limits, the maximum portfolio concentration limits, the maximum maturity, and the minimum credit ratings for these government agency bonds. The proposed rule change also would change sovereign ''obligations'' to sovereign ''bonds''; change central bank ''obligations'' to central bank ''deposits''; and specify that the concentration limits for reverse repos apply per counterparty family. Similarly, the proposed rule change would specify for purchases of EU sovereign bonds that the maximum issuer limits apply per EU government issuer and would eliminate the minimum credit rating and instead require that the German, French, Belgian, or Dutch governments issue the bonds. Similarly, the proposed rule change would eliminate the minimum credit rating for US and UK sovereign bonds and instead only require that the US or UK government issue the bonds. Finally, with respect to commercial bank obligations the proposed rule change would also change ''obligations'' to ''deposits'' and would revise the entry for maximum issuer or counterparty concentration limits to note that for commercial banks, these limits are set separately as unsecured cash limits for financial service providers (which are set out in ICE Clear Europe's Unsecured Credit Limits Procedures).

The proposed rule change also would amend the Glossary section of the Procedures to make changes consistent with those described above. Specifically, the proposed rule change would remove the terms Central Bank Obligations and Commercial Bank Obligations as no longer necessary because the amended Procedures would refer to central bank deposits and commercial bank deposits instead. The proposed rule change would revise the term EU Sovereign Obligations to the more general defined term, Government Agency Bonds, which would be defined as bonds issued by or that have their principal and interest fully guaranteed by their government. The proposed rule change also would clarify the wording of the definition for the term Permitted Investment Counterparties for FCM Customer Funds. Similar to the changes described above, the proposed rule change would revise references to UK Sovereign Obligations and US Sovereign Obligations to UK Sovereign Bonds and US Sovereign Bonds. Finally, the proposed rule change would add a definition for Supranational Obligations, which, as described above, the proposed rule change would add to the list of permitted collateral for repurchase transactions.

Finally, the Procedures currently contain a section that describes the investments that ICE Clear Europe could make in periods where the market supply of authorized investments is not sufficient to meet ICE Clear Europe's investment needs. The proposed rule change would delete this section from the Procedures. ICE Clear Europe no longer considers this section necessary because it believes that the amended table of authorized investments and associated limits, as described above, would provide sufficient flexibility to permit ICE Clear Europe to manage changes in supply of particular types of investments.

D. Permitting ICE Clear Europe To Use Additional Types of Collateral in Reverse Repurchase Agreements

The Procedures currently set out a table that describes the collateral acceptable for a reverse repurchase agreement, which specifies the currency of the agreement, the currency of the collateral, the credit rating, the securities used as collateral, and the haircut applied by ICE Clear Europe. The proposed rule change would amend this table to allow ICE Clear Europe to use additional collateral in repurchase agreements. Currently, the Procedures permit the use of EU, UK, and US sovereign obligations as collateral. As amended, the Procedures would continue to permit the use of EU, UK, and US sovereign bonds, as well as EU, UK, and US supranational obligations and US government agency bonds. The proposed rule change would keep the current required credit rating of AA−/Aa3 and the current required 2% haircut. The proposed rule change also would expand the scope of permitted collateral to allow cross-currency repo agreements, such as an agreement denominated in Euros with collateral in UK pounds or dollars. For these cross-currency repurchase agreements, and transactions involving supranational obligations and US government agency bonds, the haircut would be 4%.

While expanding the collateral permitted under repurchase agreements, the proposed rule change also would amend the Procedures to specify that ICE Clear Europe's preferred form of collateral is sovereign bonds in the same currency as the reverse repurchase transaction. The proposed rule change also would amend the Procedures to require that ICE Clear Europe's Head of Treasury and Chief Risk Officer review the use of non-preferred collateral monthly.

Finally, in the section describing additional considerations for reverse repurchase agreements, the proposed rule change would revise some of the wording by changing the reference to ICE Clear Europe's Treasury and Banking Services group to Treasury and simplifying the description of maturity definitions.

E. Monitoring, Escalating, and Remediating Breaches, Investment Activities, and Board Risk Appetites

Finally, the proposed rule change would revise the process for monitoring, escalating, and remediating breaches of investment criteria and concentration limits, revise the description of ICE

Clear Europe's investment activities, and revise the description of board risk appetites.

Currently, the Procedures require that breaches of the concentration limits be escalated to the Risk Oversight Department and Compliance team and that the investment portfolio be rebalanced to return within the concentration limits. The proposed rule change would amend this slightly to require that both breaches of the concentration limits and investment criteria be escalated and further to require that the investment portfolio be rebalanced to comply with the concentration limits and investment criteria. Moreover, the proposed rule change would add a requirement that ICE Clear Europe's Treasury and Finance teams, on a daily basis, monitor investments against the concentration limits and investment criteria.

Similarly, in both the background section of the Policy and Section 6, the proposed rule change would replace specific references to ICE Clear Europe's Treasury and Banking Services team and their activities to refer generally to ICE Clear Europe and its liquidity and investment management activities. ICE Clear Europe is making this change to reflect the fact that other groups at ICE Clear Europe, such as Finance, perform the liquidity and investment management activities that are within the scope of the Policy.

Finally, the proposed rule change would delete a statement in the background section of the Policy that ICE Clear Europe's Treasury and Banking Services team operates within the risk appetites set by the board and in compliance with applicable regulations. As discussed, the Policy would apply to other groups at ICE Clear Europe and not just the Treasury Banking Services Team. Moreover, ICE Clear Europe believes this specific statement is unnecessary because board-adopted risk appetites apply to all activities of ICE Clear Europe anyway.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[6] For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[7] and Rule 17Ad–22(e)(1), (e)(2)(v), and (e)(16).[8]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICE Clear Europe be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, as well as to assure the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible.[9]

The Commission believes that, by applying the Procedures and the Policy to investments of ICE Clear Europe's skin in the game and regulatory capital, the proposed rule change should help to ensure that such skin in the game and regulatory capital are invested in accordance with the principles and processes specified in the Procedures and the Policy. Because these principles and processes generally should help to ensure that cash is invested reasonably, conservatively, and in a manner that protects against loss, the Commission believes that application of the Procedures and the Policy to ICE Clear Europe's skin in the game and regulatory capital should help to safeguard the skin in the game and regulatory capital against loss. Further, because the loss of ICE Clear Europe's skin in the game and regulatory capital could impair its ability to operate and therefore clear and settle transactions and safeguard securities and funds, the Commission believes that this aspect of the proposed rule change should help to facilitate the prompt the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible, and, therefore, is consistent with Section 17A(b)(3)(F) of the Act.[10]

Similarly, the Commission believes that by facilitating the use of central bank deposits; the investment in US, UK, and EU government agency bonds, and the use of additional collateral in reverse repurchase agreements and cross-currency transactions, the proposed rule change should expand ICE Clear Europe's permitted investments to include investments that should be generally reasonable and conservative and have minimal credit, market, and liquidity risks. Moreover, the Commission believes that the other changes to the authorized investments discussed above, *i.e.,* changing the wording from ''obligations'' to ''bonds'' and ''deposits'', specifying for purchases of EU sovereign bonds that the maximum issuer limits apply per EU government issuer, eliminating the minimum credit rating for US, UK, and EU sovereign bonds, and relying on ICE Clear Europe's authorized investments and associated limits in periods of insufficient market supply, should not reduce the reasonableness or conservativeness of ICE Clear Europe's permitted investments. Thus, the Commission believes these aspects of the proposed rule change should provide ICE Clear Europe additional investment options that should help to safeguard skin in the game, regulatory capital, and clearing member cash against loss. Because the loss of skin in the game, regulatory capital, and clearing member cash could impair ICE Clear Europe's ability to operate and therefore clear and settle transactions and safeguard securities and funds, the Commission believes that these aspects of the proposed rule change should be consistent with Section 17A(b)(3)(F) of the Act.[11]

The Commission further believes the changes described above regarding breaches and the personnel involved in ICE Clear Europe's investment activities should help to ensure compliance with the Procedures consistent Section 17A(b)(3)(F) of the Act.[12] Specifically, in requiring that both breaches of concentration limits and investment criteria be escalated and that the investment portfolio be rebalanced in remediation of a breach, the Commission believes that the proposed rule change should help to ensure adherence to the limits and criteria as well as remediation when they are breached. Moreover, in requiring that ICE Clear Europe's Treasury and Finance teams monitor the concentration limits and investment criteria daily, and that ICE Clear Europe's Head of Treasury and Chief Risk Officer review the use of non-preferred collateral monthly, the Commission believes the proposed rule change should help to facilitate adherence to the Procedures, the remediation of breaches, and monitoring to prevent breaches from happening in the first place. Because, as discussed above, the Commission believes that the Procedures should help to ensure that ICE Clear Europe's investments of

[6] 15 U.S.C. 78s(b)(2)(C).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 240.17Ad–22(e)(1), (e)(2)(v), (e)(16).

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 15 U.S.C. 78q–1(b)(3)(F).

regulatory capital, skin in the game, and Clearing Member cash are conservative and subject to reasonable protections, and therefore ICE Clear Europe is able to clear and settle transactions and safeguard funds, the Commission believes that these aspects of the proposed rule change, in facilitating compliance with the Procedures, are consistent with Section 17A(b)(3)(F) of the Act.[13]

Finally, the Commission believes the other changes to the Policy described above should help to ensure the accuracy of the Policy consistent Section 17A(b)(3)(F) of the Act.[14] Amending the Policy to replace specific references to ICE Clear Europe's Treasury and Banking Services team and their activities to refer generally to ICE Clear Europe and its liquidity and investment management activities and to delete a statement that ICE Clear Europe's Treasury and Banking Services team operates within the risk appetites set by the board and in compliance with applicable regulations should help to ensure the Policy accurately reflects the operations of ICE Clear Europe. Similarly, by renaming the Policy and deleting an inaccurate statement that the Policy constitutes ICE Clear Europe's liquidity risk management framework for purposes of EMIR, the Commission believes that the proposed rule change should help to ensure that the Policy is accurate and up-to-date. Because, as discussed above, the Policy should help to ensure that ICE Clear Europe's investments of regulatory capital, skin in the game, and Clearing Member cash are subject to reasonable protections, and therefore ICE Clear Europe is able to clear and settle transactions and safeguard funds, the Commission believes that these aspects of the proposed rule change, in ensuring the accuracy of the Policy, are consistent with Section 17A(b)(3)(F) of the Act.[15]

Therefore, for these reasons, the Commission finds that the proposed rule change should promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds in ICE Clear Europe's custody and control, consistent with the Section 17A(b)(3)(F) of the Act.[16]

B. Consistency With Rule 17Ad–22(e)(1)

Rule 17Ad–22(e)(1) requires that ICE Clear Europe establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in a relevant jurisdictions.[17] As discussed above, the proposed rule change would delete an inaccurate statement in the Policy that the Policy constitutes ICE Clear Europe's liquidity risk management framework for purposes of EMIR. This statement is inaccurate because, for purposes of EMIR, ICE Clear Europe's liquidity risk management framework is not limited to the Policy. Thus, in making this change, the Commission believes that the proposed rule change should help to ensure that ICE Clear Europe has an enforceable legal basis for its activities under EMIR. For this reason, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(e)(1).[18]

C. Consistency With Rule 17Ad–22(e)(2)(v)

Rule 17Ad–22(e)(2)(v) requires that ICE Clear Europe establish, implement, maintain and enforce written policies and procedures reasonably designed to provide governance arrangements that, among other things, specify clear and direct lines of responsibility.[19] As discussed above, the proposed rule change would require that ICE Clear Europe's Treasury and Finance teams monitor the concentration limits and investment criteria daily. The Commission believes that this aspect of the proposed rule change should help to establish a clear and direct line of responsibility, in assigning the Treasury and Finance teams the responsibility for daily monitoring. Similarly, the proposed rule change would require that ICE Clear Europe's Head of Treasury and Chief Risk Officer review the use of non-preferred collateral monthly. The Commission believes this proposed change should help to place clear and direct responsibility on ICE Clear Europe's Head of Treasury and Chief Risk Officer. For these reasons, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(e)(2)(v).[20]

D. Consistency With Rule 17Ad–22(e)(16)

Rule 17Ad–22(e)(16) requires that ICE Clear Europe establish, implement, maintain and enforce written policies and procedures reasonably designed to, among other things, safeguard its own and its Clearing Members' assets and invest such assets in instruments with minimal credit, market, and liquidity risks.[21] As discussed above, the proposed rule change, by applying the Procedures and the Policy to investments of ICE Clear Europe's skin in the game and regulatory capital, should help to ensure that such skin in the game and regulatory capital are invested in accordance with the principles and processes specified in the Procedures and the Policy. In addition, the Commission believes that these principles and processes generally should help to ensure that cash is invested reasonably and in a manner that protects against loss. In addition, the proposed rule change would expand the investments permitted to ICE Clear Europe by amending the Procedures to facilitate the use of central bank deposits; US, UK, and EU government agency bonds; and additional collateral in reverse repurchase agreements as well as cross-currency transactions. The Commission believes these investments, as well as the investments currently permitted under the Procedures, constitute instruments with minimal credit, market, and liquidity risks. Therefore, in applying the Procedures and Policy to ICE Clear Europe's regulatory capital and skin in the game and expanding the permitted investments, the Commission believes the proposed rule change should help ICE Clear Europe to safeguard its own and its Clearing Members' assets and invest such assets in instruments with minimal credit, market, and liquidity risks. For these reasons, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(e)(16).[22]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Partial Amendment No. 1, 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–ICEEU–2020–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

[13] 15 U.S.C. 78q–1(b)(3)(F).
[14] 15 U.S.C. 78q–1(b)(3)(F).
[15] 15 U.S.C. 78q–1(b)(3)(F).
[16] 15 U.S.C. 78q–1(b)(3)(F).
[17] 17 CFR 240.17Ad–22(e)(1).
[18] 17 CFR 240.17Ad–22(e)(1).
[19] 17 CFR 240.17Ad–22(e)(2)(v).
[20] 17 CFR 240.17Ad–22(e)(2)(v).
[21] 17 CFR 240.17Ad–22(e)(16).
[22] 17 CFR 240.17Ad–22(e)(16).

Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICEEU–2020–002. 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, as modified by Partial Amendment No. 1, that are filed with the Commission, and all written communications relating to the proposed rule change, as modified by Partial Amendment No. 1, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/clear-europe/regulation.* All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2020–002 and should be submitted on or before July 29, 2020.

V. Accelerated Approval of the Proposed Rule Change as Modified by Partial Amendment No. 1

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[23] to approve the proposed rule change, as modified by Partial Amendment No. 1, prior to the 30th day after the date of publication of Partial Amendment No. 1 in the **Federal Register**. As discussed above, Partial Amendment No. 1 updates the Procedures to assign ICE Clear Europe's Treasury and Finance teams responsibility for daily monitoring against the concentration limits and investment criteria. By so updating the Procedures, Partial Amendment No. 1 provides for a more clear and comprehensive understanding of how ICE Clear Europe would monitor its adherence to the concentration limits and investment criteria, which helps to improve the Commission's review of the proposed rule change for consistency with the Act.

For the reasons discussed above, the Commission finds that the proposed rule change, as modified by Partial Amendment No. 1, is consistent with the Act and the applicable rules thereunder. Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Partial Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Exchange Act.[24]

VI. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act[25] and Rules 17Ad–22(e)(1), (e)(2)(v), and (e)(16).[26]

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act[27] that the proposed rule change, as modified by Partial Amendment No. 1 (SR–ICEEU–2020–002), be, and hereby is, approved on an accelerated basis.[28]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14627 Filed 7–7–20; 8:45 am]

BILLING CODE 8011–01–P

[23] 15 U.S.C. 78s(b)(2).

[24] 15 U.S.C. 78s(b)(2).

[25] 15 U.S.C. 78q–1(b)(3)(F).

[26] 17 CFR 240.17Ad–22(e)(1), (e)(2)(v), (e)(16).

[27] 15 U.S.C. 78s(b)(2).

[28] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Investment Company Act of 1940 Release no. 33916/July 1, 2020; In the Matter of Allianz Life Insurance Co. of North America, et al. File No. 812–14722

Order Granting Hearing and Scheduling Filing of Statements

On December 20, 2019, the Securities and Exchange Commission (''Commission'') issued a notice of application (the ''Notice'') for an order approving the substitution of certain securities pursuant to section 26(c) of the Investment Company Act of 1940, as amended (''Act'') and an order of exemption pursuant to section 17(b) of the Act from section 17(a) of the Act, submitted by Allianz Life Insurance Company of North America and other Applicants as defined in the Notice (collectively, ''Allianz'').[1] On January 14, 2020, Franklin Advisers, Inc., Franklin Mutual Advisers, LLC, and Templeton Global Advisors Limited (collectively, ''Franklin'') submitted a request for a hearing (the ''Hearing Request'').[2]

The Commission finds that a hearing is appropriate pursuant to Investment Company Act Rule 0–5.[3] Accordingly, the Commission hereby establishes that Allianz and Franklin may each file an additional written statement regarding the Allianz Application. Any such written statements shall be prepared in a proportionally spaced typeface of 12 points or larger and shall not exceed 10,000 words, exclusive of pages containing the table of contents, table of authorities, and any addendum that consists solely of copies of applicable cases, pertinent legislative provisions or rules, and exhibits. The scope of the written statements shall be limited to those issues that were raised in Franklin's Hearing Request. Incorporation of any document by reference into a written statement is not permitted. Written statements shall be submitted to the Commission by sending an email to the Commission's Secretary at *Secretarys-Office@sec.gov,* and serving the opposing party with a copy of the written statement by email. Written statements should be received by the Commission on or before July 31, 2020, at 5:30 p.m., and should be accompanied by proof of service on the opposing party.

The Commission further establishes that Allianz and Franklin then each may file a responsive written statement, which also shall be prepared in a proportionally spaced typeface of 12 points or larger and shall not exceed 5,000 words, exclusive of the items listed above. The scope of any such responsive statement shall be limited to

[1] Allianz Life Insurance Company of North America, *et al.,* Investment Company Act Release No. 33721 (Dec. 20, 2019), *available at https://www.sec.gov/rules/ic/2019/ic-33721.pdf.*

[2] Letter from Franklin to Vanessa Countryman, dated January 14, 2020, submitted by Morgan, Lewis & Bockius LLP, *available at https://www.sec.gov/comments/812-14722/812-14722-9.pdf.*

[3] 17 CFR 275.0–5(c). Rule 0–5(c) provides that the Commission will order a hearing on a matter, upon the request of an interested person or upon its own motion, if it appears that a hearing is ''necessary or appropriate in the public interest or for the protection of investors.''

the issues raised in the written statement to which the party is responding. Incorporation of any document by reference into a responsive written statement is not permitted. Responsive written statements shall be submitted to the Commission on or before August 17, 2020, at 5:30 p.m., at the email address above, and shall be accompanied by proof of service on the opposing party.

This process will provide an opportunity for the Commission to fully assess the Allianz Application and the issues that Franklin has raised. Allianz and Franklin are hereby notified that any arguments related to the Allianz Application that are not discussed in their respective written statements shall be deemed waived. Reference to other documents, including prior submissions and exhibits, will not be sufficient to preserve arguments. The Hearing Request did not include a request for an in-person hearing, and the Commission has determined that its consideration of the Allianz Application would not be significantly aided by oral argument, so this hearing will be limited to written statements.

The filing of written statements related to the Allianz Application shall be limited to Allianz and Franklin because the period of time specified for an interested party to file a hearing request elapsed on January 14, 2020. No other party may submit a written statement regarding the Allianz Application except by leave of the Commission, upon a showing by that party that it has both a cognizable interest and good cause as to why it did not file a hearing request by the specified date.

Accordingly, *it is ordered*, that pursuant to Investment Company Act Rule 0–5(c), Franklin's request for a hearing is granted.

It is further *ordered* that on or before July 31, 2020, at 5:30 p.m., Allianz and Franklin may each submit to the Commission an additional written statement in accordance with this order.

It is further *ordered* that on or before August 17, 2020, at 5:30 p.m., Allianz and Franklin may each submit to the Commission a responsive written statement in accordance with this order.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14615 Filed 7–7–20; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16180; Louisiana Disaster Number LA–00098 Declaration of Economic Injury]

Administrative Declaration of an Economic Injury Disaster for the State of Louisiana

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of an Economic Injury Disaster Loan (EIDL) declaration for the State of Louisiana, dated 11/05/2019.

Incident: New Orleans Hard Rock Hotel Collapse and Related Street Closures.

Incident Period: 10/12/2019 through 06/24/2020.

DATES: Issued on 06/26/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 08/05/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of an Administrator's EIDL declaration for the State of Louisiana, dated 11/05/2019, is hereby amended to establish the incident period for this disaster as beginning 10/12/2019 and continuing through 06/24/2020.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Jovita Carranza,

Administrator.

[FR Doc. 2020–14593 Filed 7–7–20; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Women in Aviation Advisory Board; Notice of Public Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Public meeting.

SUMMARY: This notice announces a meeting of the Women in Aviation Advisory Board (WIAAB).

DATES: The meeting will be held on Tuesday, August 11, 2020, from 9:00 a.m.–4:00 p.m. Eastern Daylight Time.

Requests to attend the meeting must be received by Tuesday, July 28, 2020.

Requests for accommodations to a disability must be received by Tuesday, July 28, 2020.

If you wish to speak during the meeting, you must submit a written copy of your remarks to FAA by Tuesday, July 28, 2020.

Requests to submit written materials to be reviewed during the meeting must be received no later than Tuesday, July 28, 2020.

ADDRESSES: The meeting will be held virtually only. Members of the public who wish to observe the meeting must RSVP by emailing *S612WomenAdvisoryBoard@faa.gov.* General committee information including copies of the meeting minutes will be available on the WIAAB website at *https://www.faa.gov/about/office_org/headquarters_offices/ahr/advisory_committees/women_aviation/.*

FOR FURTHER INFORMATION CONTACT: Ms. Angela Anderson, Designated Federal Officer, FAA, at *S612WomenAdvisoryBoard@faa.gov.* Any committee related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

WIAAB was created under the Federal Advisory Committee Act (FACA), in accordance with Section 612 of the FAA Reauthorization Act of 2018 (Pub. L. 115–254), to encourage women and girls to enter the field of aviation with the objective of promoting organizations and programs that are providing education, training, mentorship, outreach, and recruitment of women in the aviation industry.

II. Agenda

At the meeting, the agenda will include the following topics:

- Welcome and Introductions
- Overview of FACA
- Member Expectations
- Overview of WIAAB Objectives and Tasking
- Review of Action Items

A detailed agenda will be posted on the WIAAB internet website address listed in the **ADDRESSES** section at least 15 days in advance of the meeting.

III. Public Participation

The meeting will be open to the public. Please confirm your attendance with the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Please provide the following information: Full legal name, country of citizenship, and name of your industry

association, or applicable affiliation. Anyone that has registered to attend will be notified in a timely manner prior to the meeting.

The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

There will be a total of 15 minutes allotted for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, the time for each commenter may be limited. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name, address, and organizational affiliation of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the FAA may conduct a lottery to determine the speakers. Speakers are requested to submit a written copy of their prepared remarks for inclusion in the meeting records and for circulation to WIAAB members. All prepared remarks submitted on time will be accepted and considered as part of the record. Any member of the public may present a written statement to the committee at any time. The public may present written statements to WIAAB by emailing the Designated Federal Officer's address listed in the **FOR FURTHER INFORMATION CONTACT** section.

Issued in Washington, DC, on July 1, 2020.

Angela Anderson,

Senior Advisor, Office of the Assistant Administrator for Human Resource Management, Federal Aviation Administration.

[FR Doc. 2020–14720 Filed 7–7–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice To Rescind Notice of Intent To Prepare Environmental Impact Statement, US 1/MD 201 Project, Prince George's County, Maryland

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice to rescind Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice to advise the public that FHWA is rescinding its Notice of Intent to prepare an Environmental Impact Statement for the US 1/MD 201 project in Prince George's County, Maryland.

FOR FURTHER INFORMATION CONTACT: Jeanette Mar, Environmental Program Manager, Federal Highway Administration, Maryland Division, (410) 779–7152, or email: *jeanette.mar@dot.gov;* Jeremy Beck, MDOT SHA Project Manager (410) 545–8500, or email: *JBeck@mdot.maryland.gov.*

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare an Environmental Impact Statement for the US 1/MD 201 project was published in the **Federal Register** at 67 FR 8332 on February 21, 2002. The purpose and need for the project was to improve safety and accommodate existing and projected travel demand in the vicinity of Beltsville, Maryland. No alternative was selected at that time.

The proposed transportation project included portions of both the US 1 and MD 201 corridors between the Capital Beltway (I–95/I–495) and Muirkirk Road in Prince George's County, Maryland, a distance of approximately 5 miles in length.

Due to Federal and State funding constraints, as well as the unlikelihood of adequate funding for all project phases in the foreseeable future, the Notice of Intent is hereby rescinded.

Gregory Murrill,

Division Administrator, Federal Highway Administration, Baltimore, Maryland.

[FR Doc. 2020–14638 Filed 7–7–20; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice To Rescind Notice of Intent To Prepare Environmental Impact Statement, US 301 Waldorf Area Transportation Improvements Project, in Charles and Prince George's Counties, Maryland

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice to rescind Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice to advise the public that FHWA is rescinding its Notice of Intent to prepare an Environmental Impact Statement for the US 301 Waldorf Area Transportation Improvements Project in Charles and Prince George's Counties, Maryland.

FOR FURTHER INFORMATION CONTACT: Jeanette Mar, Environmental Program Manager, Federal Highway Administration, Maryland Division, (410) 779–7152, or email: *jeanette.mar@dot.gov;* Jeremy Beck, MDOT SHA Project Manager (410) 545–8500, or email: *JBeck@mdot.maryland.gov.*

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare an Environmental Impact Statement for the US 301 Waldorf Area Transportation Improvements Project was published in the **Federal Register** at 72 FR 13552 on March 22, 2007. The purpose and need for the project was to improve safety and accommodate existing and projected travel demand in the vicinity of Waldorf, Maryland. No alternative was selected at that time.

The proposed transportation project included a portion of US 301 extending from the US 301 intersection with Turkey Hill Road/Washington Avenue in Charles County, Maryland to the US 301/MD 5 interchange in Prince George's County, Maryland. The project was approximately 13 miles in length.

Due to Federal and State funding constraints, as well as the unlikelihood of adequate funding for all project phases in the foreseeable future, the Notice of Intent is hereby rescinded.

Gregory Murrill,

Division Administrator, Federal Highway Administration, Baltimore, Maryland.

[FR Doc. 2020–14639 Filed 7–7–20; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

U.S. Maritime Transportation System National Advisory Committee; Notice of Public Meeting; Correction Updating Website Link

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of public meeting and correction.

SUMMARY: The Maritime Administration (MARAD) announces a public meeting of the U.S. Maritime Transportation System National Advisory Committee (MTSNAC) to discuss advice and recommendations for the U.S. Department of Transportation on issues related to the marine transportation system. The previous meeting notice published in the **Federal Register** on July 1, 2020 inadvertently included an inactive website link in the **ADDRESSES**

section and the **SUPPLEMENTARY INFORMATION** section. This notice includes the correct MTSNAC website link.

DATES: The webinar-based (online) public meeting will be held on Wednesday, July 15, 2020, from 1 p.m. to 4:00 p.m. Eastern Daylight Time (EDT). Requests to speak during the public comment period of the meeting must submit a written copy of their remarks to DOT no later than by Wednesday, July 8, 2020. Requests to submit written materials to be reviewed during the meeting must be received by Wednesday, July 8, 2020.

ADDRESSES: The meeting will be held via webinar, accessible via most internet browsers.

The website link to join the meeting will be posted on the MTSNAC website by Wednesday, July 8, 2020. Please visit the MTSNAC website at *https://www.maritime.dot.gov/outreach/maritime-transportation-system-mts/marine-transportation-system-national-advisory-committee*.

FOR FURTHER INFORMATION CONTACT: Amanda Rutherford, Designated Federal Officer, at *MTSNAC@dot.gov* or at (202) 366–1332. Maritime Transportation System National Advisory Committee, 1200 New Jersey Avenue SE. W21–307, Washington, DC 20590. Any committee related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The MTSNAC is a Federal advisory committee that advises the U.S. Secretary of

Transportation through the Maritime Administrator on issues related to the marine transportation system. The MTSNAC was originally established in 1999 and mandated in 2007 by the Energy Independence and Security Act of 2007 (Pub. L. 110–140). The MTSNAC is codified at 46 U.S.C. 55603 and operates in accordance with the provisions of the Federal Advisory Committee Act (FACA).

II. Agenda

The agenda will include: (1) Welcome, opening remarks, and introductions; (2) administrative items; (3) subcommittee break-out sessions; (4) refining recommendations for the maritime transportation system for the full MTSNAC committee to vote and adopt during the September 28–29, 2020 meeting. The agenda will include updates to the Committee on the subcommittee research, processes for developing their recommendations, and a second look at the subcommittee's draft implementation strategies to help achieve the recommendations; and (5) public comments. A detailed agenda will be posted on the MTSNAC internet website at *https://www.maritime.dot.gov/outreach/maritime-transportation-system-mts/marine-transportation-system-national-advisory-committee* at least one week in advance of the meeting.

III. Public Participation

The meeting will be open to the public.

Services for Individuals with Disabilities: The public meeting is accessible to people with disabilities. The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Public Comments: A public comment period will commence at approximately 3 p.m. EST on July 15, 2020. To provide time for as many people to speak as possible, speaking time for each individual will be limited to three minutes. Members of the public who would like to speak are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Commenters will be placed on the agenda in the order in which notifications are received. If time allows, additional comments will be permitted. Copies of oral comments must be submitted in writing at the meeting or preferably emailed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments: Persons who wish to submit written comments for consideration by the Committee must send them to the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

(Authority: 49 CFR part 1.93(a); 5 U.S.C. 552b; 41 CFR parts 102–3; 5 U.S.C. app. Sections 1–16)

* * * * *

Dated: July 2, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–14684 Filed 7–7–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2019–0109]

Notice of Availability; Notice of Public Meeting; Request for Comments Port of Long Beach (POLB or Port) Pier B On-Dock Rail Support Facility Project

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The U.S Department of Transportation (DOT), Maritime Administration (MARAD) announces the availability of the Draft Environmental Impact Statement (DEIS) for the Port of Long Beach (POLB or Port) Pier B On-Dock Rail Support Facility Project (Project) to support an application to DOT for Railroad Rehabilitation & Improvement Financing (RRIF) and potentially other federal funding programs. Publication of this notice begins a 45 day public comment period. A virtual public meeting will be held online and via teleconference. The public meeting will be preceded by a virtual informational open house. MARAD requests comments on the Project. Comments will inform our preparation of a Final Environmental Impact Statement (FEIS). The DEIS, supporting information, and comments will be available for viewing and download at *http://www.regulations.gov* under docket number MARAD–2019–0109. The FEIS, when published, will be announced and available at this site as well.

The Project is designed to address current traffic and cargo distribution bottlenecks into, out of, and within the POLB. The Project also includes consideration for anticipated future demand for cargo movement via on-dock rail; maximize on-dock intermodal operations to reach the long-term goal of 30 to 35 percent of cargo containers to be handled by on-dock rail; provide a facility that can accept and handle longer container trains; and provide a rail yard that is cost effective and fiscally prudent. The Port is applying to the RRIF Program, and potentially other federal funding programs, to support the Project.

DATES: The public comment period will end August 24, 2020. There will be one public meeting held in connection with the Project. The meeting will be held online and via teleconference Tuesday, July 28, 2020, from 6:00 p.m. to 8:00 p.m. Pacific Time *(9:00 p.m.–11:00 p.m. Eastern).* The public meeting will be preceded by an informational virtual open house from 4:00 p.m. to 6:00 p.m. Pacific Time (7:00 p.m.–9:00 p.m.

Eastern) A supplemental notice with online access information and teleconference phone number will be published at least two weeks prior to the meeting. These portals will be open a few minutes before the meeting/open house.

The public meeting may end later than the stated time, depending on the number of persons wishing to speak. Additionally, materials submitted in response to this request for comments on the Pier B On-Dock Rail Support Facility Project must reach the Federal Docket Management Facility no later than 45 days after this notice is published in the **Federal Register**.

ADDRESSES: The public docket for MARAD–2019–0109 is maintained by the U.S. Department of Transportation, Docket Management Facility, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Alan Finio, Office of Environment, at telephone number: 202–366–8024 or by email at *Alan.Finio.ctr@dot.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during business hours. The FIRS is available twenty-four hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments or other Project documents are posted. Anonymous comments will be accepted.

SUPPLEMENTARY INFORMATION:

Request for Comments

We request public comments or other relevant information related to the Draft Environmental Impact Statement (DEIS) for the proposed Pier B On-Dock Rail Support Facility Project (Project). These comments will inform our preparation of the Final Environmental Impact Statement (FEIS). The comments may relate to, but are not limited to, the environmental impact of the proposed action. All comments will be accepted. The virtual public meeting (see Public Meeting and Open House) is not the only opportunity you will have to comment on the Project. In addition, we encourage you to submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* under docket number MARAD–2019–0109. If you submit your comments electronically, it is not necessary to also submit a hard copy. If you cannot submit using *http://www.regulations.gov,* please contact Alan Finio (see **FOR FURTHER INFORMATION CONTACT**). If you have questions on viewing or uploading to the Docket, call Docket Operations, telephone: 202–366–9317 or 202–366–9826. Comments can also be faxed to the Federal Docket Management Facility at 202–493–2251. Please submit comments using only one method.

The comments and associated documentation, as well as the draft and final environmental impact statements (when published), will be available for viewing at the Federal Docket Management System (FDMS) website: *http://www.regulations.gov* under docket number MARAD–2019–0109.

Public comment submissions should include the Docket number MARAD–2019–0109.

Faxed or mailed submissions must be unbound, no larger than 8 ½ by 11 inches and suitable for copying and electronic scanning. The format of electronic submissions should also be no larger than 8 ½ by 11 inches. If you mail your submission and want to know when it reaches the Federal Docket Management Facility, please include a stamped, self-addressed postcard or envelope.

Regardless of the method used for submitting comments, all submissions will be posted, without change, to the FDMS website (*http://www.regulations.gov*) and will include any personal information you provide. Therefore, submitting this information to the docket makes it public. You may wish to read the Privacy and Use Notice that is available on the FDMS website and the Department of Transportation Privacy Act Notice that appeared in the **Federal Register** on April 11, 2000 (65 FR 19477) (see PRIVACY ACT).

Public Meeting and Open House

A virtual informational open house and public meeting will be held online and by teleconference call. We encourage you to attend the virtual informational open house and public meeting to learn about, and comment on, the proposed Project. The meeting will be held on Tuesday July 28, 2020. A supplemental notice will be published to provide meeting details including online links and call-in phone numbers at least two weeks prior to the meeting.

Those wishing to make comments during the public meeting may register online or can contact MARAD *(*see **FOR FURTHER INFORMATION CONTACT***).* Comments made during the public meeting will be recognized in the following order: Elected officials, public agencies, individuals or groups in the sign-up order and then anyone else not previously registered who wishes to speak.

In order to allow everyone a chance to speak at the public meeting, we may limit comment time, extend the meeting hours, or both. Those making comments during the public meeting must identify themselves and their organization by name. Comments will be recorded and/or transcribed for inclusion in the public docket.

You may submit written material to the *Federal eRulemaking Portal* at *http://www.regulations.gov* under docket number MARAD–2019–0109, either in place of, or in addition to, speaking at the public meeting. Written material must include your name and address and will be included in the public docket (*http://www.regulations.gov*).

The virtual open house and public meeting will be conducted in compliance with the Americans with Disabilities Act. If you plan to attend the virtual open house or public meeting and need special assistance such as sign language interpretation, non-English language translator services or other reasonable accommodation, please notify MARAD (see **FOR FURTHER INFORMATION CONTACT**) at least 5 business days in advance of the public meeting. Include your contact information as well as information about your specific needs.

Summary of the Project

The City of Long Beach (COLB), acting by and through its Board of Harbor Commissioners (BHC), is proposing to construct the 12th Street Alternative in the POLB. The purposes of the proposed reconfiguration and expansion Project are to: (a) Provide a sufficient facility to accommodate the expected demand of cargo to be moved via on-dock rail into the foreseeable future; (b) maximize on-dock intermodal operations to reach the long-term goal of 30 to 35 percent of cargo containers to be handled by on-dock rail (c) provide a facility that can accept and handle longer container trains; and (d) provide a rail yard that is cost effective and fiscally prudent.

The proposed Project would be constructed in three phases over an estimated seven years and has an estimated opening year of 2025. Components of the proposed Project would include:

- Adding 31 yard tracks and five arrival/departure tracks, thereby expanding the yard from an existing 12 tracks (2 main line tracks, 10 yard tracks, and no arrival/departure tracks)

to a total of 48 tracks (2 main tracks, 41 yard tracks, and five arrival/departure tracks);

- Providing for up to 10,000-foot long receiving/departure tracks;
- Widening the existing rail bridge over Dominguez Channel to accommodate one additional track; and
- Constructing an area for locomotive refueling within the yard.

Realignments and closures of some roadways would be required. Pier B Street would be realigned to the south, its geometrics would be improved, and two lanes of traffic in each direction would be provided.

- The realignment of Pier B Street would require the reconstruction of two intersections, at Anaheim Way and Edison Avenue.
- The existing at-grade 9th Street railroad grade crossing would be closed and the Shoemaker ramps removed.
- Pico Avenue would be realigned to the west beginning at the I–710 ramps south to approximately Pier D Street, allowing space for four additional tracks between Pico Avenue and the I–710 freeway.
- Areas needed for new rail tracks would require the closure of portions of 9th, 10th, 11th, and 12th streets and Edison, Jackson, Santa Fe, Canal, Caspian, Harbor, and Fashion avenues between Anaheim Street and Pier B Street, in the City of Long Beach.
- Portions of Farragut, Foote, Cushing, Macdonough, and Schley avenues would be closed in the vicinity of existing railroad right-of-way (ROW) in the City of Long Beach.

The proposed Project would be located in two POLB Planning Districts (the Northeast Harbor and North Harbor); the site also includes the Wilmington-Harbor City Community Plan Area of the City of Los Angeles. The Project site is generally situated between Dominguez Channel to the west, Interstate 710 (I–710) to the east, Ocean Boulevard to the south, and Anaheim Street to the north. The proposed Project area includes rail tracks that extend west beyond the Terminal Island Freeway (State Route 103) to just west of Dominguez Channel, where they connect with the Alameda Corridor, and also south as far as Ocean Boulevard. In addition to privately owned property, a variety of public agencies own property within the Project site and in its vicinity, including the POLB, COLB, City of Los Angeles, Port of Los Angeles, Union Pacific and Burlington Northern Santa Fe railroads; Alameda Corridor Transportation Authority; Los Angeles County Flood Control District; and Southern California Edison.

Privacy Act

In accordance with *5 U.S.C. 553*(c), MARAD solicits comments from the public to better inform its administrative process. MARAD 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.* If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 42 U.S.C. 4321, *et seq.,* 40 CFR parts 1500–1508, Department of Transportation Order 5610.1C, and MARAD Administrative Order 600–1)

Dated: July 2, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–14716 Filed 7–7–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for New Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before August 7, 2020.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on July 1, 2020.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21061–N	KLA Corporation	173.212, 173.213	To authorize the transportation in commerce of certain flammable solids in non-DOT specification packaging. (modes 1, 4).
21062–N	Gas Innovations Inc	171.23	To authorize the transportation in commerce of pressure drums containing Hydrogen chloride, anhydrous, UN 1050 that do not meet the requalification requirement in § 171.23 for export. (modes 1, 2, 3).

SPECIAL PERMITS DATA—Continued

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21063–N	Cobham Mission Systems Orchard Park Inc.	173.302a(a)(1)	To authorize the transportation in commerce of certain gases in non-refillable, non-DOT specification cylinders. (modes 1, 2, 3, 4).
21065–N	Advance Stores Company Incorporated.	172.704, 173.159	To authorize the transportation in commerce of lead acid batteries and limited quantities of hazardous materials by third-party delivery services without requiring carrier training. (mode 1).
21067–N	Stainless Tank & Equipment Co., LLC.	178.345–2	To authorize the manufacture, mark, sale, and use of DOT 400 series cargo tanks fabricated using materials not authorized in 178.345–2. (mode 1).
21068–N	FirePro Systems Limited	173.166	To authorize the transportation in commerce of fire extinguishing products which are classed as Safety Devices. (modes 1, 2, 3, 4).
21069–N	Catalina Cylinders, Inc	173.302a, 178.71(l)(1)	To authorize the manufacture, mark, sale, and use of non-DOT specification cylinders. (modes 1, 2, 3, 4).

[FR Doc. 2020–14618 Filed 7–7–20; 8:45 am]
BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Actions on Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before August 7, 2020.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on July 1, 2020.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA—GRANTED

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
9168–M	Berlin Packaging LLC	173.13(a), 173.13(b), 173.13(c)(1)(ii), 173.13(c)(1)(iv), 173.13(c)(2)(iii).	To modify the special permit to clarify quantities of hazmat authorized per packaging.
14584–M	Techknowserv Corp	173.302a(b)(2), 173.302a(b)(3), 173.302a(b)(4), 173.302a(b)(5), 180.205(c), 180.205(f), 180.205(g), 180.205(i), 180.209(a), 180.209(a).	To modify the special permit to authorize additional cylinders to be requalified by these methods.
14799–M	Joyson Safety Systems Sachsen Gmbh.	173.301(a)(1), 173.302a	To modify the special permit to remove the five year from manufacture restriction on transporting.
14833–M	Joyson Safety Systems Aschaffenburg Gmbh.	173.301(a)(1), 173.302a, 178.65(f)(2)	To modify the special permit to remove the five year from manufacture restriction on transporting the articles.
15536–M	Techknowserv Corp	180.507, 180.509, 180.519(a)	To modify the special permit to authorize additional tank cars.
15610–M	Techknowserv Corp	173.302a(b)(2), 173.302a(b)(3), 173.302a(b)(4), 173.302a(b)(5), 180.205(c), 180.205(f), 180.205(g), 180.205(i), 180.209(a), 180.213.	To modify the special permit to authorize additional cylinders.
15963–M	Jack Harter Helicopters, Inc.	172.200, 175.75, 172.300, 172.400, 173.27, 175.30, 175.33, 175.75.	To modify the special permit to authorize additional hazmat and to clarify certain hazard communications, quantity limitations and loading and stowage requirements.

SPECIAL PERMITS DATA—GRANTED—Continued

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
16504–M	iDrink Products Inc	171.2(k), 172.200, 172.202(a)(5)(iii)(B), 172.300, 172.500, 172.400, 172.700(a).	To modify the special permit to bring it in line with other permits authorizing the transportation in commerce of certain used DOT Specification 3AL cylinders and containers that contain carbon dioxide, but not necessarily in an amount qualifying as hazardous material.
20524–M	Wilhelm Schmidt Gmbh	172.102(c)(4), 178.705(c)(2)(ii)	To modify the special permit to authorize an additional 6.1 hazmat.
20541–M	ISGEC Heavy Engineering Ltd.	179.300–19(a)	To modify the special permit to clarify test and chemical analysis observations.
20687–M	Department Of Defense	172.203(a), 172.203(k), 172.301(c)	To modify the special permit to add additional Division 6.1 hazmat.
20861–M	Ayalytical Instruments Inc	173.120(c)	To modify the special permit to authorize an additional ASTM Standard Test Method D6450.
20983–N	Roth Global Plastics Inc	173.302a(a)(1)	To authorize the transportation in commerce of Division 2.2 materials in non-DOT specification cylinders (accumulators).
20986–N	Olin Corporation	172.302(c), 173.26, 173.314(c), 179.13(b).	To authorize the transportation in commerce of tank cars containing chlorine in quantities exceeding those authorized in the HMR.
21018–N	Packaging And Crating Technologies, LLC.	172.200, 172.300, 172.400, 172.600, 172.700(a), 173.185(b), 173.185(c), 173.185(f).	To authorize the manufacture, mark, sale, and use of UN 4G packaging with a specially-designed, fire-suppressing liner for the transportation of damaged, defective, or recalled lithium ion cells and batteries, including those contained in or packed with equipment, without being subject to certain hazard communication requirements.
21028–N	Neutron Holdings, Inc	173.185(f)	To authorize the manufacture, mark, sale and use of alternative packaging for the transportation in commerce of damaged, defective, or recalled lithium ion cells and batteries and lithium metal cells and batteries and these cells or batteries contained in or packed with equipment.
21029–N	U.S. Cryogenics, Inc	172.203(a), 172.301(c), 180.211(c)(2)(i)	To authorize the transportation in commerce of Dewars that have been repaired but have not been pressure tested in accordance with the specifications under which they were originally manufactured.
21036–N	Triad National Security, LLC.	172.203(a), 172.301(c), 173.22(a)(4)(i), 173.22(a)(4)(ii), 173.24(f)(2).	To authorize the transportation in commerce of hazardous materials packaged in packaging that has not been closed in accordance with the manufacturer's closure instructions.

SPECIAL PERMITS DATA—DENIED

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21002–N	Calumet Branded Products, LLC.	173.150(b)(2)	To authorize the transportation in commerce of flammable liquids as limited quantities when the inner packaging capacity exceeds the HMR authorization.
21045–N	Tradewater LLC	172.200, 172.700(a), 172.400	To authorize the transport of non-refillable DOT 39 gas cylinders containing refrigerant gases with alternate documentation and hazard communication requirements.
21053–N	Wisconsin Central Ltd	172.203(a), 174.24, 174.26(a)	To authorize the use of electronic means to maintain and communicate on-board train consist and shipping paper information in lieu of paper documentation when hazardous materials are transported by rail.

SPECIAL PERMITS DATA—WITHDRAWN

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21064–N	Medichem Sa	173.241	To authorize the transportation in commerce by cargo aircraft of an Environmentally Hazardous Substance, liquid, n.o.s. in Intermediate Bulk Containers.

[FR Doc. 2020–14620 Filed 7–7–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Modifications to Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

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

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on July 1, 2020.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
13250–M	Pacific Consolidated Industries LLC.	173.302a(a)(1), 173.304a(a)(1)	To modify the special permit to authorize an extension of cylinder life utilizing the Modal Acoustic Emission (MAE) test method. (modes 1, 2, 3, 4, 5)
14509–M	Pacific Consolidated Industries LLC.	173.302(a), 173.302(f)(3), 173.302(f)(4), 173.302(f)(5), 173.304(a), 175.501(e)(3).	To modify the special permit to authorize an extension of cylinder life utilizing the Modal Acoustic Emission (MAE) test method. (modes 1, 2, 3, 4, 5)
15347–M	Raytheon Company	173.301, 173.302a	To modify the special permit to authorize passenger carrying aircraft as a mode of transportation. (modes 1, 2, 3, 4)
15821–M	Circor Instrumentation Technologies, Inc.	173.301(a), 173.302a, 173.304a	To modify the special permit to update the cylinder specification drawings and add a 150 cc cylinder. (modes 1, 2, 3)
20245–M	Jaguar Instruments Inc	173.302(a), 173.304(a)	To modify the special permit to update reporting procedure, update cylinder design drawings and incorporate ICAO references to the permit. (modes 1, 2, 3, 4)
20549–M	Cellblock Fcs, LLC	172.400, 172.700(a), 172.102(c)(1), 172.200, 172.300.	To modify the special permit to authorize an increase in the maximum watt hour rating up to 1000 for shipping ever larger damaged or defective lithium batteries. (modes 1, 2, 3)
20904–M	Piston Automotive, LLC	172.101(j)	To modify the special permit to authorize a change to the packaging of the battery assembly. (mode 4)
20907–M	Versum Materials, Inc	171.23(a), 171.23(a)(3)	To modify the special permit to authorize shipment of up to 60 cylinders a month. (modes 1, 3)
20973–M	Olin Winchester LLC	172.203(a), 173.63(b)(2)(v)	To modify the special permit to remove the requirement for carrying a copy of the permit on each vessel, aircraft or motor vehicle transporting packages covered by the permit. (modes 1, 2, 3, 4, 5)
20989–M	DGM Italia SRL	173.56(b), 173.185(a)	To modify the special permit to authorize the use of ATA 300 specification packaging. (modes 1, 4)

[FR Doc. 2020–14619 Filed 7–7–20; 8:45 am]
BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been removed from OFAC's Specially Designated Nationals and Blocked Persons List (SDN List). Their property and interests in property are no longer blocked, and U.S. persons are no longer generally prohibited from engaging in transactions with them. OFAC is also removing the name of two vessels that had been identified as blocked property.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, tel: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On June 2, 2020 and June 18, 2020, OFAC determined that the persons listed below met one or more of the criteria under Executive Order 13850, ''Blocking Property of Additional Persons Contributing to the Situation in Venezuela,'' 83 FR 55243 (E.O. 13850), as amended by Executive Order 13857 of January 25, 2019, ''Taking Additional Steps to Address the National Emergency with Respect to Venezuela,'' 84 FR 509 (E.O. 13857). Also on June 2, 2020 and June 18, 2020, OFAC identified the four vessels listed below as blocked property pursuant to E.O. 13850. On July 02, 2020, OFAC determined that circumstances no longer warrant the inclusion of the following entities and their property on the SDN List under this authority. These entities and vessels are no longer subject to the blocking provisions of Section 1(a) of E.O. 13850.

Entities

1. SANIBEL SHIPTRADE LTD, Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, MH 96960, Marshall Islands; Identification Number IMO 4124196 [VENEZUELA–EO13850].
2. ROMINA MARITIME CO INC, 5th Floor, 99, Akti Miaouli, 185 38, Piraeus, Greece; Identification Number IMO 5967632 [VENEZUELA–EO13850].
3. DELOS VOYAGER SHIPPING LTD, Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands; Identification Number IMO 6019130 [VENEZUELA–EO13850].
4. ADAMANT MARITIME LTD, Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, MH 96960, Marshall Islands; Identification Number IMO 5869890 [VENEZUELA–EO13850].

Vessels

1. VOYAGER I Crude Oil Tanker Marshall Islands flag; Vessel Registration Identification IMO 9233789 (vessel) [VENEZUELA–EO13850] (Linked To: SANIBEL SHIPTRADE LTD).
2. EUROFORCE Crude Oil Tanker Liberia flag; Vessel Registration Identification IMO 9251585 (vessel) [VENEZUELA–EO13850] (Linked To: ROMINA MARITIME CO INC).
3. DELOS VOYAGER Crude Oil Tanker Panama flag; Vessel Registration Identification IMO 9273052 (vessel) [VENEZUELA–EO13850] (Linked To: DELOS VOYAGER SHIPPING LTD).
4. SEAHERO Crude Oil Tanker Bahamas flag; Vessel Registration Identification IMO 9315642 (vessel) [VENEZUELA–EO13850] (Linked To: ADAMANT MARITIME LTD).

Dated: July 2, 2020.

Andrea M. Gacki

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2020–14660 Filed 7–7–20; 8:45 am]
BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Multiemployer Pension Plan Application To Reduce Benefits

AGENCY: Department of the Treasury.

ACTION: Notice and request for comment; reopening of comment period.

SUMMARY: On January 17, 2020, the Department of the Treasury (Treasury) published a notice of availability and request for comments regarding an application to Treasury to reduce benefits under the American Federation of Musicians & Employers Pension Fund (Fund), in accordance with the Multiemployer Pension Reform Act of 2014 (MPRA). The purpose of this notice is to reopen the comment period for the Fund's application and provide more time for interested parties to provide comments.

DATES: Treasury is reopening the comment period for the notice regarding the Fund entitled ''Multiemployer Pension Plan Application to Reduce Benefits Comments,'' which was published in the **Federal Register** on January 17, 2020, (85 FR 3106). Treasury will accept comments received on this notice on or before July 15, 2020.

ADDRESSES: You may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov,* in accordance with the instructions on that site. Commenters are strongly encouraged to submit public comments electronically. Treasury expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable.

Comments may be mailed to the Department of the Treasury, MPRA Office, 1500 Pennsylvania Avenue NW, Room 1224, Washington, DC 20220, Attn: Danielle Norris. Comments sent via facsimile, telephone, or email will not be accepted.

Additional Instructions. All comments received, including attachments and other supporting materials, will be made available to the public. Do not include any personally identifiable information (such as your Social Security number, name, address, or other contact information) or any other information in your comment or supporting materials that you do not want publicly disclosed. Treasury will make comments available for public inspection and copying on *www.regulations.gov* or upon request. Comments posted on the internet can be retrieved by most internet search engines.

FOR FURTHER INFORMATION CONTACT: For information regarding the application from the Fund, please contact Treasury at (202) 622–1534 (not a toll-free number).

SUPPLEMENTARY INFORMATION: MPRA amended the Internal Revenue Code to permit a multiemployer plan that is projected to have insufficient funds to reduce pension benefits payable to participants and beneficiaries if certain conditions are satisfied. In order to reduce benefits, the plan sponsor is required to submit an application to the Secretary of the Treasury, which must be approved or denied in consultation with the Pension Benefit Guaranty Corporation (PBGC) and the Department of Labor.

On December 30, 2019, the Board of Trustees of the Fund submitted an application for approval to reduce

benefits under the plan. As required by MPRA, that application has been published on Treasury's website at *https://www.treasury.gov/services/Pages/Plan-Applications.aspx.* On January 17, 2020, Treasury published ai notice in the **Federal Register** (85 FR 3106), in consultation with PBGC and the Department of Labor, to solicit public comments on all aspects of the Fund's application The comment period in the notice published on January 17, 2020, closed on March 2, 2020. On March 19, 2020, Treasury published a notice in the **Federal Register** (85 FR 15868), in consultation with PBGC and the Department of Labor, to reopen the comment period until April 20, 2020.

This notice announces the reopening of the comment period on the Fund's application with respect to the notice published on January 17, 2020, until July 15, 2020, in order to give additional time for interested parties to provide comments.

David Kautter,

Assistant Secretary for Tax Policy.

[FR Doc. 2020–14713 Filed 7–7–20; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Interest Rate Paid on Cash Deposited To Secure U.S. Immigration and Customs Enforcement Immigration Bonds

AGENCY: Departmental Offices, Treasury.

ACTION: Notice.

SUMMARY: For the period beginning July 1, 2020, and ending on September 30, 2020, the U.S. Immigration and Customs Enforcement Immigration Bond interest rate is 0.15 per centum per annum.

DATES: Rates are applicable July 1, 2020 to September 30, 2020.

ADDRESSES: Comments or inquiries may be mailed to Will Walcutt, Supervisor, Funds Management Branch, Funds Management Division, Fiscal Accounting, Bureau of the Fiscal Services, Parkersburg, West Virginia 26106–1328.

You can download this notice at the following internet addresses: *http://www.treasury.gov* or *http://www.federalregister.gov.*

FOR FURTHER INFORMATION CONTACT: Ryan Hanna, Manager, Funds Management Branch, Funds Management Division, Fiscal Accounting, Bureau of the Fiscal Service, Parkersburg, West Virginia 261006–1328 (304) 480–5120; Will Walcutt, Supervisor, Funds Management Branch, Funds Management Division, Fiscal Accounting, Bureau of the Fiscal Services, Parkersburg, West Virginia 26106–1328, (304) 480–5117.

SUPPLEMENTARY INFORMATION: Federal law requires that interest payments on cash deposited to secure immigration bonds shall be ''at a rate determined by the Secretary of the Treasury, except that in no case shall the interest rate exceed 3 per centum per annum.'' 8 U.S.C. 1363(a). Related Federal regulations state that ''Interest on cash deposited to secure immigration bonds will be at the rate as determined by the Secretary of the Treasury, but in no case will exceed 3 per centum per annum or be less than zero.'' 8 CFR 293.2. Treasury has determined that interest on the bonds will vary quarterly and will accrue during each calendar quarter at a rate equal to the lesser of the average of the bond equivalent rates on 91-day Treasury bills auctioned during the preceding calendar quarter, or 3 per centum per annum, but in no case less than zero. [FR Doc. 2015–18545] In addition to this Notice, Treasury posts the current quarterly rate in Table 2b—Interest Rates for Specific Legislation on the TreasuryDirect website.

The Deputy Assistant Secretary for Public Finance, Gary Grippo, having reviewed and approved this document, is delegating the authority to electronically sign this document to Heidi Cohen, Federal Register Liaison for the Department, for purposes of publication in the **Federal Register**.

Heidi Cohen,

Federal Register Liaison.

[FR Doc. 2020–14602 Filed 7–7–20; 8:45 am]

BILLING CODE 4810–25–P

UNITED STATES INSTITUTE OF PEACE

Virtual Board Meeting

AGENCY: United States Institute of Peace.

BILLING CODE: BAC 6820–AR.

DATE/TIME: Friday, July 17, 2020 (10:00 a.m.–12:00 p.m.)

LOCATION: *Virtual Board Meeting Information:*

Join by video: https://usiporg.zoomgov.com/j/1614762998?pwd=TXFsZHJXRTVGcVVOMjV5ZFN0TXEvdz09.

Dial-in option: +1–646–254–5252.

Meeting ID: 161 476 2998/Password: 663780.

STATUS: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: July 17, 2020 Board Meeting: Chairman's Report; Vice Chairman's Report; President's Report; Reports/Updates from the Front Lines: *China's Impact on Burma, Africa Center,* and *Generation Change;* Approval of Minutes; Reports from USIP Building, Program, Audit & Finance, Search, and Security Committees.

CONTACT: Nancy Lindborg, President & CEO: *nlindborg@usip.org.*

Dated: July 2, 2020.

Nancy Lindborg,

President & CEO.

[FR Doc. 2020–14726 Filed 7–7–20; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 85 Wednesday,

No. 131 July 8, 2020

Part II

Environmental Protection Agency

40 CFR Part 63

NESHAP: Surface Coating of Automobiles and Light-Duty Trucks; Miscellaneous Metal Parts and Products; Plastic Parts and Products; Large Appliances; Printing, Coating, and Dyeing of Fabrics and Other Textiles; and Metal Furniture Residual Risk and Technology Reviews; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2019–0314, EPA–HQ–OAR–2019–0312, EPA–HQ–OAR–2019–0313, EPA–HQ–OAR–2017–0670, EPA–HQ–OAR–2017–0668, EPA–HQ–OAR–2017–0669; FRL–10006–70–OAR]

RIN 2060–AT49 and RIN 2060–AT72

NESHAP: Surface Coating of Automobiles and Light-Duty Trucks; Miscellaneous Metal Parts and Products; Plastic Parts and Products; Large Appliances; Printing, Coating, and Dyeing of Fabrics and Other Textiles; and Metal Furniture Residual Risk and Technology Reviews

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is taking final action on the residual risk and technology reviews (RTRs) conducted for the Surface Coating of Automobiles and Light-Duty Trucks (ALDT); Surface Coating of Miscellaneous Metal Parts and Products (MMPP); and the Surface Coating of Plastic Parts and Products (PPP) source categories regulated under national emission standards for hazardous air pollutants (NESHAP). These final amendments also address emissions during periods of startup, shutdown, and malfunction (SSM); electronic reporting of performance test results and compliance reports; the addition of EPA Method 18 and updates to several measurement methods; and the addition of requirements for periodic performance testing. Several miscellaneous technical amendments were also made to improve the clarity of the rule requirements. We are making no revisions to the numerical emission limits based on these risk analyses or technology reviews. This notice also finalizes technical corrections to the NESHAP for Surface Coating of Large Appliances; NESHAP for Printing, Coating, and Dyeing of Fabrics and Other Textiles; and NESHAP for Surface Coating of Metal Furniture.

DATES: This final rule is effective on July 8, 2020. The incorporation by reference (IBR) of certain publications listed in the rule is approved by the Director of the Federal Register as of July 8, 2020. The incorporation by reference of certain other publications listed in the rule was approved by the Director of the Federal Register as of June 25, 2004.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2019–0314 for 40 Code of Federal Regulations (CFR) part 63, subpart IIII (ALDT Docket); Docket ID No. EPA–HQ–OAR–2019–0312 for 40 CFR part 63, subpart MMMM, Surface Coating of MMPP Docket; and Docket ID No. EPA–HQ–OAR–2019–0313 for 40 CFR part 63, subpart PPPP, Surface Coating of PPP Docket. All documents in the dockets are listed on the *https://www.regulations.gov/* website. Although listed, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *https://www.regulations.gov/,* or in hard copy at the EPA Docket Center, WJC West Building, Room Number 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about this final action for the Surface Coating of ALDT NESHAP, the Surface Coating of MMPP NESHAP, the Surface Coating of PPP NESHAP, and the technical corrections to the NESHAP for Surface Coating of Large Appliances and the NESHAP for Surface Coating of Metal Furniture contact Ms. J. Kaye Whitfield, Minerals and Manufacturing Group, Sector Policies and Programs Division (D243–04), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2509; fax number: (919) 541–4991; and email address: *whitfield.kaye@epa.gov.* For questions about the technical corrections to the Printing, Coating, and Dyeing of Fabrics and Other Textiles, contact Ms. Paula Hirtz, Minerals and Manufacturing Group, Sector Policies and Programs Division (D243–04), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2618; fax number: (919) 541–4991; and email address: *hirtz.paula@epa.gov.* For specific information regarding the risk modeling methodology, contact Mr. Chris Sarsony, Health and Environmental Impacts Division (C539–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4843; fax number: (919) 541–0840; and email address: *sarsony.chris@epa.gov.* For information about the applicability of the NESHAP to a particular entity, contact Mr. John Cox, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, WJC South Building (Mail Code 2227A), 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–1395; and email address: *cox.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

Preamble acronyms and abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

ALDT Automobile and Light-Duty Trucks
APA Administrative Procedures Act
CAA Clean Air Act
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
CFR Code of Federal Regulations
CRA Congressional Review Act
EPA Environmental Protection Agency
ERT Electronic Reporting Tool
HAP hazardous air pollutant(s)
HF hydrogen fluoride
HI hazard index
HQ hazard quotient
HQREL hazard quotient reference exposure limit
IBR incorporation by reference
ICR Information Collection Request
km kilometer
MACT maximum achievable control technology
mg/m^3 milligrams per cubic meter
MIBK methyl isobutyl ketone
MIR maximum individual risk
MMPP Miscellaneous Metal Parts and Products
NAAQS National Ambient Air Quality Standard
NEI National Emission Inventory
NESHAP national emission standards for hazardous air pollutants
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
OSHA Occupational Safety and Health Administration
PB–HAP persistent and bioaccumulative HAP
PPP Plastic Parts and Products
PRA Paperwork Reduction Act
RFA Regulatory Flexibility Act
RTR residual risk and technology review
SSM startup, shutdown, and malfunction
TOSHI target organ-specific hazard index
tpy tons per year
UMRA Unfunded Mandates Reform Act
VCS voluntary consensus standards
VOC volatile organic compound

Background information. On November 1, 2019, the EPA proposed revisions to the Surface Coating of ALDT NESHAP, the Surface Coating of MMPP NESHAP, and the Surface Coating of PPP NESHAP based on our RTR (84 FR 58936). In this action, we are finalizing decisions and revisions for these rules. We summarize some of the more significant comments we timely received regarding the proposed rules and provide our responses in this preamble. A summary of all other public comments on the proposal and the EPA's responses to those comments is available in the ''Summary of Public Comments and Responses for the Risk and Technology Reviews for the NESHAP for Surface Coating of ALDT; Surface Coating of MMPP; and Surface Coating of PPP,'' in Docket ID No. EPA–HQ–OAR–2019–0314 for 40 CFR part 63, subpart IIII, Surface Coating of ALDT, Docket ID No. EPA–HQ–OAR–2019–0312 for 40 CFR part 63, subpart MMMM, Surface Coating of MMPP, and Docket ID No. EPA–HQ–OAR–2019–0313 for 40 CFR part 63, subpart PPPP, Surface Coating of PPP. A ''track changes'' version of the regulatory language that incorporates the changes in this action is available in the docket for each subpart.

Organization of this document. The information in this preamble is organized as follows:

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I. General Information

A. Does this action apply to me?

Regulated entities. Categories and entities potentially regulated by this action are shown in Table 1 of this preamble.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

NESHAP source category	NAICS code [1]	Regulated entities
Surface Coating of ALDT	336111, 336112, 336211	ALDT assembly plants, producers of automobile and light-duty truck bodies.
Surface Coating of MMPP	335312, 336111, 336211, 336312, 33632, 33633, 33634, 33637, 336399.	Automobile parts (engine parts, vehicle parts and accessories, brakes, axles, etc.).
	331316, 331524, 332321, 332323	Extruded aluminum, architectural components, rod, and tubes.
	33312, 333611, 333618	Heavy equipment (tractors, earth moving machinery).
	332312, 332722, 332813, 332991, 332999, 334119, 336413, 339999.	Job shops (making any of the products from the MMPP segments).
	33612, 336211	Large trucks and buses.
	331319, 331422, 335929	Magnet wire.
	332311	Prefabricated metal buildings, carports, docks, dwellings, greenhouses, panels for buildings.
	33242, 81131, 322214, 326199, 331513, 332439	Metal drums, kegs, pails, shipping containers.
	331111, 33121, 331221, 331511	Metal pipe and foundry (plate, tube, rods, nails, spikes, etc.).
	33651, 336611, 482111	Rail transportation (brakes, engines, freight cars, locomotives).
	3369, 331316, 336991, 336211, 336112, 336213, 336214, 336399.	Recreational vehicles (motorcycles, motor homes, semitrailers, truck trailers).
	326291, 326299	Rubber to metal products (engine mounts, rubberized tank tread, harmonic balancers.
	332311, 332312	Structural steel (joists, railway bridge sections, highway bridge sections).
	336212, 336999, 33635, 56121, 8111. 56211	Miscellaneous transportation related equipment and parts.
Surface Coating of PPP	337214	Office furniture, except wood.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION—Continued

NESHAP source category	NAICS code [1]	Regulated entities
	32614, 32615	Plastic foam products (*e.g.,* pool floats, wrestling mats, life jackets).
	326199	Plastic products not elsewhere classified (*e.g.,* name plates, coin holders, storage boxes, license plate housings, cosmetic caps, cup holders).
	333313	Office machines.
	33422	Radio and television broadcasting and communications equipment (*e.g.,* cellular telephones).
	336211	Motor vehicle body manufacturing.
	336399	Motor vehicle parts and accessories.
	336212	Truck trailer manufacturing.
	336213	Motor home manufacturing.
	336214	Travel trailer and camper manufacturing.
	336999	Transportation equipment not elsewhere classified (*e.g.,* snowmobile hoods, running boards, tractor body panels, personal watercraft parts).
	339111, 339112	Medical equipment and supplies.
	33992	Sporting and athletic goods.
	33995	Signs and advertising specialties.
	339999	Manufacturing industries not elsewhere classified (*e.g.,* bezels, consoles, panels, lenses).
Surface Coating of Large Appliances.	335221	Household cooking equipment.
	335222	Household refrigerators and freezers.
	335224	Household laundry equipment.
	335228	Other major household appliances.
	333312	Commercial laundry, dry cleaning, and pressing equipment.
	333415	Air-conditioners (except motor vehicle), comfort furnaces, and industrial refrigeration units and freezers (except heat transfer coils and large commercial and industrial chillers).
	333319	Other commercial/service industry machinery, *e.g.,* commercial dishwashers, ovens, and ranges, etc.
Printing, Coating, and Dyeing of Fabrics and Other Textiles.	31321	Broadwoven fabric mills.
	31322	Narrow fabric mills and Schiffli machine embroidery.
	313241	Weft knit fabric mills.
	313311	Broadwoven fabric finishing mills.
	313312	Textile and fabric finishing (except broadwoven fabric) mills.
	313320	Fabric coating mills.
	314110	Carpet and rug mills.
	326220	Rubber and plastics hoses and belting and manufacturing.
	339991	Gasket, packing, and sealing device manufacturing.
Surface Coating of Metal Furniture.	337124	Metal household furniture manufacturing.
	337214	Nonwood office furniture manufacturing.
	337127	Institutional furniture manufacturing.
	337215	Showcase, partition, shelving, and locker manufacturing.
	337127	Institutional furniture manufacturing.
	332951	Hardware manufacturing.
	332116	Metal stamping.
	332612	Wire spring manufacturing.
	335121	Residential electric lighting fixture manufacturing.
	335122	Commercial, industrial, and institutional electric lighting fixture manufacturing.
	339111	Laboratory furniture manufacturing.
	339114	Dental equipment manufacturing.
	81142	Reupholstery and furniture repair.
	922140	State correctional institutions that apply coatings to metal furniture.

[1] North American Industry Classification System.

Table 1 of this preamble is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by the final action for the source categories listed. To determine whether your facility is

affected, you should examine the applicability criteria in the appropriate NESHAP. If you have any questions regarding the applicability of any aspect of these NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

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

In addition to being available in the docket, an electronic copy of this final action will also be available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this final action at: *https://www.epa.gov/stationary-sources-air-pollution/surface-coating-automobiles-and-light-duty-trucks-national-emission, https://www.epa.gov/stationary-sources-air-pollution/surface-coating-miscellaneous-metal-parts-and-products-national,* and *https://www.epa.gov/stationary-sources-air-pollution/surface-coating-plastic-parts-and-products-national-emission.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at these same websites.

Additional information is available on the RTR website at *https://www.epa.gov/stationary-sources-air-pollution/risk-and-technology-review-national-emissions-standards-hazardous.* This information includes an overview of the RTR program and links to project websites for the RTR source categories.

C. Judicial Review and Administrative Reconsideration

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit (the Court) by September 8, 2020. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. This section also provides a mechanism for the EPA to reconsider the rule if the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within the period for public comment or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule. Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

II. Background

A. What is the statutory authority for this action?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. In the first stage, we must identify categories of sources emitting one or more of the HAP listed in CAA section 112(b) and then promulgate technology-based NESHAP for those sources. ''Major sources'' are those that emit, or have the potential to emit, any single HAP at a rate of 10 tons per year (tpy) or more, or 25 tpy or more of any combination of HAP. For major sources, these standards are commonly referred to as maximum achievable control technology (MACT) standards and must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts). In developing MACT standards, CAA section 112(d)(2) directs the EPA to consider the application of measures, processes, methods, systems, or techniques, including, but not limited to, those that: (1) Reduce the volume of or eliminate HAP emissions through process changes, substitution of materials, or other modifications; (2) enclose systems or processes to eliminate emissions; (3) collect, capture, or treat HAP when released from a process, stack, storage, or fugitive emissions point; (4) are design, equipment, work practice, or operational standards; or (5) any combination of the above.

For these MACT standards, the statute specifies certain minimum stringency requirements, which are referred to as MACT floor requirements, and which may not be based on cost considerations. See CAA section 112(d)(3). For new sources, the MACT floor cannot be less stringent than the emission control achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than floors for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT standards, we must also consider control options that are more stringent than the floor under CAA section 112(d)(2). We may establish standards more stringent than the floor, based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

In the second stage of the regulatory process, the CAA requires the EPA to undertake two different analyses, which we refer to as the technology review and the residual risk review. Under the technology review, we must review the technology-based standards and revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less frequently than every 8 years pursuant to CAA section 112(d)(6). Under the residual risk review, we must evaluate the risk to public health remaining after application of the technology-based standards and revise the standards, if necessary, to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. The residual risk review is required within 8 years after promulgation of the technology-based standards, pursuant to CAA section 112(f). In conducting the residual risk review, if the EPA determines that the current standards provide an ample margin of safety to protect public health, it is not necessary to revise the MACT standards pursuant to CAA section 112(f).[1] For more information on the statutory authority for this rule, see the proposal preamble (84 FR 58936, November 1, 2019) and the memorandum, *CAA Section 112 Risk and Technology Reviews: Statutory Authority and Methodology,* December

[1] The Court has affirmed this approach of implementing CAA section 112(f)(2)(A): *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (D.C. Cir. 2008) (''If EPA determines that the existing technology-based standards provide an 'ample margin of safety,' then the Agency is free to readopt those standards during the residual risk rulemaking.'').

14, 2017, in the ALDT Docket, MMPP Docket, and PPP Docket.

B. What are the source categories and how do the NESHAP regulate their HAP emissions?

1. What is the surface coating of ALDT source category and how does the current NESHAP regulate its HAP emissions?

The NESHAP for the ALDT source category was promulgated on April 26, 2004 (69 FR 22602), and is codified at 40 CFR part 63, subpart IIII. Technical corrections and clarifying amendments were promulgated on December 22, 2006 (71 FR 76922), and April 24, 2007 (72 FR 20227). The ALDT NESHAP applies to any affected source that is a major source, is located at a major source, or is part of a major source of HAP emissions. The affected source is any coating operation that applies topcoats to new automobile or new light-duty truck bodies or body parts for new automobiles or new light-duty trucks and/or coatings to other new motor vehicle bodies or body parts for other new motor vehicles; parts intended for use in new automobiles, new light-duty trucks, or other new motor vehicles; or aftermarket repair or replacement parts for automobiles, light-duty trucks, or other motor vehicles. The source category covered by this MACT standard currently comprises 43 facilities.

The ALDT NESHAP (40 CFR 63.3176) defines an ''automobile'' as ''a motor vehicle designed to carry up to eight passengers, excluding vans, sport utility vehicles, and motor vehicles designed primarily to transport light loads of property,'' and defines ''light-duty truck'' as ''vans, sport utility vehicles, and motor vehicles designed primarily to transport light loads of property with gross vehicle weight rating of 8,500 lbs [pounds] or less.''

The ALDT NESHAP defines a ''coating'' as ''a material that is applied to a substrate for decorative, protective or functional purposes. Such materials include, but are not limited to, paints, sealants, caulks, inks, adhesives, primers, deadeners, and maskants. Decorative, protective, or functional materials that consist only of protective oils for metal, acids, bases, or any combination of these substances are not considered coatings for the purposes of this subpart.'' (40 CFR 63.3176).

This source category is further described in the November 1, 2019, RTR proposal. See 84 FR 58941.

The primary HAP emitted from ALDT surface coating operations are organic HAP and include toluene, xylene, glycol ethers, methyl isobutyl ketone (MIBK), ethyl benzene, and methanol. The HAP emissions are from coating application and drying and curing ovens in the ALDT surface coating operations. Some emissions occur from the cleaning of spray booths and equipment. In most cases, HAP emissions from surface preparation, storage, and handling are relatively small (*i.e.,* not quantifiable) for this source category. Although inorganic HAP are reported components of coatings, no inorganic HAP are emitted because of the use of high efficiency spray equipment and filters on coating spray application operations.

The NESHAP specifies numerical emission limits for existing sources and for new and reconstructed sources for organic HAP emissions from (1) electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations; (2) primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operation plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations; (3) adhesives and sealers, other than glass bonding adhesive materials; and (4) deadener materials.

The specific organic HAP emission limits are in 40 CFR 63.3090 (for new and reconstructed sources) and 40 CFR 63.3091 (for existing sources), and the operating limits are in 40 CFR 63.3093. The emission limits and operating limits are summarized in Tables 2 and 3, respectively, of the memorandum titled *Technology Review for Surface Coating Operations in the Automobiles and Light-Duty Trucks Source Category,* in the ALDT Docket.

Compliance with the ALDT NESHAP emission limits can be achieved using several different options, including a compliant material option, an emission rate without add-on controls option (emissions averaging option), and an emission rate with add-on controls option. For bake ovens used to cure electrodeposition primers, an alternative is to capture the emissions and duct them to a control device having a destruction or removal efficiency of at least 95 percent. Facilities that have multiple paint lines may choose to group operations from two or more paint lines together to demonstrate compliance, or to make a separate compliance demonstration for the operations from each paint line.

All ALDT facilities must develop and implement a work practice plan to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, and cleaning materials used in, and waste materials generated by, the coating operations. The plan must specify practices and procedures to ensure that a set of minimum work practices specified in the NESHAP are implemented.

Those ALDT facilities using add-on controls to comply with the NESHAP must also comply with site-specific operating limits for the emission capture and control system. These operating limits are established during the compliance test for the emission capture system and add-on control device. Alternatively, emission capture systems can meet design and air flow specifications to qualify as a permanent total enclosure with 100-percent capture efficiency.

2. What is the surface coating of MMPP source category and how does the current NESHAP regulate its HAP emissions?

The MMPP NESHAP was promulgated on January 2, 2004 (69 FR 130), and is codified at 40 CFR part 63, subpart MMMM. Technical corrections to the final rule were published on April 26, 2004 (69 FR 22602), and December 22, 2006 (71 FR 76922). The MMPP NESHAP applies to owners or operators of metal parts and products surface coating operations at facilities that are major sources of HAP. The source category covered by this MACT standard currently comprises 368 facilities.

The MMPP include, but are not limited to, metal components of the following types of products as well as the products themselves: Motor vehicle parts and accessories, bicycles and sporting goods, recreational vehicles, extruded aluminum structural components, railroad cars, heavy-duty trucks, medical equipment, lawn and garden equipment, electronic equipment, magnet wire, steel drums, industrial machinery, metal pipes, and numerous other industrial, household, and consumer products. The MMPP NESHAP does not apply to any surface coating or coating operation that meets the applicability criteria of any one of 11 other surface coating NESHAP, *e.g.,* surface coating of metal components of wood furniture (subpart JJ of 40 CFR part 63), surface coating of metal components of large appliances (subpart NNNN of 40 CFR part 63), and surface coating of metal components of ALDT

(subpart IIII of 40 CFR part 63). See 40 CFR 63. 3881(c) for a list of exclusions to the MMPP source category.

This source category is further described in the November 1, 2019, RTR proposal. See 84 FR 58942.

The primary HAP emitted from MMPP surface coating operations are organic HAP and include xylenes, toluene, glycol ethers, ethyl benzene, MIBK, methanol, ethylene glycol, and dimethyl phthalate. The majority of organic HAP emissions can be attributed to the application, drying, and curing of coatings.

Inorganic HAP emissions were considered in the development of the MMPP NESHAP, and the EPA determined that inorganic HAP emissions would be very low based on the coating application techniques in place at the time of the rule development. Given the combination of very low usage of coatings containing inorganic HAP in this source category, and the current and expected continued use of controls (dry filters and waterwash systems on spray booths and high efficiency equipment) to reduce overspray emissions, the EPA concluded that levels of inorganic HAP emissions did not warrant federal regulation because those regulations would increase regulatory burden but not be expected to result in additional emissions reduction.

The MMPP NESHAP establishes the organic HAP emissions limits for existing sources and for new and reconstructed sources for organic HAP emissions for five subcategories. The five subcategories are (1) general use coating, (2) high performance coating, (3) magnet wire coating, (4) rubber-to-metal coating, and (5) extreme performance fluoropolymer coating.

Compliance can be demonstrated with a compliant coatings option, where all coatings used have organic HAP contents that individually meet the organic HAP emissions limit, and all thinners and cleaning materials contain no organic HAP; an emission rate without add-on controls option, where the organic HAP emission rate, calculated as a rolling 12-month emission rate and determined on a monthly basis, is equal to or less than the organic HAP emissions limit; or an emission rate with add-on controls option, where the organic HAP emission rate, calculated as a rolling 12-month emissions rate and determined on a monthly basis, taking into account the emissions reduction achieved through the use of one or more emissions capture and control devices, is equal to or less than the organic HAP emissions limit. A facility using the add-on control option must also comply with work practice standards to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, cleaning materials, and waste materials associated with the coating operation(s) and must also comply with operating limits for the emissions capture systems and add-on control devices.

The specific organic HAP emission limits for each coating subcategory can be found in 40 CFR 63.3890 and the operating limits in 40 CFR 63.3892. The emission limits and operating limits are summarized in Tables 4 and 5, respectively, of the memorandum titled *Technology Review for Surface Coating Operations in the Miscellaneous Metal Parts and Products Category.*

3. What is the surface coating of PPP source category and how does the current NESHAP regulate its HAP emissions?

The NESHAP for the PPP source category was promulgated on April 19, 2004 (69 FR 20968), and is codified at 40 CFR part 63, subpart PPPP. Technical corrections to the final rule were published on December 22, 2006 (71 FR 76922), and April 24, 2007 (72 FR 20227). The PPP NESHAP applies to owners or operators of PPP surface coating operations at facilities that are major sources of HAP. The PPP include, but are not limited to, plastic components of the following types of products as well as the products themselves: Motor vehicle parts and accessories for automobiles, trucks, recreational vehicles; sporting and recreational goods; toys; business machines; laboratory and medical equipment; and household and other consumer products. The PPP NESHAP does not apply to the surface coating or coating operations that meet the applicability criteria of any of 11 other surface coating NESHAP, *e.g.,* surface coating of plastic components of wood furniture (subpart JJ of 40 CFR part 63), surface coating of plastic components of large appliances (subpart NNNN of 40 CFR part 63), and surface coating of plastic components of ALDT (subpart IIII of 40 CFR part 63). See 40 CFR 63. 4481(c) for a list of exclusions to the PPP source category.

This source category is further described in the November 1, 2019, RTR proposal. See 84 FR 58943.

The primary HAP emitted from PPP surface coating operations are organic HAP and, based on the 2011 National Emission Inventory (NEI), include xylene, toluene, MIBK, ethylbenzene, styrene, glycol ethers, and methanol, in order of decreasing emissions. These compounds account for about 96 percent of the nationwide HAP emissions from this source category, based on an analysis of the NEI. The source category covered by this MACT standard currently comprises 125 facilities.

No inorganic HAP are currently associated with the coatings used in this source category, based on the data in the NEI.

The PPP NESHAP specifies numerical emission limits for existing sources and for new and reconstructed sources for organic HAP emissions. The final rule contains four subcategories: (1) General use coating, (2) thermoplastic olefin coating, (3) automotive lamp coating, and (4) assembled on-road vehicle coating.

Compliance can be demonstrated with a compliant material option, where the HAP content of each coating used is less than or equal to the applicable organic HAP emissions limit and each thinner, additive, and cleaning material uses no organic HAP; an emission rate without add-on controls option, where the organic HAP emission rate, calculated as a rolling 12-month emission rate and determined on a monthly basis, is equal to or less than the organic HAP emissions limit; or an emission rate with add-on controls option, where the organic HAP emission rate, calculated as a rolling 12-month emissions rate and determined on a monthly basis, taking into account the emissions reduction achieved through the use of one or more emissions capture and control devices, is equal to or less than the organic HAP emissions limit. A facility using the add-on control option must also comply with work practice standards to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, cleaning materials, and waste materials associated with the coating operation(s) and must also comply with operating limits for the emissions capture systems and add-on control devices.

The specific organic HAP emission limits for each coating subcategory can be found in 40 CFR 63.4490 and the operating limits in 40 CFR 63.4492. The organic HAP emission limits and operating limits are summarized in Tables 2 and 3, respectively, of the memorandum titled *Technology Review for the Plastic Parts and Products Surface Coating Operations Source Category.*

4. What are the surface coating of large appliances; printing, coating, and dyeing of fabrics and other textiles; and surface coating of metal furniture source categories and how do the current NESHAP regulate their HAP emissions?

The three source categories that are the subject of the technical corrections that are being finalized in this action are described in the **Federal Register** document for the final RTR rule amendments (84 FR 9590, March 15, 2019).

C. What changes did we propose for the source categories in our November 1, 2019, RTR proposal?

On November 1, 2019, the EPA published a proposed rule in the **Federal Register** for the Surface Coating of ALDT NESHAP, the Surface Coatings of MMPP NESHAP, and the Surface Coating of PPP NESHAP, 40 CFR part 63, subpart IIII, 40 CFR 63, subpart MMMM, and 40 CFR 63, subpart PPPP, respectively, that took into consideration the RTR analyses.

We proposed to find that after compliance with the current NESHAP (*i.e.,* MACT standards) the risks to public health from each of the source categories are acceptable, and that for each source category additional emission controls are not necessary to provide an ample margin of safety. Based on our technology review, we did not identify any cost-effective developments in practices, processes, or control technologies for any of the three surface coating source categories. Accordingly, we proposed no changes to the existing emission control requirements in subparts IIII, MMMM, and PPPP pursuant to the RTR analyses.

We proposed the following amendments to improve rule effectiveness, provide regulatory flexibility, and comply with a legal ruling:

- For each source category, a requirement for electronic submittal of notifications, semi-annual reports, and compliance reports (which include performance test reports);
- for each source category, revisions to the SSM provisions of each NESHAP in order to ensure that they are consistent with the Court decision in *Sierra Club* v. *EPA,* 551 F. 3d 1019 (D.C. Cir. 2008), which vacated two provisions that exempted source owners and operators from the requirement to comply with otherwise applicable CAA section 112(d) emission standards during periods of SSM;
- for each source category, adding the option of conducting EPA Method 18 of appendix A to 40 CFR part 60, ''Measurement of Gaseous Organic Compound Emissions by Gas Chromatography,'' to measure and then subtract methane emissions from measured total gaseous organic mass emissions as carbon;
- for each source category, removing references to paragraph (d)(4) of the Occupational Safety and Health Administration (OSHA) Hazard Communication standard (29 CFR 1910.1200), which dealt with OSHA-defined carcinogens, and replacing that reference with a list of HAP that must be regarded as potentially carcinogenic based on the EPA guidelines;
- for each source category, a requirement to perform performance testing and reestablish operating limits no less frequently than every 5 years for sources that are using add-on controls to demonstrate compliance; and
- for each source category, IBR of alternative test methods and references to updated alternative test methods.

We also proposed several minor editorial and technical changes in each subpart, as well as technical corrections to three other recently promulgated RTRs for the following source categories: Surface Coating of Large Appliances NESHAP (40 CFR 63, subpart NNNN); Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP (40 CFR 63, subpart OOOO); and Surface Coating of Metal Furniture NESHAP (40 CFR 63, subpart RRRR).

III. What is included in these final rules?

This action finalizes the EPA's proposed determinations pursuant to the RTR provisions of CAA sections 112(d)(6) and (f)(2) for the Surface Coating of ALDT source category, the Surface Coatings of MMPP source category, and the Surface Coating of PPP source category. This action also finalizes other proposed changes to each NESHAP as proposed, including the following for each source category:

- A requirement for electronic submittal of notifications, semi-annual reports, and compliance reports (which include performance test reports);
- revisions to the SSM provisions of each NESHAP;
- adding the option of conducting EPA Method 18 of appendix A to 40 CFR part 60, ''Measurement of Gaseous Organic Compound Emissions by Gas Chromatography,'' to measure and then subtract methane emissions from measured total gaseous organic mass emissions as carbon;
- replacing a reference to OSHA's Hazard Communication standard (29 CFR 1910.1200(d)(4)) with a list of HAP that must be regarded as potentially carcinogenic based on the EPA guidelines;
- adding a requirement for sources to perform periodic control device testing if they are using add-on controls to demonstrate compliance; and
- IBR of alternative test methods and references to updated alternative test methods.

We are finalizing, as proposed, several minor editorial and technical changes in each subpart, including technical corrections to the Surface Coating of Large Appliances NESHAP (40 CFR 63, subpart NNNN); Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP (40 CFR 63, subpart OOOO); and Surface Coating of Metal Furniture NESHAP (40 CFR 63, subpart RRRR).

A. What are the final rule amendments based on the risk reviews for these source categories?

This section describes the final amendments to the Surface Coating of ALDT NESHAP (40 CFR part 63, subpart IIII); the Surface Coating of Miscellaneous Metal Parts NESHAP (40 CFR part 63, subpart MMMM); and the Surface Coating of PPP NESHAP (40 CFR part 63, subpart PPPP) being promulgated pursuant to CAA section 112(f)(2). The EPA proposed no changes to these three subparts based on the risk reviews conducted pursuant to CAA section 112(f)(2). In this action, we are finalizing our proposed determination that, considering compliance with MACT, the public health risks from these three subparts are acceptable, and that the standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. The EPA received no new data or other information during the public comment period that causes us to change that proposed determination. Therefore, we are not requiring additional emission controls under CAA section 112(f)(2) for any of the three subparts in this action.

B. What are the final rule amendments based on the technology reviews for these source categories?

We determined that there are no cost-effective developments in practices, processes, and control technologies that warrant revisions to the MACT standards for the Surface Coating of ALDT, Surface Coating of MMPP, and Surface Coating of PPP source categories. Therefore, we are not finalizing revisions to the MACT standards under CAA section 112(d)(6) for any of the three subparts in this action.

C. What are the final rule amendments addressing emissions during periods of SSM?

We are finalizing the proposed amendments to the Surface Coating of ALDT NESHAP; the Surface Coating of MMPP NESHAP; and the Surface Coating of PPP NESHAP to remove and revise provisions related to SSM. In its 2008 decision in *Sierra Club* v. *EPA* 551 F. 3d 1019 (D.C. Cir. 2008), the Court vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some CAA section 112 standards apply continuously.

As detailed in section IV.A, B, and C of the November 1, 2019, proposal preamble, the ALDT NESHAP, MMPP NESHAP, and PPP NESHAP require that the standards apply at all times (see 40 CFR 63.3093(b), 63.3900(a)(2), and 63.4492(b), respectively), consistent with the Court decision in *Sierra Club* v. *EPA,* 551 F. 3d 1019 (D.C. Cir. 2008). Table 2 to Subpart IIII of Part 63, Table 2 to Subpart MMMM of Part 63, and Table 2 to Subpart PPPP of Part 63 (General Provisions applicability tables) are being revised to change the specification of the requirements that apply during periods of SSM. We are eliminating or revising certain recordkeeping and reporting requirements related to the eliminated SSM exemption. The EPA is also making other harmonizing changes to remove or modify inappropriate, unnecessary, or redundant language in the absence of the SSM exemption. We have determined that facilities in these source categories can meet the applicable emission standards in the Surface Coating of ALDT NESHAP, the Surface Coating of MMPP NESHAP, and the Surface Coating of PPP NESHAP at all times, including periods of startup and shutdown. Therefore, the EPA has determined that no additional standards are needed to address emissions during these periods. The legal rationale and detailed changes for SSM periods that we are finalizing here are set forth in the November 1, 2019, preamble to the proposed rule. See 84 FR 58959 through 58963 for ALDT, 58971 through 58973 for MMPP, and 58980 through 58982 for PPP.

Further, the EPA is not finalizing standards for malfunctions. As discussed in section IV.A, B, and C of the November 1, 2019, proposal preamble, the EPA interprets CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards, although the EPA has the discretion to set standards for malfunctions where feasible. For these source categories, it is unlikely that a malfunction would result in a violation of the standards, and no comments were submitted that would suggest otherwise. Refer to section IV.A, B, and C of the November 1, 2019, proposal preamble for further discussion of the EPA's rationale for the decision not to set standards for malfunctions, as well as a discussion of the actions a facility could take in the unlikely event that a facility fails to comply with the applicable CAA section 112 standards as a result of a malfunction event, given that administrative and judicial procedures for addressing exceedances of the standards fully recognize that violations may occur despite good faith efforts to comply and can accommodate those situations.

We are finalizing revisions to the General Provisions tables to 40 CRF part 63, subparts IIII, MMMM, and PPPP, to eliminate requirements that include rule language providing an exemption for periods of SSM. Additionally, we are finalizing our proposal to eliminate language related to SSM that treats periods of startup and shutdown the same as periods of malfunction. Finally, we are finalizing our proposal to revise the Deviation Notification Report and related records as they relate to malfunctions. As discussed in detail in the proposal preamble, these revisions are consistent with the requirements in 40 CFR 63.3093(b), 63.3900(a)(2), and 63.4492(b) stating that the standards apply at all times.

We are finalizing a revision to the performance testing requirements at 40 CFR 63.3164(a)(1), 40 CFR 63.3964(a)(1), and 40 CFR 63.4564(a)(1). The final performance testing provisions prohibit performance testing during SSM as these conditions are not representative of steady state operating conditions. The final rules also require that operators maintain records to document that operating conditions during the tests represent steady state conditions.

D. What other changes have been made to these NESHAP?

These rules also finalize, as proposed, revisions to several other NESHAP requirements. We describe the revisions that apply to all the affected source categories in the following paragraphs.

To increase the ease and efficiency of data submittal and data accessibility, we are finalizing a requirement that owners or operators of facilities in the Surface Coating of ALDT; Surface Coating of MMPP; and Surface Coating of PPP source categories submit electronic copies of certain required performance test reports through the EPA's Central Data Exchange (CDX) website using an electronic performance test report tool called the Electronic Reporting Tool (ERT). We also are finalizing, as proposed, provisions that allow facility operators the ability to seek extensions for submitting electronic reports for circumstances beyond the control of the facility, *i.e.,* for a possible outage in the CDX or Compliance and Emissions Data Reporting Interface (CEDRI) or for a *force majeure* event in the time just prior to a report's due date, as well as the process to assert such a claim.

For each subpart, we also are changing the format of references to test methods in 40 CFR part 60, appendix A to indicate where, in the eight sections of appendix A, each method is found.

We are finalizing amendments to 40 CFR 63.3166(b), 40 CFR 63.3966(b), and 40 CFR 63.4566(b) to add the option of conducting EPA Method 18 of appendix A to 40 CFR part 60, ''Measurement of Gaseous Organic Compound Emissions by Gas Chromatography,'' to measure and then subtract methane emissions from measured total gaseous organic mass emissions as carbon, when facilities are using EPA Method 25A to measure control device destruction efficiency.

For each subpart, we are finalizing the proposal to re-designate the list of organic HAP that must be used when a facility chooses to use the compliant material option (*i.e.,* for calculating total organic HAP content of a coating material present at 0.1 percent or greater by mass). To specify the applicable HAP, we are changing the rules to remove the references to paragraph (d)(4) of OSHA's Hazard Communication standard (29 CFR 1910.1200) and replace it with a new table in each subpart (Table 5 to 40 CFR part 63, subpart IIII; Table 5 to 40 CFR part 63, subpart MMMM; and Table 5 to 40 CFR part 63, subpart PPPP) that lists the applicable HAP. The organic HAP in these new tables are those HAP that were categorized in the EPA's *Prioritized Chronic Dose-Response Values for Screening Risk Assessments* (dated May 9, 2014) as a ''human carcinogen,'' ''probable human carcinogen,'' or ''possible human carcinogen'' according to *The Risk Assessment Guidelines of 1986* (EPA/

600/8–87/045, August 1987) [2] or as ''carcinogenic to humans,'' ''likely to be carcinogenic to humans,'' or with ''suggestive evidence of carcinogenic potential'' according to the *Guidelines for Carcinogen Risk Assessment* (EPA/630/P–03/001F, March 2005).

We are including in the final rule for each subpart a requirement for facilities to conduct control device performance testing no less frequently than once every 5 years when using the emission rate with add-on controls compliance option. For facilities with title V permits that require comparable periodic testing prior to permit renewal, no additional testing is required, and we included provisions in the rule to allow facilities to harmonize the NESHAP testing schedule with a facility's current title V testing schedule.

1. Technical Amendments to the Surface Coating of ALDT NESHAP

We are revising the monitoring provisions for thermal and catalytic oxidizers, as proposed, to clarify that a thermocouple is part of the temperature sensor referred to in 40 CFR 63.3168(c)(3) for purposes of performing periodic calibration and verification checks.

We are adding, as proposed, a new paragraph 40 CFR 63.3130(p) and revising 40 CFR 63.3131(a) to allow that any records required to be maintained by 40 CFR part 63, subpart IIII that are submitted electronically via the EPA's CEDRI may be maintained in electronic format. We are also adding clarification that this ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

We are amending 40 CFR 63.3166(b) to add the option of conducting EPA Method 18 of appendix A–6 to 40 CFR part 60, ''Measurement of Gaseous Organic Compound Emissions by Gas Chromatography,'' to measure and subtract methane emissions from total gaseous organic mass emissions as carbon when facilities are using EPA Method 25A.

In the final rule, as proposed, we are adding and updating test methods that are incorporated by reference. In accordance with requirements of 1 CFR 51.5, the EPA is incorporating by reference the voluntary consensus standards (VCS) and other methods described in the amendments to 40 CFR 63.14:

- ASTM D1475–13, Standard Test Method for Density of Liquid Coatings, Inks, and Related Products, IBR approved for 40 CFR 63.3151(b);
- ASTM D2369–10 (Reapproved 2015)[e], Standard Test Method for Volatile Content of Coatings, IBR approved for 40 CFR 63.3151(a)(2);
- ASTM D2697–03 (Reapproved 2014), Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings, IBR approved for 40 CFR 63.3161(f)(1);
- ASTM D5066–91 (Reapproved 2017), Standard Test Method for Determination of the Transfer Efficiency Under Production Conditions for Spray Application of Automotive Paints-Weight Basis, IBR approved for 40 CFR 63.3161(g);
- ASTM D5965–02 (Reapproved 2013), Standard Test Methods for Specific Gravity of Coating Powders, IBR approved for 40 CFR 63.3151(b);
- ASTM D6093–97 (Reapproved 2016), Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using Helium Gas Pycnometer, IBR approved for 40 CFR 63.3161(f)(1);
- ASTM D6266–00a (Reapproved 2017), Standard Test Method for Determining the Amount of Volatile Organic Compound (VOC) Released from Waterborne Automotive Coatings and Available for Removal in a VOC Control Device (Abatement), IBR approved for 40 CFR 63.3165(e); and
- EPA–450/3–88–018, Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations, IBR approved for 40 CFR 63.3130(c), 63.3161(d) and (g), 63.3165(e), and appendix A to subpart IIII of part 63.

2. Technical Amendments to the Surface Coating of MMPP NESHAP

We are amending 40 CFR 63.3966(b) to add the option of conducting EPA Method 18 of appendix A to 40 CFR part 60, ''Measurement of Gaseous Organic Compound Emissions by Gas Chromatography,'' to measure and then subtract methane emissions from total gaseous organic mass emissions as carbon when facilities are using EPA Method 25A.

Current 40 CFR 63.3931 specifies how records must be maintained. We are adding clarification to this provision at 40 CFR 63.3931(a) that specifies the allowance to retain electronic records applies to all records that were submitted as reports electronically via the EPA's CEDRI. We are also adding text to the same provision clarifying that this ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

In the final rule, as proposed, we are adding and updating test methods that are incorporated by reference. In accordance with requirements of 1 CFR 51.5, the EPA is incorporating by reference the VCS and other methods described in the amendments to 40 CFR 63.14:

- ASTM D1475–13, Standard Test Method for Density of Liquid Coatings, Inks, and Related Products, IBR approved for 40 CFR 63.3941(b)(4) and (c) and 63.3951(c);
- ASTM D2111–10 (Reapproved 2015), Standard Test Methods for Specific Gravity and Density of Halogenated Organic Solvents and Their Admixtures, IBR approved for 40 CFR 63.3951(c);
- ASTM Method D2369–10 (Reapproved 2015)[e], Standard Test Method for Volatile Content of Coatings, IBR approved for 40 CFR 63.3961(j)(3);
- ASTM D2697–03 (Reapproved 2014), Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings, IBR approved for 40 CFR 63.3941(b)(1);
- ASTM Method D5965–02 (Reapproved 2013), Standard Test Methods for Specific Gravity of Coating Powders, IBR approved for 40 CFR 3951(c); and
- ASTM D6093–97 (Reapproved 2016), Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using Helium Gas Pycnometer, IBR approved for 40 CFR 63.3941(b)(1).

3. Technical Amendments to the Surface Coating of PPP NESHAP

We are amending 40 CFR 63.4566(b)(4) to add the option of conducting EPA Method 18 of appendix A to 40 CFR part 60, ''Measurement of Gaseous Organic Compound Emissions by Gas Chromatography,'' to measure and then subtract methane emissions from total gaseous organic mass emissions as carbon when facilities are using EPA Method 25A.

Current 40 CFR 63.4530 specifies records that must be maintained. We are adding clarification to this provision at 40 CFR 63.4530(a) that specifies the allowance to retain electronic records applies to all records that were submitted as reports electronically via the EPA's CEDRI. We are also adding text to the same provision clarifying that this ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and

[2] See *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants.*

reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

We are clarifying and harmonizing the general requirement in 40 CFR 63.4500(b) with the reporting requirement in 40 CFR 63.4520(a)(5), (6), and (7), and the recordkeeping requirement in 40 CFR 63.4530(h)(4).

In the final rule, as proposed, we are adding and updating test methods that are incorporated by reference. In accordance with requirements of 1 CFR 51.5, the EPA is incorporating by reference the following VCS described in the amendments to 40 CFR 63.14:

- ASTM D1475–13, Standard Test Method for Density of Liquid Coatings, Inks, and Related Products, IBR approved for 40 CFR 63.4551(c);
- ASTM D2111–10 (Reapproved 2015), Standard Test Methods for Specific Gravity and Density of Halogenated Organic Solvents and Their Admixtures, IBR approved for 40 CFR 63.4551(c); and
- ASTM D2369–10 (Reapproved 2015)[e], Standard Test Method for Volatile Content of Coatings, IBR approved for 40 CFR 63.4541(a)(2), and 63.4561(j)(3).

4. Technical Amendments to Other Subparts

We are revising the NESHAP for Surface Coating of Large Appliances (40 CFR part 63, subpart NNNN); the NESHAP for Printing, Coating, and Dyeing of Fabrics and Other Textiles (40 CFR part 63, subpart OOOO); and the NESHAP for Surface Coating of Metal Furniture (40 CFR part 63, subpart RRRR) to make corrections after the three subparts were amended in a final rule published in the **Federal Register** on March 15, 2019 (84 FR 9590). The proposed corrections were published on November 1, 2019 (84 FR 58936), and no public comments on these corrections were received. Therefore, we are making the corrections to these three subparts as proposed.

E. What are the effective and compliance dates of the standards?

The revisions to the MACT standards being promulgated in this action are effective on July 8, 2020.

For affected sources in the ALDT, MMPP, and PPP source categories, the compliance date is January 5, 2021, with the exception of the electronic format for submitting semiannual compliance reports. For the electronic format for submitting semiannual compliance reports, both existing and new (or reconstructed) affected sources must comply within 1 year after the electronic reporting templates are available on CEDRI, or 1 year after July 8, 2020, whichever is later. The EPA selected these compliance dates based on experience with similar industries and the EPA's detailed justification for the selected compliance dates is included in the preamble to the proposed rule (84 FR 58965, 58975, and 58984).

F. What are the requirements for submission of performance test data to the EPA?

As proposed, the EPA is taking a step to increase the ease and efficiency of data submittal and data accessibility. Specifically, the EPA is finalizing the requirement for owners or operators of facilities in the ALDT, MMPP, and PPP source categories to submit electronic copies of certain required performance test reports.

Performance test results collected using test methods that are supported by the EPA's ERT as listed on the ERT website (*https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert*) at the time of the test be submitted in the format generated through the use of the ERT. The ERT will generate an electronic report package which will be submitted to the CEDRI interface on the EPA's CDX. CEDRI can be accessed through the CDX website (*https://cdx.epa.gov/*).

The requirement to submit performance test data electronically to the EPA does not create any additional performance testing and will apply only to those performance tests conducted using test methods that are supported by the ERT. A listing of the pollutants and test methods supported by the ERT is available at the ERT website. Electronic reporting will save time in the performance test submittal process. The electronic submittal of reports increases the usefulness of the data contained in those reports, is in keeping with current trends in data availability, further assists in the protection of public health and the environment, and ultimately results in less burden on regulated facilities. It also will improve compliance by facilitating the ability of regulated facilities to demonstrate compliance and the ability of air agencies and the EPA to assess and determine compliance. Electronic storage of reports make data more accessible for review, analysis, and sharing. Electronic reporting also eliminates paper-based, manual processes; thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors, and providing data quickly and accurately to affected facilities, air agencies, the EPA, and the public. For a more thorough discussion of electronic reporting of performance tests, see the memorandum, *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,* August 8, 2018, in the ALDT Docket, MMPP Docket, and PPP Docket.

In summary, in addition to supporting regulation development, control strategy development, and other air pollution control activities, having an electronic database populated with performance test data will save industry, state/local/tribal agencies, and the EPA significant time, money, and effort while improving the quality of emission inventories and air quality regulations.

IV. What is the rationale for our final decisions and amendments for these source categories?

For each amendment, this section provides a description of what we proposed and what we are finalizing for the amendment, the EPA's rationale for the final decisions and amendments, and a summary of key comments and responses. For all comments not discussed in this preamble, comment summaries and the EPA's responses can be found in the comment summary and response document available in the ALDT Docket, MMPP Docket, and PPP Docket.

A. Residual Risk Reviews

1. What did we propose pursuant to CAA section 112(f)?

a. Surface Coating of ALDT (40 CFR part 63, subpart IIII) Source Category

Pursuant to CAA section 112(f)(2), the EPA conducted a residual risk review and presented the results of this review, along with our proposed decisions regarding risk acceptability and ample margin of safety, in the November 1, 2019, proposed rule for 40 CFR part 63, subpart IIII (84 FR 58954). The results of the risk assessment for the proposal are presented briefly below in Table 2 of this preamble. More detail is in the residual risk technical support document, *Residual Risk Assessment for the Surface Coating of Automobiles and Light-Duty Trucks Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* available in the ALDT Docket.

TABLE 2—SURFACE COATING OF ALDT SOURCE CATEGORY INHALATION RISK ASSESSMENT RESULTS

Risk assessment	Maximum individual cancer risk (in 1 million)		Estimated population at increased risk of cancer ≥ 1-in-1 million		Estimated annual cancer incidence (cases per year)		Maximum chronic noncancer target organ-specific hazard index (TOSHI [1])		Maximum screening acute noncancer HQ [2]
	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	
Source Category	10	10	15,000	19,000	0.01	0.01	0.3	0.3	hazard quotient reference exposure limit (HQREL) = 1.
Whole Facility ...	10	.....	48,000	.....	0.02	.....	0.3	.....	

[1] The TOSHI is the sum of the chronic noncancer hazard quotients (HQs) for substances that affect the same target organ or organ system.
[2] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop HQ values (HQREL = HQ reference exposure level).

The results of the proposal inhalation risk modeling using actual emissions data, as shown in Table 2 of this preamble, indicate that the maximum individual cancer risk based on actual emissions (lifetime) is 10-in-1 million (driven by naphthalene and ethyl benzene from miscellaneous industrial processes—other/not classified), the maximum chronic noncancer TOSHI value based on actual emissions is 0.3 (driven by hexamethylene-1,6-diisocyanate from a painting topcoat process), and the maximum screening acute noncancer HQ value (off-facility site) could be up to 1 (driven by formaldehyde). At proposal, the total annual cancer incidence (national) from these facilities based on actual emission levels was estimated to be 0.01 excess cancer cases per year, or one case in every 100 years.

The results of the proposal inhalation risk modeling using allowable emissions data, as shown in Table 2 of this preamble, indicate that the maximum individual cancer risk based on allowable emissions (lifetime) is 10-in-1 million (driven by naphthalene and ethyl benzene), and the maximum chronic noncancer TOSHI value based on allowable emissions is 0.3 (driven by hexamethylene-1,6-diisocyanate). At proposal, the total annual cancer incidence (national) from these facilities based on allowable emissions was estimated to be 0.01 excess cancer cases per year, or one case in every 100 years.

The maximum individual cancer risk (lifetime) for the whole facility was determined to be 10-in-1 million at proposal (driven by naphthalene and ethyl benzene). The maximum facility-wide TOSHI for the source category was estimated to be 0.3 (driven by emissions of hexamethylene-1,6-diisocyanate). At proposal, the total estimated cancer incidence from the whole facility was determined to be 0.02 excess cancer cases per year, or one excess case in every 50 years.

One persistent and bioaccumulative HAP (PB–HAP) is emitted by facilities in the source category: Lead. In evaluating the potential for multipathway effects from emissions of lead, we compared modeled annual lead concentrations to the National Ambient Air Quality Standard (NAAQS) for lead of 0.15 milligrams per cubic meter (mg/m^3), arithmetic mean concentration over a 3-month period. The highest annual average lead concentration of 1.5×10^{-5} mg/m^3 is below the NAAQS level for lead, indicating a low potential for multipathway impacts of concern due to lead even assuming a shorter averaging period is analyzed. Based on this evaluation, we proposed that there is no significant potential for human health multi-pathway risks as a result of HAP emissions from this source category. Three environmental HAP are emitted by sources within this source category: Lead, hydrochloric acid (HCl) and hydrogen fluoride (HF). Therefore, at proposal, we conducted a screening-level evaluation of the potential adverse environmental risks associated with emissions of lead, HCl, and HF for the ALDT source category. Based on this evaluation, we proposed that we do not expect an adverse environmental effect as a result of HAP emissions from this source category.

We weighed all health risk factors, including those shown in Table 2 of this preamble, in our risk acceptability determination and proposed that the residual risks from the Surface Coating of ALDT source category are acceptable (section IV.A.2.a of proposal preamble, 84 FR 58956, November 1, 2019).

We then considered whether 40 CFR part 63, subpart IIII provides an ample margin of safety to protect public health. In considering whether the standards should be tightened to provide an ample margin of safety to protect public health, we considered the same risk factors that we considered for our acceptability determination and also considered the costs, technological feasibility, and other relevant factors related to emissions control options that might reduce risk associated with emissions from the source category. Related to risk, the baseline risks were low, and regardless of the availability of further control options, little risk reduction could be realized. As discussed further in section IV.B of this preamble, we did not identify any cost-effective measures to further reduce HAP emissions for the Surface Coating of ALDT source category. Therefore, given the low baseline risks and lack of options for further risk reductions, we proposed that additional emission controls for this source category are not necessary to provide an ample margin of safety (section IV.A.2.b of proposal preamble, 84 FR 58956, November 1, 2019).

b. Surface Coating of MMPP (40 CFR part 63, subpart MMMM) Source Category

Pursuant to CAA section 112(f)(2), the EPA conducted a residual risk review and presented the results of this review, along with our proposed decisions regarding risk acceptability and ample margin of safety, in the November 1, 2019, proposed rule for 40 CFR part 63, subpart MMMM (84 FR 58966). The results of the risk assessment for the proposal are presented briefly below in Table 3 of this preamble. More detail is in the residual risk technical support document, *Residual Risk Assessment for the Surface Coating of MMPP Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* available in the MMPP Docket.

TABLE 3—SURFACE COATING OF MMPP SOURCE CATEGORY INHALATION RISK ASSESSMENT RESULTS

Risk assessment	Maximum individual cancer risk (in 1 million)		Estimated population at increased risk of cancer ≥ 1-in-1 million		Estimated annual cancer incidence (cases per year)		Maximum chronic noncancer TOSHI [1]		Maximum screening acute noncancer HQ [2]
	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	
Source category	20	30	18,000	24,000	0.008	0.01	0.8	1	HQREL = 4.
Whole facility	100	.....	370,000	.....	0.04	.....	1	.....	

[1] The TOSHI is the sum of the chronic noncancer HQ for substances that affect the same target organ or organ system.
[2] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop HQ values (HQREL = HQ reference exposure level).

The results of the proposal inhalation risk modeling using actual emissions data, as shown in Table 3 of this preamble, indicate that the maximum individual cancer risk based on actual emissions (lifetime) is 20-in-1 million (driven by naphthalene and ethyl benzene from coating operations), the maximum chronic noncancer TOSHI value based on actual emissions is 0.8 (driven by antimony from coating operations), and the maximum screening acute noncancer HQ value (off-facility site) could be up to 4 (driven by glycol ethers). At proposal, the total annual cancer incidence (national) from these facilities based on actual emission levels was estimated to be 0.008 excess cancer cases per year, or one case in every 125 years.

The results of the proposal inhalation risk modeling using allowable emissions data, as shown in Table 3 of this preamble, indicate that the maximum individual cancer risk based on allowable emissions (lifetime) is 30-in-1 million (driven by naphthalene and ethyl benzene), and the maximum chronic noncancer TOSHI value based on allowable emissions is 1 (driven by antimony). At proposal, the total annual cancer incidence (national) from these facilities based on allowable emissions was estimated to be 0.01 excess cancer cases per year, or one case in every 100 years.

The maximum individual cancer risk (lifetime) for the whole facility was determined to be 100-in-1 million at proposal (driven by nickel from welding operations). The maximum facility-wide TOSHI for the source category was estimated to be 1 (driven by emissions of cobalt from a gel coating operation). At proposal, the total estimated cancer incidence from the whole facility was determined to be 0.04 excess cancer cases per year, or one excess case in every 25 years.

Three PB–HAP are emitted by facilities in the source category: Arsenic, cadmium, and lead. The PB–HAP emissions from these facilities did not exceed the Tier 1 multipathway screening value of 1 for cancer or noncancer. In evaluating the potential for multipathway effects from emissions of lead, we compared modeled annual lead concentrations to the NAAQS for lead of 0.15 mg/m^3, arithmetic mean concentration over a 3-month period). The highest annual average lead concentration of 0.059 mg/m^3 is below the NAAQS level for lead, indicating a low potential for multipathway impacts of concern due to lead even assuming a shorter averaging period is analyzed. Based on this evaluation, we proposed that there is no significant potential for human health multi-pathway risks as a result of HAP emissions from this source category. Four environmental HAP are emitted by facilities in this source category: Arsenic, cadmium, lead and HCl. Therefore, at proposal, we conducted a screening-level evaluation of the potential adverse environmental effects associated with emissions of arsenic, cadmium, lead, and HCl for the MMPP source category. Based on this evaluation, we proposed that we do not expect an adverse environmental effect as a result of HAP emissions from this source category.

We weighed all health risk factors, including those shown in Table 3 of this preamble, in our risk acceptability determination and proposed that the residual risks from the Surface Coating of MMPP source category are acceptable (section IV.B.2.a of proposal preamble, 84 FR 58967, November 1, 2019).

We then considered whether 40 CFR part 63, subpart MMMM provides an ample margin of safety to protect public health. In considering whether the standards should be tightened to provide an ample margin of safety to protect public health, we considered the same risk factors that we considered for our acceptability determination and also considered the costs, technological feasibility, and other relevant factors related to emissions control options that might reduce risk associated with emissions from the source category. Based on our review (described in section IV.B of this preamble), we identified and evaluated the use of add-on control technologies for the rubber-to-metal bonding and high-performance coating subcategories.

We determined that the added costs and cost effectiveness for these two coating subcategories ($9,500 per ton of HAP reduced for the rubber-to-metal bonding subcategory and $11,700 per ton for the high-performance coating subcategory) are not justified. We proposed that these costs are unreasonable particularly because the risks are already low, and the risks would not be reduced in a meaningful manner by the control of these subcategories. Six facilities in the high-performance subcategory had a cancer risk above 1-in-1 million. The cancer risk for only one of these facilities would be reduced as a result of the add-on controls evaluated, going from 6-in-1 million to 2-in-1 million (based on actual emissions) because the facility would be required to reduce emissions. Only one facility in the rubber-to-metal bonding subcategory had a cancer risk above 1-in-1 million. The cancer risk for this facility would not be reduced as a result of the add-on controls evaluated because the facility is able to use averaging between the general-use subcategory and the rubber-to-metal bonding subcategory to meet the general-use emission limit and would not have to reduce emissions. Therefore, we proposed that additional emissions controls for this source category are not necessary to provide an ample margin of safety (section IV.B.2.b of proposal preamble, 84 FR 58968, November 1, 2019). Of the 40 facilities in the high-performance subcategory, there were six with cancer risk above 1-in-1 million. The cancer risk for only one of these facilities would be reduced as a result of the add-on controls evaluated, going from 6-in-1 million to 2-in-1 million (based on actual emissions). Of the 16 facilities in the rubber-to-metal bonding subcategory, only one had cancer risk

above 1-in-1 million. The cancer risk for this facility would not be reduced as a result of the add-on controls evaluated.

c. Surface Coating of PPP (40 CFR part 63, subpart PPPP) Source Category

Pursuant to CAA section 112(f)(2), the EPA conducted a residual risk review and presented the results of this review, along with our proposed decisions regarding risk acceptability and ample margin of safety, in the November 1, 2019, proposed action for 40 CFR part 63, subpart PPPP (84 FR 58976). The results of the risk assessment for the proposal are presented briefly below in Table 4 of this preamble. More detail is in the residual risk technical support document, *Residual Risk Assessment for the Surface Coating of PPP Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* available in the PPP Docket.

TABLE 4—SURFACE COATING OF PPP SOURCE CATEGORY INHALATION RISK ASSESSMENT RESULTS

Risk assessment	Maximum individual cancer risk (in 1 million)		Estimated population at increased risk of cancer ≥ 1-in-1 million		Estimated annual cancer incidence (cases per year)		Maximum chronic noncancer TOSHI [1]		Maximum screening acute noncancer HQ [2]
	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	
Source Category	10	10	600	700	0.001	0.001	1	1	HQREL = 4.
Whole Facility ...	70	.....	29,000	.....	0.006	.....	1	.....	

[1] The TOSHI is the sum of the chronic noncancer HQ for substances that affect the same target organ or organ system.
[2] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop HQ values (HQREL = HQ reference exposure level).

The results of the proposal inhalation risk modeling using actual emissions data, as shown in Table 4 of this preamble, indicate that the maximum individual cancer risk based on actual emissions (lifetime) is 10-in-1 million (driven by formaldehyde, naphthalene, and ethyl benzene from coating operations), the maximum chronic noncancer TOSHI value based on actual emissions is 1 (driven by hexamethylene-1,6-diisocyanate from coating operations), and the maximum screening acute noncancer HQ value (off-facility site) could be up to 4 (driven by glycol ethers). At proposal, the total annual cancer incidence (national) from these facilities based on actual emission levels was estimated to be 0.001 excess cancer cases per year, or one case in every 1,000 years.

The results of the proposal inhalation risk modeling using allowable emissions data, as shown in Table 4 of this preamble, indicate that the maximum individual cancer risk based on allowable emissions (lifetime) is 10-in-1 million (driven by formaldehyde, naphthalene, and ethyl benzene), and the maximum chronic noncancer TOSHI value based on allowable emissions is 1 (driven by hexamethylene-1,6-diisocyanate from coating operations). At proposal, the total annual cancer incidence (national) from these facilities based on allowable emissions was estimated to be 0.001 excess cancer cases per year, or one case in every 1,000 years.

The maximum individual cancer risk (lifetime) for the whole facility was determined to be 70-in-1 million at proposal (driven by nickel and formaldehyde from a co-located boiler). The maximum facility-wide TOSHI for the source category was estimated to be 1 (driven by emissions of nickel and formaldehyde from a co-located boiler). At proposal, the total estimated cancer incidence from the whole facility was determined to be 0.006 excess cancer cases per year, or one excess case in every 200 years.

No PB–HAP are emitted by facilities in this source category; therefore, at proposal we did not estimate any human health multi-pathway risks from this source category. No environmental HAP are emitted by facilities in this source category; therefore, we proposed that we do not expect an adverse environmental effect as a result of HAP emissions from this source category.

We weighed all health risk factors, including those shown in Table 4 of this preamble, in our risk acceptability determination and proposed that the residual risks from the Surface Coating of PPP source category are acceptable (section IV.C.2.a of proposal preamble, 84 FR 58977, November 1, 2019).

We then considered whether 40 CFR part 63, subpart PPPP provides an ample margin of safety to protect public health. In considering whether the standards should be tightened to provide an ample margin of safety to protect public health, we considered the same risk factors that we considered for our acceptability determination and also considered the costs, technological feasibility, and other relevant factors related to emissions control options that might reduce risk associated with emissions from the source category. Based on our review at proposal (described in section IV.B of this preamble), we did not identify any measures to further reduce HAP. Therefore, we proposed that additional emissions controls for this source category are not necessary to provide an ample margin of safety (section IV.C.2.b of proposal preamble, 84 FR 58978, November 1, 2019).

2. How did the risk reviews change since proposal?

We have not changed any aspect of the risk assessments for any of the three source categories as a result of public comments received on the November 1, 2019, proposal for any of the three source categories.

3. What key comments did we receive on the risk reviews, and what are our responses?

We received comments in support of and against the proposed residual risk reviews and our determinations that no revisions were warranted under CAA section 112(f)(2) for all three source categories. Generally, the comments that were not supportive of the determination from the risk reviews suggested changes to the underlying risk assessment methodology. For example, some commenters stated that the EPA should lower the acceptability benchmark so that risks below 100-in-1 million are unacceptable, include emissions outside of the source categories in question in the risk assessment, and assume that pollutants with noncancer health risks have no safe level of exposure. After review of all the comments received, we determined that no changes to our Science Advisory Board-approved review process were necessary. The comments and our specific responses can be found in the document,

Summary of Public Comments and Responses for the Risk and Technology Reviews for Surface Coating Automobiles and Light-Duty Trucks, Surface Coating of Miscellaneous Metal Parts and Products, and Surface Coating of Plastic Parts and Products, available in the dockets for this action (Docket ID Nos. EPA–HQ–OAR–2019–0312, EPA–HQ–OAR–2019–0313, and EPA–HQ–OAR–2019–0314).

4. What is the rationale for our final approach and final decisions for the risk reviews?

As noted in our proposal, the EPA sets standards under CAA section 112(f)(2) using ''a two-step standard-setting approach, with an analytical first step to determine an 'acceptable risk' that considers all health information, including risk estimation uncertainty, and includes a presumptive limit on the maximum individual risk (MIR) of approximately 1-in-10 thousand'' (see 54 FR 38045, September 14, 1989). We weigh all health risk factors in our risk acceptability determination, including the cancer MIR, cancer incidence, the maximum cancer TOSHI, the maximum acute noncancer HQ, the extent of noncancer risks, the distribution of cancer and noncancer risks in the exposed population, and the risk estimation uncertainties.

Since proposal, neither the quantitative risk assessment nor our determinations regarding risk acceptability, ample margin of safety, or adverse environmental effects have changed. For the reasons explained in the proposed rule and above, we find that the risks from the Surface Coating of ALDT, Surface Coating of MMPP, and Surface Coating of PPP source categories are acceptable, and the current standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. Therefore, we are not revising any of these three subparts to require additional controls pursuant to CAA section 112(f)(2) based on the residual risk review, and we are maintaining the existing standards under CAA section 112(f)(2).

B. Technology Reviews

1. What did we propose pursuant to CAA section 112(d)(6)?

Based on our review, we did not identify any developments in practices, processes, or control technologies for the Surface Coating of ALDT source category, and, therefore, we did not propose any changes to the standards under CAA section 112(d)(6). A brief summary of the EPA's findings in conducting the technology review of ALDT surface coating operations was included in the preamble to the proposed action (84 FR 58957, November 1, 2019). For a detailed discussion of the EPA's findings, refer to the memorandum, *Technology Review for Surface Coating Operations in the Automobiles and Light-Duty Trucks Source Category,* June 2019, in the ALDT Docket.

In our technology review of the Surface Coating of MMPP source category, we identified and evaluated the use of add-on control technologies (*e.g.,* regenerative thermal oxidizers) for two coating subcategories, high-performance coating and rubber-to-metal coating, that had not been previously considered during development of the MMPP NESHAP. This analysis is described in detail in the preamble to the proposed action (84 FR 58969, November 1, 2019). However, we determined that the added costs and cost effectiveness for these two coating subcategories ($9,500 per ton of HAP reduced for the rubber-to-metal coating subcategory and $11,700 per ton for the high-performance subcategory) were not justified. Aside from this, we did not identify any new or improved process equipment, work practices, or procedures that would further reduce emissions. Therefore, the EPA proposed no revisions to the MMPP NESHAP pursuant to CAA section 112(d)(6). For a detailed discussion of the EPA's findings, refer to the *MMPP Technology Review Memo* in the MMPP Docket.

Based on our review, we did not identify any developments in practices, processes, or control technologies for the Surface Coating of PPP source category, and, therefore, we did not propose any changes to the standards under CAA section 112(d)(6). A brief summary of the EPA's findings in conducting the technology review of plastic parts surface coating operations was included in the preamble to the proposed action (84 FR 58978, November 1, 2019). For a detailed discussion of the EPA's findings, refer to the memorandum, *Technology Review for the Plastic Parts and Products Surface Coating Operations Source Category,* June 2019, in the PPP Docket.

2. How did the technology reviews change since proposal?

We are making no changes to the conclusions of the technology review and are finalizing the results of the technology reviews for the Surface Coating of ALDT, Surface Coating of MMPP, and Surface Coating of PPP source categories as proposed.

3. What key comments did we receive on the technology reviews, and what are our responses?

We received several general comments supporting the results of our technology reviews for all three source categories and one comment objecting to our conclusion that there have been no technology developments in these three source categories.

Comment: One commenter alleged that the EPA has failed to meet the statutory obligation to conduct a technology review under CAA section 112(d)(6). The commenter argued that the EPA has refused to complete the technology review by refusing to strengthen the emission standards for regulated pollutants based primarily on cost or cost effectiveness. The commenter argued that CAA section 112(d)(6) does not include that term ''cost effectiveness,'' and so the EPA's proposed action on the technology review is unlawful and arbitrary.

Response: The EPA disagrees with the commenter that cost effectiveness cannot be considered in the technology reviews. CAA section 112(d)(6) does include the phrase ''as necessary'' and the EPA interprets ''as necessary'' to include a cost component, such as cost effectiveness. The EPA's interpretation that cost and cost effectiveness may be considered in technology reviews was affirmed by the Court in *Association of Battery Recyclers, Inc.* v. *EPA,* 716 F.3d 667 (DC Cir. 2013).[3] Therefore, the technology review for the Surface Coating of MMPP source category completed at proposal is not being revised based on this comment.

[3] See *Association of Battery Recyclers, Inc.* v. *EPA,* 716 F.3d 667 (DC Cir. 2013), p. 673: Environmental petitioners next argue that the EPA impermissibly considered cost in revising emissions standards under CAA section 112(d)(6). But the statute only bars cost consideration in setting MACT floors under CAA section 112(d)(3), see *National Lime,* 233 F.3d at 640; CAA section 112(d)(2) in contrast expressly directs the EPA to consider costs when setting beyond-the-floor standards, see 42 U.S.C. 7412(d)(2) (directing the Administrator to ''tak[e] into consideration the cost of achieving . . . emission reduction''). Petitioners are correct that CAA section 112(d)(6) itself makes no reference to cost and that the Supreme Court has ''refused to find implicit in ambiguous sections of the [CAA] an authorization to consider costs that has elsewhere, and so often, been expressly granted.'' *Whitman* v. *American Trucking Associations, Inc.,* 531 U.S. 457, 467, 121 S. Ct. 903, 149 L.Ed.2d 1 (2001). But given that the EPA has no obligation to recalculate the MACT floor when revising standards, see *supra* at 672–73, and given that CAA section 112(d)(2) expressly authorizes cost consideration in other aspects of the standard-setting process, we believe this clear statement rule is satisfied.

4. What is the rationale for our final approach and final decisions for the technology reviews?

For the reasons explained in the preamble to the proposed rules (84 FR 58597, 58969, and 58978, November 1, 2019), and in our analysis of public comments explained above in section IV.B.3 of this preamble, we are making no changes to any of the three subparts to require additional controls pursuant to CAA section 112(d)(6) and are finalizing the results of the technology reviews as proposed.

C. Electronic Reporting Provisions

1. What did we propose?

In the November 1, 2019, document, we proposed to require owners and operators of surface coating facilities in all three source categories to submit electronic copies of notifications, reports, and performance tests through the EPA's CDX, using the CEDRI. These include the initial notifications required in 40 CFR 63.9(b); notifications of compliance status required in 40 CFR 63.9(h); the performance test reports required in 40 CFR 63.7(g); and the semiannual reports required in 40 CFR 63.3120(a) for ALDT surface coating, 40 CFR 63.3920(a) for MMPP surface coating, and 40 CFR 63.4520(a) for PPP surface coating. A description of the electronic submission process is provided in the memorandum, *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP),* August 8, 2018, in the ALDT, MMPP, and PPP Dockets. The proposed rule requirements would replace the current rule requirements to submit the notifications and reports to the Administrator at the appropriate address listed in 40 CFR 63.13. The proposed rule requirement would not affect submittals required by state air agencies.

2. What changed since proposal?

We are finalizing the electronic reporting provisions as proposed with no changes (84 FR 58958, 58970, and 58979, November 1, 2019).

3. What key comments did we receive and what are our responses?

Comment: Several commenters requested that additional opportunity should be provided for public review and comment of the electronic reporting templates before they are final and facilities are required to use them for electronic reporting. One commenter also requested that the EPA provide a notice and comment period through a **Federal Register** document for all future changes in reporting templates because many industry members do not track changes to the CEDRI website where the EPA intends to make future template changes. The commenter argued that this would be consistent with the requirements of both the CAA and the Administrative Procedures Act (APA) because, the commenter argues, the development of the reporting template constitutes a rulemaking action.

Response: The EPA disagrees that changes to the electronic reporting template constitute a rulemaking because the reporting template does not create new requirements, but instead, provides the mechanism by which the sources report the information required to be submitted pursuant to the underlying NESHAP.

The EPA promulgated the original MACT emissions standards and attendant monitoring, recordkeeping, and reporting requirements through notice and comment rulemaking, but the sources were not required to submit reports via electronic reporting at the time. The EPA is moving toward electronic reporting for all NESHAP and proposed to require electronic reporting for these source categories along with the RTR rulemaking. The electronic reporting template is the tool by which the sources will enter their required reports and data to CEDRI to comply with the NESHAP, but it does not establish, in itself, any requirements, including monitoring, recordkeeping, and reporting requirements. Any future revisions to the underlying NESHAP's monitoring, recordkeeping, and reporting requirements will be made through a proposed rulemaking that will be published in the **Federal Register**; thereby giving the public notice and an opportunity to comment. The changes to reporting templates, by contrast, are merely changes that are necessary to allow owners/operators to successfully submit reports (*e.g.,* resolving issues with template cells that are not properly formatted, unlocking inadvertently locked cells, and correcting regulatory citations). The EPA disagrees that the APA and the CAA require such changes undergo notice and comment rulemaking in the **Federal Register**.

We also note that if the reporting templates for these subparts are completed concurrently with the final rule publication, facilities will have 1 year after the final rule is published to submit semiannual compliance reports using the electronic reporting template in CEDRI. If the reporting templates are not finalized concurrently with the final rule publication, facilities will be required to submit semiannual compliance reports using the electronic reporting template in CEDRI once the reporting template has been available on the CEDRI website for one year. The dates that templates are initially made available in CEDRI are listed on the CEDRI website.

4. What is the rationale for our final approach for the electronic reporting provisions?

For the reasons explained in the preamble to the proposed rules (84 FR 58958, 58970, and 58979, November 1, 2019), and in the comment responses above in section IV.C.3 of this preamble, we are finalizing the electronic reporting provisions for 40 CFR parts 63, subparts IIII, MMMM, and PPPP, as proposed.

D. SSM Provisions

1. What did we propose?

In the November 1, 2019, action, we proposed amendments to the ALDT NESHAP, the MMPP NESHAP, and the PPP NESHAP to remove and revise provisions related to SSM that are not consistent with the statutory requirement that the standards apply at all times. More information concerning the elimination of SSM provisions is in the preamble to the proposed rules (84 FR 58959, 58971, and 58980, November 1, 2019).

2. What changed since proposal?

We are finalizing the SSM provisions as proposed except for some changes to the General Provisions references in Table 2 of 40 CFR part 63, subpart IIII (84 FR 58959, 58971, and 58980, November 1, 2019).

3. What key comments did we receive and what are our responses?

Comment: One commenter argued that the proposed removal and revision of the SSM provisions would effectively eliminate a longstanding provision applicable to magnet wire coating operations that allows for extra HAP emissions during SSM events, so long as the permittee addresses those events according to its facility SSM plan. The commenter acknowledged that the EPA is compelled to take this action by the decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (DC Cir. 2008), but the commenter reported that certain facilities now are challenged to find a methodology for emission calculations during SSM periods.

The commenter reported that magnet wire coaters—unless advised of an alternative approach—would account for SSM events in emission calculations by weighing coating hours in full compliance (with control percentage

determined through stack testing) v. coating hours during start-up, shutdown, and malfunction periods, where the default assumption during the latter is zero control. The commenter stated that the weighted efficiency ratio would then be applied to the total mass of HAP input to surface coating operations to determine estimated emissions.

Response: The EPA agrees we are compelled to remove and revise the SSM provisions from each subpart consistent with *Sierra Club* v. *EPA,* 551 F.3d 1019 (DC Cir. 2008).

The commenter has not provided enough detail for the EPA to determine whether the compliance approach described by the commenter is consistent with the current requirements of 40 CFR part 63, subpart MMMM. However, subpart MMMM already includes provisions to account for deviation periods, so the commenter's proposed approach should not be necessary. For example, for coating operations that use an add-on control device, Equation 1 of 40 CFR 63.3961 includes the term H_{UNC}, which is the total mass in kilograms of organic HAP in the coatings, thinners, and/or other additives, and cleaning materials used during all deviations specified in 40 CFR 63.3963(c) and (d) that occurred during the month, as calculated in Equation 1D of 40 CFR 63.3961. The rest of subpart MMMM treats these HAP as being uncontrolled, which is consistent with the commenter's assumption of zero control during SSM events.

Comment: One commenter recommended several changes to Table 2 (Applicability of General Provisions) to 40 CFR part 63, subpart IIII, as result of the changes made to reflect the SSM changes:

- Clarify that the provisions of 40 CFR 63.6(e)(3), 63.6(f)(1), 63.10(b)(2), and 63.10(d)(5) apply only to capture systems and add-on control devices used to comply with the standards, as in the current rule;
- correct an apparent drafting error and add back in a reference to 40 CFR 63.6(i)(16) with an indicator that it is still applicable to 40 CFR part 63, subpart IIII;
- do not finalize the applicability of 40 CFR 63.8(c)(7) from ''No'' to ''Yes'' unless the EPA provides further explanation of this change because it was not discussed in the preamble to the proposed rule; and
- combine the provisions of 40 CFR 63.9(h)(5) and (6) with the other notification of compliance status requirements in 40 CFR 63.9(h)(1) through (3).

Response: We agree with the commenter that the language indicating that the provisions of 40 CFR 63.6(e)(3), 63.6(f)(1), 63.10(b)(2), and 63.10(d)(5) apply only to capture systems and add-on control devices used to comply with the standards is a useful clarification and it is being added back into the appropriate rows of Table 2 to 40 CFR part 63, subpart IIII suggested by the commenter.

The commenter is correct that 40 CFR 63.6(i)(16) is still applicable to 40 CFR part 63, subpart IIII and this has been added back into the final Table 2 to subpart IIII.

We proposed to change the applicability of 40 CFR 63.8(c)(7) in Table 2 to 40 CFR part 63, subpart IIII from ''No'' to ''Yes'' because that was an apparent error in the original Table 2 to subpart IIII. Facilities are required to comply with 40 CFR 63.8(c)(7) as specified in 40 CFR 63.3120(a)(4), and the Table 2 to subpart IIII should already have been ''Yes'' instead of ''No.'' New references to 40 CFR 63.8(c)(7) are also being added in 40 CFR 63.3120(a)(6)(vii) and (a)(8)(vi).

We agree with the commenter that the provisions of 40 CFR 63.9(h)(5) and (6) should be combined with the other notification of compliance status requirements in 40 CFR 63.9(h)(1) through (3). The provisions of 40 CFR 63.9(h)(5) and (6) were separated in drafting the revised table because 40 CFR 63.9(h)(4) is reserved, but we agree that keeping them together on one line as ''§ 63.9(h)(1) through (3), (5), and (6)'' would avoid confusion, so we are adopting that approach in the promulgated version of Table 2 to 40 CFR part 63, subpart IIII.

4. What is the rationale for our final approach for the SSM provisions?

For the reasons explained in the proposed rule and after evaluation of the comments on the proposed amendments to the SSM provisions for the ALDT NESHAP, MMPP NESHAP, and PPP NESHAP, we are finalizing the proposed revisions related to SSM so that they are now consistent with the requirement that the standards apply at all times. More information concerning the proposed amendments to the SSM provisions is in the preamble to the proposed rules (84 FR 58959, 58971, and 58980, November 1, 2019).

E. Ongoing Compliance Demonstrations

1. What did we propose?

In the November 1, 2019, action, we proposed to require owners and operators of ALDT, MMPP, and PPP surface coating facilities that use the emission rate with add-on controls compliance option to conduct periodic performance testing of add-on control devices on a regular frequency of every 5 years to ensure the equipment continues to operate properly. This proposed periodic testing requirement included an exception to the general requirement for periodic testing for facilities using the catalytic oxidizer control options and following catalyst maintenance procedures that are found in 40 CFR part 63, subparts IIII, MMMM, and PPPP. These catalyst maintenance procedures include annual testing of the catalyst and other maintenance procedures that provide ongoing demonstrations that the control system is operating properly and may, thus, be considered comparable to conducting a performance test. The proposed periodic performance testing requirement also allows an exception from periodic testing for facilities using continuous emission monitoring systems (CEMS) to show actual emissions. The use of CEMS to demonstrate compliance would obviate the need for periodic testing.

This proposed requirement did not require periodic testing or CEMS monitoring of facilities using the compliant materials option or the emission-rate without add-on controls compliance option because these two compliance options do not use any add-on controls or control efficiency measurements in the compliance calculations.

The proposed periodic performance testing requirement requires facilities complying with the standards using emission capture systems and add-on controls and which are not already on a 5-year testing schedule to conduct the first of the periodic performance tests within 3 years of the effective date of the revised standards. Afterward, they would conduct periodic testing before they renew their operating permits, but no longer than 5 years following the previous performance test. Additionally, facilities that have already tested as a condition of their permit within the last 2 years before the effective date would be permitted to maintain their current 5-year schedule.

2. What changed since proposal?

We have revised the proposed periodic testing language in 40 CFR part 63, subparts IIII, MMMM, and PPPP, since proposal to clarify that testing is only required for add-on control devices and is not for emission capture systems. We are also revising 40 CFR 63.3093(a) to clarify that facilities in the ALDT source category are not required to meet any operating limits for any coating

operations that do not use add-on controls to comply with the emission limits in 40 CFR 63.3090 or 63.3091.

3. What key comments did we receive and what are our responses?

Comment: One commenter recommended that proposed rule language at 40 CFR 63.3163(c)(3) in subpart IIII should be revised to clarify that periodic performance testing is only required for the add-on control device and that capture system efficiency testing is not required. The commenter argued that the EPA provided no technical justification to require periodic capture efficiency testing, and that capture efficiency is not likely to change without structural or operational changes to the emission capture system.

Response: The EPA agrees with the commenter and has revised the periodic performance testing language in 40 CFR part 63, subparts IIII, MMMM, and PPPP to clarify that the testing applies to the add-on control devices and does not include capture efficiency testing.

Comment: One commenter requested that the final 40 CFR part 63, subpart IIII should clarify that timing of subsequent performance tests should be aligned with title V permit requirements for testing to avoid additional testing to comply with both the NESHAP and their title V permits. The commenter recommended that regulatory language should provide for periodic testing ''within the 5-year term of the Title V permit'' or ''within 5 years of the most recent testing,'' or something similar. The commenter stated that the EPA should not require testing within a specified time period from the issuance of the amended rule or by a specific date.

Response: The EPA disagrees with the commenter that changes to the proposed rule language are needed because the proposed rule language already allows this flexibility. The proposed rule language at 40 CFR 63.3163(c)(3) stated,

''. . . You must conduct the first periodic performance test before [date 3 years after date of publications of final rule in the **Federal Register**], unless you are already required to complete periodic performance tests as a requirement of renewing your facility's operating permit under 40 CFR part 70 or 40 CFR part 71 and have conducted a performance test on or after [date 2 years before date of publications of final rule in the **Federal Register**]. Thereafter you must conduct a performance test no later than 5 years following the previous performance test. . . .''

Therefore, the proposed rule language already allows a facility to conduct a performance test within the 5-year period of a title V permit if testing is already required, and does not specify any additional testing, as long as the title V permit is renewed on a regular 5-year schedule as specified under 40 CFR part 70 and 40 CFR part 71.

Comment: One commenter requested that the EPA should allow for performance testing extensions beyond the 5-year requirement when necessary to obtain representative conditions and when agreed to with the EPA or with an EPA-approved permitting authority. The commenter argued that if, for example, significant coating operation facility changes or product changes are planned near the end of a 5-year period, deferring testing until after the change occurs would be preferable to obtain a more representative result. The commenter noted that the General Provisions currently allow for delays in performance tests due to *force majeure* events or a waiver of subsequent performance tests under certain conditions, but the General Provisions do not specifically reference testing delays due to the need to establish representative conditions. The commenter provided two examples of permit language that allow for extensions of testing periods.

Response: The EPA disagrees with the need to allow for testing delays and is not revising the proposed language to include the commenter's recommendation. The compliance calculations in 40 CFR part 63, subparts IIII, MMMM, and PPPP require a facility to use the organic HAP destruction or removal efficiency (DRE) of the add-on control device. The standards already require that tests be performed under representative coating operation operating conditions and under representative emission capture system and add-on control device operating conditions, which specifically exclude testing during periods of startup, shutdown, nonoperation, and malfunction. The EPA currently does not have sufficient information to define the conditions under which an extension should be granted, and no additional information was provided by the commenter. The commenter also provided no additional information to indicate whether and how the situations described by the commenter (*e.g.,* significant coating operation changes or product changes) would alter the DRE of an add-on control device.

The EPA also notes that the purpose of periodic compliance testing is to not only demonstrate future compliance, but to also confirm past compliance. If a facility is planning significant changes that would prevent testing according to the 5-year schedule, the facility may need to complete testing earlier so as to demonstrate that the facility was in compliance under the original configuration. It may be necessary for the facility to repeat testing under the new configuration to re-establish new operating limits and efficiency values for the emission capture and control system.

Comment: One commenter requested that the EPA revise 40 CFR 63.3093(a) to clarify that facilities in the ALDT source category that do not use add-on controls to comply with the emission limits in 40 CFR 63.3090 or 63.3091 are not required to comply with the operating limits for add-on controls and emission capture systems. The commenters reported that the original language in 40 CFR 63.3093(a) only mentioned ''coating operations without add-on controls'' and this has led to confusion because many facilities have add-on controls to limit VOC emissions, but they are not needed to comply with the HAP emission limits.

Response: The EPA agrees that this change will avoid confusion and we will make the change to the language in 40 CFR part 63, subpart IIII. Other surface coating NESHAP, such as 40 CFR part 63, subparts MMMM and PPPP, already have language that avoids similar confusion over the applicability of the operating limits.

4. What is the rationale for our final approach for the ongoing compliance demonstrations?

For the reasons explained in the preamble to the proposed rules (84 FR 58963, 58974, and 58983, November 1, 2019), and in the comment responses above in section IV.E.3 of this preamble, we are finalizing the periodic testing provisions for 40 CFR part 63, subparts IIII, MMMM, and PPPP, as proposed. As also described in section IV.E.3 of this preamble, we are also making changes to each NESHAP to clarify that testing is only required for add-on control devices and is not required for emission capture systems. We are also revising 40 CFR 63.3093(a) to clarify that facilities in the ALDT source category are not required to meet any operating limits for any coating operations that do not use add-on controls to comply with the emission limits in 40 CFR 63.3090 or 63.3091, as described in section IV.E.3 of this preamble.

V. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted

A. What are the affected facilities?

Currently, we estimate 43 major source facilities are subject to the ALDT NESHAP and operating in the United

States. The affected source under the NESHAP is the collection of all coating operations; all storage containers and mixing vessels in which coatings, thinners, and cleaning materials are stored or mixed; all manual and automated equipment and containers used for conveying coatings, thinners, and cleaning materials; and all storage containers and all manual and automated equipment and containers used for conveying waste materials generated by a coating operation. A coating operation is defined as the equipment used to apply coating to a substrate (coating application) and to dry or cure the coating after application. A single coating operation always includes at least the point at which a coating is applied and all subsequent points in the affected source where organic HAP emissions from that coating occur. There may be multiple coating operations in an affected source. Coating application with hand-held nonrefillable aerosol containers, touchup bottles, touchup markers, marking pens, or pinstriping equipment is not a coating operation for the purposes of this subpart. The application of temporary materials such as protective oils and ''travel waxes'' that are designed to be removed from the vehicle before it is delivered to a retail purchaser is not a coating operation for the purposes of 40 CFR part 61, subpart IIII.

Currently, we estimate 368 major source facilities are subject to the MMPP NESHAP and operating in the United States. The affected source under the NESHAP is the collection of all coating operations; all storage containers and mixing vessels in which coatings, thinners, and cleaning materials are stored or mixed; all manual and automated equipment and containers used for conveying coatings, thinners, and cleaning materials; and all storage containers and all manual and automated equipment and containers used for conveying waste materials generated by a coating operation. A coating operation is defined as the equipment used to apply cleaning materials to a substrate to prepare it for coating application (surface preparation) or to remove dried coating; to apply coating to a substrate (coating application) and to dry or cure the coating after application; or to clean coating operation equipment (equipment cleaning). A single coating operation may include any combination of these types of equipment but always includes at least the point at which a given quantity of coating or cleaning material is applied to a given part and all subsequent points in the affected source where organic HAP are emitted from the specific quantity of coating or cleaning material on the specific part. There may be multiple coating operations in an affected source. Coating application with handheld, non-refillable aerosol containers, touch-up markers, or marking pens is not a coating operation for the purposes of 40 CFR part 63, subpart MMMM.

Currently, we estimate 125 major source facilities are subject to the PPP NESHAP and operating in the United States. The affected source under the NESHAP is the collection of coating operations; all storage containers and mixing vessels in which coatings, thinners, and cleaning materials are stored or mixed; all manual and automated equipment and containers used for conveying coatings, thinners, and cleaning materials; and all storage containers and all manual and automated equipment and containers used for conveying waste materials generated by a coating operation. A coating operation is defined as the equipment used to apply cleaning materials to a substrate to prepare it for coating application (surface preparation) or to remove dried coating; to apply coating to a substrate (coating application) and to dry or cure the coating after application; or to clean coating operation equipment (equipment cleaning). A single coating operation may include any combination of these types of equipment but always includes at least the point at which a given quantity of coating or cleaning material is applied to a given part and all subsequent points in the affected source where organic HAP are emitted from the specific quantity of coating or cleaning material on the specific part. There may be multiple coating operations in an affected source. Coating application with handheld, non-refillable aerosol containers, touch-up markers, or marking pens is not a coating operation for the purposes of 40 CFR part 63, subpart PPPP.

B. What are the air quality impacts?

At the current level of control, estimated emissions of volatile organic HAP from the 43 facilities in the ALDT source category are approximately 1,700 tpy. Current estimated emissions of volatile organic HAP from the 368 facilities in the MMPP source category are approximately 2,700 tpy. Current estimated emissions of volatile organic HAP from the 125 facilities in the PPP source category are approximately 760 tpy.

The amendments require that all major sources in the ALDT, MMPP, and PPP source categories comply with the relevant emission standards at all times, including periods of SSM. We were unable to quantify the emissions that occur during periods of SSM or the specific emissions reductions that will occur as a result of this action. However, eliminating the SSM exemption has the potential to reduce emissions by requiring facilities to meet the applicable standard at all times and to minimize SSM periods.

Indirect or secondary air emissions impacts are impacts that would result from, for example, the increased electricity, natural gas, or water usage associated with the operation of control devices (*e.g.,* increased secondary emissions of criteria pollutants from power plants). Energy impacts consist of the electricity and steam needed to operate control devices and other equipment. The amendments would have no effect on the energy needs of the affected facilities in any of the three source categories and will, therefore, have no indirect or secondary air emissions impacts.

C. What are the cost impacts?

We estimate that each affected facility in these three source categories will experience costs as a result of these final amendments for recordkeeping and reporting. Each facility will experience costs to read and understand the rule amendments. Costs associated with eliminating the SSM exemption were estimated as part of the reporting and recordkeeping costs and include time for re-evaluating previously developed SSM record systems. Costs associated with the requirement to electronically submit notifications and semi-annual compliance reports using CEDRI were estimated as part of the reporting and recordkeeping costs and include time for becoming familiar with CEDRI and the reporting template for semi-annual compliance reports. The recordkeeping and reporting costs are presented in section VI.C of this preamble.

We are also finalizing a requirement for performance testing no less frequently than every 5 years for sources in each source category using the add-on controls compliance options. We estimate that five major source facilities subject to the ALDT NESHAP may incur costs to conduct periodic testing because they are currently using the emission rate with add-on controls compliance option, and the total cost for all five facilities subject to the ALDT NESHAP in a single year would be $95,000. Similarly, we estimate that seven major source facilities subject to the MMPP NESHAP may incur costs to conduct periodic testing because they

are currently using the emission rate with add-on controls compliance option, at a total cost in a single year of $133,000. Finally, we estimate that three major source facilities subject to the PPP NESHAP may incur costs to conduct periodic testing because they are currently using the emission rate with add-on controls compliance option, at a total cost in a single year of $57,000. These estimates exclude testing costs for facilities that have add-on controls and are currently required to perform periodic performance testing as a condition of their state operating permit. The cost for a facility to conduct a destruction or removal efficiency performance test using EPA Method 25 or 25A is estimated to be about $19,000. For further information on the potential costs, see the memorandum titled *Estimated Costs/Impacts 40 CFR part 63 Subparts IIII, MMMM, and PPPP Monitoring Review Revisions,* May 2019, in the ALDT Docket, MMPP Docket, and PPP Docket.

D. What are the economic impacts?

The economic impact analysis is designed to inform decision makers about the potential economic consequences of the compliance costs outlined in section VI.C. of this preamble. To assess the maximum potential impact, the largest cost expected to be experienced in any one year is compared to the total sales for the ultimate owner of the affected facilities to estimate the total burden for each facility.

For the final revisions to the ALDT NESHAP, the total cost is estimated to be approximately $113,000 for the 43 affected entities in the first year of the rule, and an additional $122,000 in testing and reporting costs for five facilities in the third year of the rule and every 5 years thereafter. The 43 affected facilities are owned by 14 different parent companies, and the total costs associated with the final requirements range from 0.000002 to 0.0056 percent of annual sales revenue per ultimate owner. These costs are not expected to result in a significant market impact, regardless of whether they are passed on to the purchaser or absorbed by the firms.

For the final revisions to the MMPP NESHAP, the total cost is estimated to be approximately $964,000 for the 368 affected entities in the first year of the rule, and an additional $172,000 in testing and reporting costs for seven facilities in the third year of the rule and every 5 years thereafter. The 368 affected facilities are owned by 265 different parent companies, and the total costs associated with the final requirements range from 0.000002 to 0.25 percent of annual sales revenue per ultimate owner. These costs are not expected to result in a significant market impact, regardless of whether they are passed on to the purchaser or absorbed by the firms.

For the final revisions to the PPP NESHAP, the total cost is estimated to be approximately $327,000 for the 125 affected entities in the first year of the rule, and an additional $74,000 in testing and reporting costs for three facilities in the third year of the rule and every 5 years thereafter. The 125 affected facilities are owned by 94 different parent companies, and the total costs associated with the final requirements range from 0.000008 to 0.22 percent of annual sales revenue per ultimate owner. These costs are not expected to result in a significant market impact, regardless of whether they are passed on to the purchaser or absorbed by the firms.

The EPA also prepared a small business screening assessment to determine whether any of the identified affected entities are small entities, as defined by the U.S. Small Business Administration. One of the facilities potentially affected by the final revisions to the ALDT NESHAP is a small entity. However, the annualized costs associated with the final requirements is 0.0056 percent of annual sales revenue for the owner of that facility. Of the facilities potentially affected by the final revisions to the MMPP NESHAP, 110 are small entities. However, the annualized costs associated with the final requirements for the 103 ultimate owners of these 110 affected small entities range from 0.001 to 0.25 percent of annual sales revenues per ultimate owner. Of the facilities potentially affected by the final revisions to the PPP NESHAP, 35 are small entities. However, the annualized costs associated with the final requirements for the 35 ultimate owners of these 35 affected small entities range from 0.0009 to 0.22 percent of annual sales revenues per ultimate owner. Therefore, there are no significant economic impacts on a substantial number of small entities from these final amendments.

E. What are the benefits?

As stated in section V.B. of the November 1, 2019, RTR proposal (84 FR 58986), we were unable to quantify the specific emissions reductions associated with eliminating the SSM exemption, although this change has the potential to reduce emissions of volatile organic HAP.

Because these amendments are not considered economically significant, as defined by Executive Order 12866, we did not monetize the benefits of reducing these emissions. This does not mean that there are no benefits associated with the potential reduction in volatile organic HAP from this rule.

F. What analysis of environmental justice did we conduct?

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. The order directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

To examine the potential for any environmental justice issues that might be associated with these source categories, we performed a demographic analysis for each source category, which is an assessment of risks to individual demographic groups of the populations living within 5 kilometers (km) and within 50 km of the facilities. In the analysis, we evaluated the distribution of HAP-related cancer and noncancer risks from each source category across different demographic groups within the populations living near facilities.

1. Surface Coating of ALDT

The results of the demographic analysis for the Surface Coating of ALDT source category are summarized in Table 5 of this preamble. These results, for various demographic groups, are based on the estimated risk from actual emissions levels for the population living within 50 km of the facilities.

The results of the ALDT source category demographic analysis indicate that emissions from the source category expose approximately 15,000 people to a cancer risk at or above 1-in-1 million and no one is exposed to a chronic noncancer HI greater than 1. The overall percent of the population that is minorities is similar nationally (38 percent) and for the category population with cancer risk greater than or equal to 1-in-1 million (40 percent). However, the category population with cancer risk greater than or equal to 1-in-1 million has a greater percent Hispanic population (27 percent) as compared to the national percent Hispanic population (18 percent).

TABLE 5—SURFACE COATING OF ALDT SOURCE CATEGORY DEMOGRAPHIC RISK ANALYSIS RESULTS

	Nationwide	Population with cancer risk at or above 1-in-1 million due to surface coating of ALDT	Population with chronic noncancer HI above 1 due to surface coating of ALDT
Total Population	317,746,049	15,000	0
White and Minority by Percent			
White	62	60	0
Minority	38	40	0
Minority Detail by Percent			
African American	12	10	0
Native American	0.8	0.2	0
Hispanic or Latino	18	27	0
Other and Multiracial	7	3	0
Income by Percent			
Below the Poverty Level	14	19	0
Above the Poverty Level	86	81	0
Education by Percent			
Over 25 Without High a School Diploma	14	14	0
Over 25 With a High School Diploma	86	86	0
Linguistically Isolated by Percent			
Linguistically Isolated	6	3	0

The methodology and the results of the demographic analysis are presented in a technical report titled *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Automobile and Light-Duty Truck Surface Coating Source Category Operations,* in the ALDT Docket.

2. Surface Coating of MMPP

The results of the demographic analysis for the Surface Coating of MMPP source category are summarized in Table 6 of this preamble. These results, for various demographic groups, are based on the estimated risk from actual emissions levels for the population living within 50 km of the facilities.

The results of the MMPP source category demographic analysis indicate that approximately 18,000 people are exposed to a cancer risk at or above 1-in-1 million and no one is exposed to a chronic noncancer HI greater than 1. The percentages of the at-risk population in the following specific demographic groups are higher than their respective nationwide percentages: ''White,'' ''Below the Poverty Level,'' and ''Over 25 and Without a High School Diploma.''

TABLE 6—SURFACE COATING OF MMPP SOURCE CATEGORY DEMOGRAPHIC RISK ANALYSIS RESULTS

	Nationwide	Population with cancer risk at or above 1-in-1 million due to surface coating of MMPP	Population with chronic noncancer HI above 1 due to surface coating of MMPP
Total Population	317,746,049	18,000	0
White and Minority by Percent			
White	62	75	0
Minority	38	25	0
Minority Detail by Percent			
African American	12	12	0
Native American	0.8	0.6	0
Hispanic or Latino	18	9	0

TABLE 6—SURFACE COATING OF MMPP SOURCE CATEGORY DEMOGRAPHIC RISK ANALYSIS RESULTS—Continued

	Nationwide	Population with cancer risk at or above 1-in-1 million due to surface coating of MMPP	Population with chronic noncancer HI above 1 due to surface coating of MMPP
Other and Multiracial	7	3	0
Income by Percent			
Below the Poverty Level	14	20	0
Above the Poverty Level	86	80	0
Education by Percent			
Over 25 Without High a School Diploma	14	18	0
Over 25 With a High School Diploma	86	82	0
Linguistically Isolated by Percent			
Linguistically Isolated	6	3	0

The methodology and the results of the demographic analysis are presented in a technical report titled *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near the Surface Coating of Miscellaneous Metal Parts and Products Source Category,* in the MMPP Docket.

3. Surface Coating of PPP

The results of the demographic analysis for the Surface Coating of PPP source category are summarized in Table 7 of this preamble. These results, for various demographic groups, are based on the estimated risk from actual emissions levels for the population living within 50 km of the facilities.

The results of the PPP source category demographic analysis indicate that approximately 500 people are exposed to a cancer risk at or above 1-in-1 million and no one is exposed to a chronic noncancer HI greater than 1. The percentages of the at-risk population in the following specific demographic groups are higher than their respective nationwide percentages: ''White'' and ''Below the Poverty Level.''

TABLE 7—SURFACE COATING OF PPP SOURCE CATEGORY DEMOGRAPHIC RISK ANALYSIS RESULTS

	Nationwide	Population with cancer risk at or above 1-in-1 million due to surface coating of PPP	Population with chronic noncancer HI above 1 due to surface coating of PPP
Total Population	317,746,049	500	0
White and Minority by Percent			
White	62	92	0
Minority	38	8	0
Minority Detail by Percent			
African American	12	4	0
Native American	0.8	0.1	0
Hispanic or Latino	18	3	0
Other and Multiracial	7	1	0
Income by Percent			
Below the Poverty Level	14	19	0
Above the Poverty Level	86	81	0
Education by Percent			
Over 25 Without High a School Diploma	14	14	0
Over 25 With a High School Diploma	86	86	0

TABLE 7—SURFACE COATING OF PPP SOURCE CATEGORY DEMOGRAPHIC RISK ANALYSIS RESULTS—Continued

	Nationwide	Population with cancer risk at or above 1-in-1 million due to surface coating of PPP	Population with chronic noncancer HI above 1 due to surface coating of PPP
Linguistically Isolated by Percent			
Linguistically Isolated	6	0	0

The methodology and the results of the demographic analysis are presented in a technical report titled *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Surface Coating of Plastic Parts and Products Source Category Operations,* in the PPP Docket.

G. What analysis of children's environmental health did we conduct?

The EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are summarized in section IV.A of this preamble and are further documented in the *Residual Risk Assessment for the Surface Coating of Automobiles and Light-Duty Trucks Source Category in Support of the 2020 Risk and Technology Review Final Rule, Residual Risk Assessment for the Surface Coating of Miscellaneous Metal Parts and Products Source Category in Support of the 2020 Risk and Technology Review Final Rule,* and *Residual Risk Assessment for the Surface Coating of Plastic Parts and Products Source Category in Support of the 2020 Risk and Technology Review Final Rule,* in the ALDT Docket, MMPP Docket, and PPP Docket, respectively.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

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

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

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

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

C. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted for approval to OMB under the PRA, as discussed for each source category covered by this action in sections VI.C.1, 2, and 3 of this preamble.

1. Surface Coating of ALDT

The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2045.09. You can find a copy of the ICR in the ALDT Docket for this rule (Docket ID No. EPA–HQ–OAR–2019–0314), and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

As part of the RTR for the ALDT NESHAP, the EPA is not revising the emission limit requirements. The EPA has revised the SSM provisions of the rule and is requiring the use of electronic data reporting for future performance test data submittals, notifications, and reports. This information is being collected to assure compliance with 40 CFR part 63, subpart IIII. The EPA is finalizing a requirement to conduct control device performance testing no less frequently than once every 5 years for facilities using the emission rate with add-on controls compliance option.

Respondents/affected entities: Facilities performing surface coating of ALDT.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart IIII).

Estimated number of respondents: In the 3 years after the amendments are final, approximately 43 respondents per year will be subject to the NESHAP and no additional respondents are expected to become subject to the NESHAP during that period. The EPA estimates that five facilities will be required to conduct performance testing in the 3 years after the amendments are final.

Frequency of response: The total number of responses in year 1 is 129 and in year 3 is 15. Year 2 would have no responses.

Total estimated burden: The average annual burden to the ALDT surface coating facilities over the 3 years after the amendments are finalized is estimated to be 410 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The average annual cost to the ALDT surface coating facilities is $47,000 in labor costs in the first 3 years after the amendments are final. The average annual capital and operation and maintenance (O&M) costs is $32,000.

2. Surface Coating of MMPP

The ICR document that the EPA prepared has been assigned EPA ICR number 2056.08. You can find a copy of the ICR in the MMPP Docket for this rule (Docket ID No. EPA–HQ–OAR–2019–0312), and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

As part of the RTR for the MMPP NESHAP, the EPA is not revising the emission limit requirements. The EPA has revised the SSM provisions of the rule and is requiring the use of electronic data reporting for future performance test data submittals, notifications, and reports. This information is being collected to assure compliance with 40 CFR part 63, subpart MMMM. The EPA is finalizing a requirement to conduct control device performance testing no less frequently than once every 5 years for facilities using the emission rate with add-on controls compliance option.

Respondents/affected entities: Facilities performing surface coating of MMPP.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart MMMM).

Estimated number of respondents: In the 3 years after the amendments are

final, approximately 368 respondents per year will be subject to the NESHAP and no additional respondents are expected to become subject to the NESHAP during that period.

Frequency of response: The total number of responses in year 1 is 1,104 and in year 3 is 21. Year 2 would have no responses.

Total estimated burden: The average annual burden to the MMPP surface coating facilities over the 3 years after the amendments are final is estimated to be 2,930 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The average annual cost to the MMPP surface coating facilities is $334,000 in labor costs in the first 3 years after the amendments are final. The average annual capital and O&M cost is $44,000.

3. Surface Coating of PPP

The ICR document that the EPA prepared has been assigned EPA ICR number 2044.09. You can find a copy of the ICR in the PPP Docket for this rule (Docket ID No. EPA–HQ–OAR–2019–0313), and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

As part of the RTR for the PPP NESHAP, the EPA is not revising the emission limit requirements. The EPA has revised the SSM provisions of the rule and is requiring the use of electronic data reporting for future performance test data submittals, notifications, and reports. This information is being collected to assure compliance with 40 CFR part 63, subpart PPPP. The EPA is finalizing a requirement to conduct control device performance testing no less frequently than once every 5 years for facilities using the emission rate with add-on controls compliance option.

Respondents/affected entities: Facilities performing surface coating of PPP.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart PPPP).

Estimated number of respondents: In the 3 years after the amendments are final, approximately 125 respondents per year will be subject to the NESHAP and no additional respondents are expected to become subject to the NESHAP during that period.

Frequency of response: The total number of responses in year 1 is 375 and in year 3 is nine. Year 2 would have no responses.

Total estimated burden: The average annual burden to the PPP surface coating facilities over the 3 years after the amendments are final is estimated to be 1,007 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The average annual cost to the PPP surface coating facilities is $115,000 in labor costs in the first 3 years after the amendments are final. The average annual capital and O&M cost is $19,000.

This action does not impose any new information collection burden related to the NESHAP for Surface Coating of Large Appliances; NESHAP for Printing, Coating, and Dyeing of Fabrics and Other Textiles; and NESHAP for Surface Coating of Metal Furniture. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0457 for NESHAP for Surface Coating of Large Appliances; 2060–0522 for NESHAP for Printing, Coating, and Dyeing of Fabrics and Other Textiles; and 2060–0518 for NESHAP for Surface Coating of Metal Furniture. This notice only finalizes technical corrections to these standards and does not impact the reporting or recordkeeping requirements.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves the ICRs, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in the final rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The economic impact associated with the requirements in this action for the affected small entities is described in section V.D. of this preamble.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

F. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. No tribal facilities are known to be engaged in any of the industries that would be affected by this action (ALDT surface coating, MMPP surface coating, and PPP surface coating). Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in sections III.A and C, IV.A.1 and 2, IV.B.1 and 2, and IV.C.1 and 2 of this preamble and are further documented in the *Residual Risk Assessment for the Surface Coating of ALDT Source Category in Support of the 2020 Risk and Technology Review Final Rule, Residual Risk Assessment for the Surface Coating of MMPP Source Category in Support of the 2020 Risk and Technology Review Final Rule,* and *Residual Risk Assessment for the Surface Coating of PPP Source Category in Support of the 2020 Risk and Technology Review Final Rule,* in the ALDT Docket, MMPP Docket, and PPP Docket, respectively.

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

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

J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This rulemaking involves technical standards. The EPA conducted searches for the MACT standards through the Enhanced National Standards Systems Network Database managed by the American National Standards Institute. We also contacted VCS organizations and accessed and searched their databases. During the EPA's VCS search, if the title or abstract (if provided) of the

VCS described technical sampling and analytical procedures that are similar to the EPA's reference method, the EPA reviewed it as a potential equivalent method. The EPA is finalizing, as proposed, addition of methods to the ALDT NESHAP, the MMPP NESHAP, and the PPP NESHAP, as discussed in this section VI.J.

The EPA is amending the ALDT NESHAP, the MMPP NESHAP, and the PPP NESHAP to provide owners and operators with the option of using two new methods. We are adding EPA Method 18 of appendix A to 40 CFR part 60, ''Measurement of Gaseous Organic Compound Emissions by Gas Chromatography,'' to measure and subtract methane emissions from measured total gaseous organic mass emissions as carbon. We are also amending each of these NESHAP to incorporate by reference ASTM D2369–10 (Reapproved 2015)[e], ''Standard Test Method for Volatile Content of Coatings,'' into these three NESHAP as an alternative to EPA Method 24 for the determination of the volatile matter content in surface coatings. ASTM D2369–10 (Reapproved 2015)[e] is a test method that allows for more accurate results for multi-component chemical resistant coatings.

We are amending the MMPP NESHAP and the PPP NESHAP to incorporate by reference ASTM D2111–10 (Reapproved 2015), ''Standard Test Methods for Specific Gravity and Density of Halogenated Organic Solvents and Their Admixtures,'' as an alternative to ASTM D1475–13. ASTM D2111–10 (Reapproved 2015) is a test method that allows measurement of specific gravity at different temperatures that are chosen by the analyst.

We are amending all three NESHAP to update ASTM D1475–98 (Reapproved 2003), ''Standard Test Method for Density of Liquid Coatings, Inks, and Related Products,'' by incorporating by reference ASTM D1475–13, ''Standard Test Method for Density of Liquid Coatings, Inks, and Related Products.'' This test method covers the measurement of the density of paints, inks, varnishes, lacquers, and components thereof, other than pigments, when in fluid form.

We are amending the ALDT NESHAP and the MMPP NESHAP to update ASTM D2697–86 (Reapproved 1998), ''Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings,'' by incorporating by reference ASTM D2697–03 (Reapproved 2014), which is the updated version of the previously approved method, and to update ASTM D6093–97 (Reapproved 2003), ''Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using Helium Gas Pycnometer,'' by incorporating by reference ASTM D6093–97 (Reapproved 2016), which is the updated version of the previously approved method. ASTM D2697–03 (Reapproved 2014) is a test method that can be used to determine the volume of nonvolatile matter in clear and pigmented coatings, and ASTM D6093–97 (Reapproved 2016) is a test method that can be used to determine the percent volume of nonvolatile matter in clear and pigmented coatings.

We are amending the ALDT NESHAP to update ASTM D5066–91 (Reapproved 2001), ''Standard Test Method for Determination of the Transfer Efficiency Under Production Conditions for Spray Application of Automotive Paints-Weight Basis,'' by incorporating by reference ASTM D5066–91 (Reapproved 2017), which is the updated version of the previously approved method. This test method covers procedures for determination of the transfer efficiency (using a weight method) under production conditions for in-plant spray application of automotive paints as outlined in Section 18 of EPA 450/3–88–018.

We are amending the ALDT NESHAP and the MMPP NESHAP to update ASTM D5965–02, ''Standard Test Methods for Specific Gravity of Coating Powders,'' by incorporating by reference ASTM D5965–02 (Reapproved 2013), which is the updated version of the previously approved method. These test methods cover three procedures for determining the specific gravity (see definition) of coating powders, *i.e.,* Test Method A—For Testing Coating Powders, Excluding Metallics; Test Method B—For Tests Requiring Greater Precision than Test Method A, Including Metallics, Using Helium Pycnometry; and Test Method C—For Theoretical Calculation Based on Raw Material.

We are amending the ALDT NESHAP to update ASTM D6266–00a, ''Standard Test Method for Determining the Amount of Volatile Organic Compound (VOC) Released from Waterborne Automotive Coatings and Available for Removal in a VOC Control Device (Abatement),'' by incorporating by reference ASTM D6266–00a (Reapproved 2017), which is the updated version of the previously approved method. This test method describes the determination of the amount of VOC released from applied waterborne automotive coatings that is available for delivery to a VOC control device. The determination is accomplished by measuring the weight loss of a freshly coated test panel subject to evaporation or drying and by analysis of the VOC or water content in the coating.

The ASTM standards are available from ASTM International 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959. See *https://www.astm.org/.*

The EPA is amending the ALDT NESHAP to incorporate by reference EPA–450/3–88–018 ''Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' for use in 40 CFR 63.3130(c), 63.3161(d), and (g), 63.3165(e), and appendix A to subpart IIII of part 63. This protocol determines the daily VOC emission rate (pounds of VOC per gallon of coating solids deposited) for a complete ALDT topcoat operation and is available in the ALDT Docket. The protocol is designed for uses in cases where topcoat emission limit is stated in units of pounds of VOC per gallon of solids deposited, compliance is demonstrated each day, and entire topcoat operation is treated as a single entity. The protocol uses the number of square feet coated on each vehicle in each booth with each coating as the basis for the daily weighting of individual transfer efficiency and bake oven exhaust control values. The method is intended to apply to primary coatings for new ALDT bodies, body parts for new ALDT, and other parts that are coated along with these bodies or body parts. It can also be downloaded from the EPA's website at the National Service Center for Environmental Publications, just access the following website at *https://nepis.epa.gov* and search either the title or document number.

The EPA decided not to include certain other VCS; these methods are impractical as alternatives because of the lack of equivalency, documentation, validation date, and other important technical and policy considerations. The search and review results have been documented and are in the memoranda titled *Voluntary Consensus Standard Results for NESHAP RTR: Surface Coating of Automobile and Light-Duty Trucks,* June 2019, *Voluntary Consensus Standard Results for NESHAP RTR: Surface Coating of Miscellaneous Metal Parts,* June 2019, and *Voluntary Consensus Standard Results for NESHAP RTR: Surface Coating of Plastic Parts and Products,* June 2019, in the ALDT Docket, MMPP Docket, and the PPP Docket, respectively.

The revised regulatory text contains references to ANSI/ASME PTC 19.10–

1981 (§ 63.3166) and ASTM D5087–02 (§ 63.3165 and appendix A to subpart IIII). Both of these standards were previously approved for these sections. That approval continues without change.

Under 40 CFR 63.7(f) and 40 CFR 63.8(f) of subpart A of the General Provisions, a source may apply to the EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures in the final rule or any amendments.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). This action increases the level of environmental protection for all affected populations. The results of this evaluation are contained in section IV.A of this preamble and the technical reports titled *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Automobile and Light-Duty truck Surface Coating Category Operations,* March 2019, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near the Surface Coating of Miscellaneous Metal Parts and Products Source Category,* May 2019, and *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Surface Coating of Plastic Parts and Products Source Category Operations,* April 2019, available in the ALDT Docket, MMPP Docket, and the PPP Docket, respectively.

L. Congressional Review Act (CRA)

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

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements, Surface coating of automobiles and light-duty trucks, Surface coating of miscellaneous metal parts and products, Surface coating of plastic parts and products.

Dated: March 11, 2020.

Andrew R. Wheeler,

Administrator.

For the reasons set forth in the preamble, the EPA amends 40 CFR part 63 as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart A—General Provisions

■ 2. Section 63.14 is amended by:
■ a. Removing paragraph (h)(12);
■ b. Redesignating paragraphs (h)(13) through (115) as paragraphs (h)(12) through (114);
■ c. Revising newly redesignated paragraphs (h)(12), (20), (25), (28), (29), (65), (75), (77), (78), and (80);
■ d. Redesignating paragraphs (n)(1) through (24) as paragraphs (n)(2) through (25); and
■ e. Adding new paragraph (n)(1).

The revisions and addition read as follows:

§ 63.14 Incorporations by reference

* * * * *

(h) * * *

(12) ASTM D1475–13, Standard Test Method for Density of Liquid Coatings, Inks, and Related Products, approved November 1, 2013, IBR approved for §§ 63.3151(b), 63.3941(b) and (c), 63.3951(c), 63.4141(b) and (c), 63.4551(c), 63.4741(b) and (c), 63.4751(c), and 63.4941(b) and (c).

* * * * *

(20) ASTM D2111–10 (Reapproved 2015), Standard Test Methods for Specific Gravity and Density of Halogenated Organic Solvents and Their Admixtures, approved June 1, 2015, IBR approved for §§ 63.3951(c), 63.4141(b) and (c), 63.4551(c), and 63.4741(a).

* * * * *

(25) ASTM D2369–10 (Reapproved 2015)[e], Standard Test Method for Volatile Content of Coatings, approved June 1, 2015, IBR approved for §§ 63.3151(a), 63.3961(j), 63.4141(a) and (b), 63.4161(h), 63.4321(e), 63.4341(e), 63.4351(d), 63.4541(a), 63.4561(j), 63.4741(a), 63.4941(a) and (b), and 63.4961(j).

* * * * *

(28) ASTM D2697–86 (Reapproved 1998), Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings, IBR approved for §§ 63.3521(b), and 63.5160(c).

(29) ASTM D2697–03 (Reapproved 2014), Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings, approved July 1, 2014, IBR approved for §§ 63.3161(f), 63.3941(b), 63.4141(b), 63.4741(a) and (b), and 63.4941(b).

* * * * *

(65) ASTM D5066–91 (Reapproved 2017), Standard Test Method for Determination of the Transfer Efficiency Under Production Conditions for Spray Application of Automotive Paints-Weight Basis, approved June 1, 2017, IBR approved for § 63.3161(g).

* * * * *

(75) ASTM D5965–02 (Reapproved 2013), Standard Test Methods for Specific Gravity of Coating Powders, approved June 1, 2013, IBR approved for §§ 63.3151(b) and 63.3951(c).

* * * * *

(77) ASTM D6093–97 (Reapproved 2003), Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer, IBR approved for §§ 63.3521 and 63.5160(c).

(78) ASTM D6093–97 (Reapproved 2016), Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer, approved December 1, 2016, IBR approved for §§ 63.3161(f), 63.3941(b), 63.4141(b), 63.4741(a) and (b), and 63.4941(b).

* * * * *

(80) ASTM D6266–00a (Reapproved 2017), Standard Test Method for Determining the Amount of Volatile Organic Compound (VOC) Released from Waterborne Automotive Coatings and Available for Removal in a VOC Control Device (Abatement), approved July 1, 2017, IBR approved for § 63.3165(e).

* * * * *

(n) * * *

(1) EPA–450/3–88–018, Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations, December 1988, IBR approved for §§ 63.3130(c), 63.3161(d) and (g), 63.3165(e), and appendix A to subpart IIII.

* * * * *

Subpart IIII—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks

■ 3. Section 63.3092 is amended by revising paragraph (a)(2) to read as follows:

§ 63.3092 How must I control emissions from my electrodeposition primer system if I want to comply with the combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive emission limit?

* * * * *

(a) * * *

(2) 0.10 percent by weight of any organic HAP in table 5 of this subpart.

* * * * *

■ 4. Section 63.3093 is amended by revising paragraphs (a) and (b) to read as follows:

§ 63.3093 What operating limits must I meet?

(a) You are not required to meet any operating limits for any coating operation(s) without add-on controls, nor are you required to meet operating limits for any coating operation(s) that do not utilize emission capture systems and add-on controls to comply with the emission limits in § 63.3090 or § 63.3091.

(b) Except as provided in paragraph (d) of this section, for any controlled coating operation(s), you must meet the operating limits specified in table 1 to this subpart. These operating limits apply to the emission capture and add-on control systems on the coating operation(s) for which you use this option, and you must establish the operating limits during performance tests according to the requirements in § 63.3167. You must meet the operating limits at all times after you establish them.

* * * * *

■ 5. Section 63.3100 is amended by revising paragraphs (b), (d), and (f) to read as follows:

§ 63.3100 What are my general requirements for complying with this subpart?

* * * * *

(b) Before January 5, 2021, the coating operations must be in compliance with the operating limits for emission capture systems and add-on control devices required by § 63.3093 at all times except during periods of SSM. On and after January 5, 2021, the coating operations must be in compliance with the operating limits for emission capture systems and add-on control devices required by § 63.3093 at all times.

* * * * *

(d) Before January 5, 2021, you must always operate and maintain your affected source including all air pollution control and monitoring equipment you use for purposes of complying with this subpart according to the provisions in § 63.6(e)(1)(i). On and after January 5, 2021, at all times, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator that may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the affected source.

* * * * *

(f) Before January 5, 2021, if your affected source uses emission capture systems and add-on control devices, you must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3). The SSMP must address startup, shutdown, and corrective actions in the event of a malfunction of the emission capture system or the add-on control devices. On and after January 5, 2021, the SSMP is not required.

■ 6. Section 63.3120 is amended by:

■ a. Revising paragraphs (a)(4), (a)(5) introductory text, (a)(5)(iv);

■ b. Adding paragraph (a)(5)(v);

■ c. Revising paragraphs (a)(6) introductory text and (a)(6)(iii), (vi) through (viii), (x), (xiii), and (xiv);

■ d. Adding paragraph (a)(6)(xv);

■ e. Revising paragraphs (a)(7) introductory text and (a)(7)(i) and (iii);

■ f. Adding paragraph (a)(7)(iv);

■ g. Revising paragraphs (a)(8) introductory text, (a)(8)(ii), (v) through (vii), (ix), and (xii), (a)(9) introductory text, (a)(9)(i) and (ii), and (c) introductory text; and

■ h. Adding paragraphs (d) through (h).

The revisions and additions read as follows:

§ 63.3120 What reports must I submit?

(a) * * *

(4) *No deviations.* If there were no deviations from the emission limits, operating limits, or work practices in §§ 63.3090, 63.3091, 63.3092, 63.3093, and 63.3094 that apply to you, the semiannual compliance report must include a statement that there were no deviations from the applicable emission limitations during the reporting period. If you used control devices to comply with the emission limits, and there were no periods during which the CPMS were out of control as specified in § 63.8(c)(7), the semiannual compliance report must include a statement that there were no periods during which the CPMS were out of control during the reporting period.

(5) *Deviations: adhesive, sealer, and deadener.* Before January 5, 2021, if there was a deviation from the applicable emission limits in § 63.3090(c) and (d) or § 63.3091(c) and (d), the semiannual compliance report must contain the information in paragraphs (a)(5)(i) through (iv) of this section. On and after January 5, 2021, if there was a deviation from the applicable emission limits in § 63.3090(c) and (d) or § 63.3091(c) and (d), the semiannual compliance report must contain the information in paragraphs (a)(5)(i) through (v) of this section.

* * * * *

(iv) The reason for the deviation (including unknown cause, if applicable).

(v) On and after January 5, 2021, the number of deviations and, for each deviation, a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over the applicable emission limit in § 63.3090(c) and (d) or § 63.3091(c) and (d), and a description of the method used to estimate the emissions.

(6) *Deviations:* combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer and glass bonding adhesive, or combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c). Before January 5, 2021, if there was a deviation from the applicable emission limits in § 63.3090(a) or (b) or § 63.3091(a) or (b) or the applicable operating limit(s) in table 1 to this subpart, the semiannual compliance report must contain the information in paragraphs (a)(6)(i) through (xiv) of this section. On and after January 5, 2021, if there was a deviation from the applicable emission limits in § 63.3090(a) or (b) or § 63.3091(a) or (b) or the applicable operating limit(s) in table 1 to this subpart, the semiannual compliance report must contain the information in paragraphs (a)(6)(i) through (xv) of this section.

* * * * *

(iii) The date and time that each malfunction of the capture system or add-on control devices used to control emissions from these operations started and stopped.

* * * * *

(vi) Before January 5, 2021, the date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks. On and after January 5, 2021, for each instance that the CPMS was inoperative, except for zero (low-level) and high-level checks, the date, time, and duration that the CPMS was inoperative; the cause (including unknown cause) for the CPMS being inoperative; and descriptions of corrective actions taken.

(vii) Before January 5, 2021, the date and time period that each CPMS was out of control, including the information in § 63.8(c)(8). On and after January 5, 2021, for each instance that the CPMS was out of control, as specified in § 63.8(c)(7), the date, time, and duration that the CPMS was out-of-control; the cause (including unknown cause) for the CPMS being out-of-control; and descriptions of corrective actions taken.

(viii) Before January 5, 2021, The date and time period of each deviation from an operating limit in table 1 to this subpart; date and time period of each bypass of an add-on control device; and whether each deviation occurred during a period of SSM or during another period. On and after January 5, 2021, the date, time, and duration of each deviation from an operating limit in table 1 to this subpart; and the date, time, and duration of each bypass of an add-on control device.

* * * * *

(x) Before January 5, 2021, a breakdown of the total duration of the deviations from each operating limit in table 1 to this subpart and bypasses of each add-on control device during the semiannual reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes. On and after January 5, 2021, a breakdown of the total duration of the deviations from each operating limit in table 1 to this subpart and bypasses of each add-on control device during the semiannual reporting period into those that were due to control equipment problems, process problems, other known causes, and other unknown causes.

* * * * *

(xiii) Before January 5, 2021, for each deviation from the work practice standards a description of the deviation, the date and time period of the deviation, and the actions you took to correct the deviation. On and after January 5, 2021, for deviations from the work practice standards, the number of deviations, and, for each deviation, the information in paragraphs (a)(6)(xiii)(A) and (B) of this section.

(A) A description of the deviation, the date, time, and duration of the deviation; and the actions you took to minimize emissions in accordance with § 63.3100(d).

(B) A list of the affected sources or equipment for which a deviation occurred, the cause of the deviation (including unknown cause, if applicable), and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

(xiv) Before January 5, 2021, a statement of the cause of each deviation. On and after January 5, 2021, for deviations from an emission limitation in § 63.3090(a) or (b) or § 63.3091(a) or (b) or operating limit in table 1 of this subpart, a statement of the cause of each deviation (including unknown cause, if applicable).

(xv) On and after January 5, 2021, for each deviation from an emission limitation in § 63.3090(a) or (b), or § 63.3091(a) or (b), or operating limit in table 1 to this subpart, a list of the affected sources or equipment for which a deviation occurred, an estimate of the quantity of each regulated pollutant emitted over any emission limit in § 63.3090(a) or (b) or § 63.3091(a) or (b), and a description of the method used to estimate the emissions.

(7) *Deviations: Separate electrodeposition primer organic HAP content limit.* Before January 5, 2021, if you used the separate electrodeposition primer organic HAP content limits in § 63.3092(a), and there was a deviation from these limits, the semiannual compliance report must contain the information in paragraphs (a)(7)(i) through (iii) of this section. On and after January 5, 2021, if you used the separate electrodeposition primer organic HAP content limits in § 63.3092(a), and there was a deviation from these limits, the semiannual compliance report must contain the information in paragraphs (a)(7)(i) through (iv) of this section.

(i) Identification of each material used that deviated from the emission limit, and the date, time, and duration each was used.

* * * * *

(iii) A statement of the cause of each deviation (including unknown case, if applicable).

(iv) On and after January 5, 2021, the number of deviations, a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit in § 63.3092(a), and a description of the method used to estimate the emissions.

(8) *Deviations: Separate electrodeposition primer bake oven capture and control limitations.* Before January 5, 2021, if you used the separate electrodeposition primer bake oven capture and control limitations in § 63.3092(b), and there was a deviation from the limitations in § 63.3092(b) or the applicable operating limit in table 1 to this subpart, the semiannual compliance report must contain the information in paragraphs (a)(8)(i) through (xii) of this section. On and after January 5, 2021, if you used the separate electrodeposition primer bake oven capture and control limitations in § 63.3092(b), and there was a deviation from the limitations in § 63.3092(b) or the applicable operating limit in table 1 to this subpart, the semiannual compliance report must contain the information in paragraphs (a)(8)(i) through (xiv) of this section.

* * * * *

(ii) The date and time that each malfunction of the capture systems or control devices used to control emissions from the electrodeposition primer bake oven started and stopped.

* * * * *

(v) Before January 5, 2021, the date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks. On and after January 5, 2021, for each instance that the CPMS was inoperative, except for zero (low-level) and high-level checks, the date, time, and duration that the CPMS was inoperative; the cause (including unknown cause) for the CPMS being inoperative; and descriptions of corrective actions taken.

(vi) Before January 5, 2021, the date, time, and duration that each CPMS was out of control, including the information in § 63.8(c)(8). On and after January 5, 2021, for each instance that the CPMS was out of control, as specified in § 63.8(c)(7), the date, time, and duration that the CPMS was out-of-control; the cause (including unknown cause) for the CPMS being out-of-control; and descriptions of corrective actions taken.

(vii) Before January 5, 2021, the date and time period of each deviation from an operating limit in table 1 to this subpart; date and time period of each bypass of an add-on control device; and whether each deviation occurred during a period of SSM or during another period. On and after January 5, 2021, the date, time, and duration of each deviation from an operating limit in table 1 to this subpart; and the date,

time, and duration of each bypass of an add-on control device.

* * * * *

(ix) Before January 5, 2021, a breakdown of the total duration of the deviations from each operating limit in table 1 to this subpart and bypasses of each add-on control device during the semiannual reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes. On and after January 5, 2021, a breakdown of the total duration of the deviations from each operating limit in table 1 to this subpart and bypasses of each add-on control device during the semiannual reporting period into those that were due to control equipment problems, process problems, other known causes, and other unknown causes.

* * * * *

(xii) A statement of the cause of each deviation (including unknown cause, if applicable).

(9) *Deviations: Work practice plans.* Before January 5, 2021, if there was a deviation from an applicable work practice plan developed in accordance with § 63.3094(b) or (c), the semiannual compliance report must contain the information in paragraphs (a)(9)(i) through (iii) of this section. On and after January 5, 2021, if there were deviations from an applicable work practice plan developed in accordance with § 63.3094(b) or (c), the semiannual compliance report must contain the number of deviations, and, for each deviation, the information in paragraphs (a)(9)(i) through (iii) of this section.

(i) Before January 5, 2021, the time period during which each deviation occurred. On and after January 5, 2021, the date, time, and duration of the deviation.

(ii) Before January 5, 2021, the nature of each deviation. On and after January 5, 2021, the nature of the deviation, including a list of the affected sources or equipment for which the deviation occurred, and the cause of the deviation (including unknown cause, if applicable).

* * * * *

(c) *SSM reports.* Before January 5, 2021, if you used add-on control devices and you had a SSM during the semiannual reporting period, you must submit the reports specified in paragraphs (c)(1) and (2) of this section. On and after January 5, 2021, the reports specified in paragraphs (c)(1) and (2) of this section are not required.

* * * * *

(d) *Performance test reports.* On and after January 5, 2021, you must submit the results of the performance test required in paragraph (b) of this section following the procedure specified in paragraphs (d)(1) through (3) of this section.

(1) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (*https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert*) at the time of the test, you must submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). (CEDRI can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*)). Performance test data must be submitted in a file format generated through the use of the EPA's ERT or an alternate electronic file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT website.

(2) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test, you must submit the results of the performance test to the Administrator at the appropriate address listed in § 63.13, unless the Administrator agrees to or specifies an alternate reporting method.

(3) If you claim that some of the performance test information being submitted under paragraph (c)(1) of this section is Confidential Business Information (CBI), you must submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage medium to the EPA. The electronic medium must be clearly marked as CBI and mailed to U.S. EPA/OAPQS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraph (c)(1) of this section.

(e) *Initial notification reports.* On and after January 5, 2021, the owner or operator shall submit the initial notifications required in § 63.9(b) and the notification of compliance status required in §§ 63.9(h) and 63.3110(c) to the EPA via the CEDRI. The CEDRI interface can be accessed through the EPA's CDX (*https://cdx.epa.gov/*). The owner or operator must upload to CEDRI an electronic copy of each applicable notification in portable document format (PDF). The applicable notification must be submitted by the deadline specified in this subpart, regardless of the method in which the reports are submitted. Owners or operators who claim that some of the information required to be submitted via CEDRI is CBI shall submit a complete report generated using the appropriate form in CEDRI or an alternate electronic file consistent with the XML schema listed on the EPA's CEDRI website, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage medium to the EPA. The electronic medium shall be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted shall be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(f) *Semiannual compliance reports.* On and after January 5, 2021, or once the reporting template has been available on the CEDRI website for 1 year, whichever date is later, the owner or operator shall submit the semiannual compliance report required in paragraph (a) of this section to the EPA via the CEDRI. The CEDRI interface can be accessed through the EPA's CDX (*https://cdx.epa.gov/*). The owner or operator must use the appropriate electronic template on the CEDRI Web for this subpart or an alternate electronic file format consistent with the XML schema listed on the CEDRI website (*https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri*). If the reporting form for the semiannual compliance report specific to this subpart is not available in CEDRI at the time that the report is due, you must submit the report to the Administrator at the appropriate addresses listed in § 63.13. Once the form has been available in CEDRI for 1 year, you must begin submitting all subsequent reports via CEDRI. The reports must be submitted by the deadlines specified in this subpart, regardless of the method in which the reports are submitted. Owners or operators who claim that some of the information required to be submitted via CEDRI is CBI shall submit a complete report generated using the appropriate form in CEDRI or an alternate electronic file consistent with the XML schema listed on the EPA's CEDRI website, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used

electronic storage medium to the EPA. The electronic medium shall be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted shall be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(g) *Reporting during EPA system outages.* If you are required to electronically submit a report through the CEDRI in the EPA's CDX, and due to a planned or actual outage of either the EPA's CEDRI or CDX systems within the period of time beginning 5 business days prior to the date that the submission is due, you will be or are precluded from accessing CEDRI or CDX and submitting a required report within the time prescribed, you may assert a claim of the EPA system outage for failure to timely comply with the reporting requirement. You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or caused a delay in reporting. You must provide to the Administrator a written description identifying the date, time and length of the outage; a rationale for attributing the delay in reporting beyond the regulatory deadline to the EPA system outage; describe the measures taken or to be taken to minimize the delay in reporting; and identify a date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported. In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved. The decision to accept the claim of the EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(h) *Reporting during force majeure events.* If you are required to electronically submit a report through CEDRI in the EPA's CDX and a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning 5 business days prior to the date the submission is due, the owner or operator may assert a claim of force majeure for failure to timely comply with the reporting requirement. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (*e.g.,* hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (*e.g.,* large scale power outage). If you intend to assert a claim of force majeure, you must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or caused a delay in reporting. You must provide to the Administrator a written description of the force majeure event and a rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event; describe the measures taken or to be taken to minimize the delay in reporting; and identify a date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported. In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs. The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

■ 7. Section 63.3130 is amended by revising paragraphs (c)(4) and (5), (g), and (h) and adding paragraph (p) to read as follows:

§ 63.3130 What records must I keep?

* * * * *

(c) * * *

(4) A record of the calculation of the organic HAP emission rate for electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) for each month if subject to the emission limit of § 63.3090(a) or § 63.3091(a). This record must include all raw data, algorithms, and intermediate calculations. If the guidelines presented in ''Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' EPA–450/3–88–018 (incorporated by reference, *see* § 63.14), are used, you must keep records of all data input to this protocol. If these data are maintained as electronic files, the electronic files, as well as any paper copies must be maintained. These data must be provided to the permitting authority on request on paper, and in (if calculations are done electronically) electronic form.

(5) A record of the calculation of the organic HAP emission rate for primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) for each month if subject to the emission limit of § 63.3090(b) or § 63.3091(b), and a record of the weight fraction of each organic HAP in each material added to the electrodeposition primer system if subject to the limitations of § 63.3092(a). This record must include all raw data, algorithms, and intermediate calculations. If the guidelines presented in ''Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' EPA–450/3–88–018 (incorporated by reference, *see* § 63.14) are used, you must keep records of all data input to this protocol. If these data are maintained as electronic files, the electronic files, as well as any paper copies must be maintained. These data must be provided to the permitting authority on request on paper, and in (if calculations are done electronically) electronic form.

* * * * *

(g) Before January 5, 2021, a record of the date, time, and duration of each deviation, and for each deviation, a record of whether the deviation occurred during a period of SSM. On and after January 5, 2021, for each deviation from an emission limitation, operating limit, or work practice plan reported under § 63.3120(a)(5) through (9), a record of the information specified in paragraphs (g)(1) through (4) of this section, as applicable.

(1) The date, time, and duration of the deviation, and for each deviation, the information as reported under § 63.3120(a)(5) through (9).

(2) A list of the affected sources or equipment for which the deviation occurred and the cause of the deviation, as reported under § 63.3120(a)(5) through (9).

(3) An estimate of the quantity of each regulated pollutant emitted over any applicable emission limit in § 63.3090(a) through (d) or § 63.3091(a) through (d) or any applicable operating limit in table 1 to this subpart, and a description of the method used to calculate the estimate, as reported under § 63.3120(a)(5) through (9).

(4) A record of actions taken to minimize emissions in accordance with § 63.3100(d) and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

(h) Before January 5, 2021, the records required by § 63.6(e)(3)(iii) through (v) related to SSM. On and after January 5, 2021, the provisions of this paragraph no longer apply.

* * * * *

(p) On and after January 5, 2021, any records required to be maintained by this subpart that are submitted electronically via the EPA's CEDRI may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

■ 8. Section 63.3131 is amended by revising paragraph (a) to read as follows:

§ 63.3131 In what form and for how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review according to § 63.10(b)(1). Where appropriate, the records may be maintained as electronic spreadsheets or as a database. On and after January 5, 2021, any records required to be maintained by this subpart that are submitted electronically via the EPA's CEDRI may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

* * * * *

■ 9. Section 63.3151 is amended by revising paragraphs (a)(1)(i), (a)(2) and (4), and (b) to read as follows.

§ 63.3151 How do I demonstrate initial compliance with the emission limitations?

* * * * *

(a) * * *

(1) * * *

(i) Count each organic HAP in table 5 to this subpart that is present at 0.1 percent by mass or more and at 1.0 percent by mass or more for other compounds. For example, if toluene (not listed in table 5 to this subpart) is measured to be 0.5 percent of the material by mass, you do not have to count it. Express the mass fraction of each organic HAP you count as a value truncated to four places after the decimal point (*e.g.,* 0.3791).

* * * * *

(2) *EPA Method 24 (appendix A–7 to 40 CFR part 60).* For coatings, you may use EPA Method 24 to determine the mass fraction of nonaqueous volatile matter and use that value as a substitute for mass fraction of organic HAP. As an alternative to using EPA Method 24, you may use ASTM D2369–10 (Reapproved 2015)[e] (incorporated by reference, *see* § 63.14).

* * * * *

(4) *Information from the supplier or manufacturer of the material.* You may rely on information other than that generated by the test methods specified in paragraphs (a)(1) through (3) of this section, such as manufacturer's formulation data, if it represents each organic HAP in table 5 to this subpart that is present at 0.1 percent by mass or more and at 1.0 percent by mass or more for other compounds. For example, if toluene (not listed in table 5 of this subpart) is 0.5 percent of the material by mass, you do not have to count it. If there is a disagreement between such information and results of a test conducted according to paragraphs (a)(1) through (3) of this section, then the test method results will take precedence, unless after consultation, the facility demonstrates to the satisfaction of the enforcement authority that the facility's data are correct.

* * * * *

(b) *Determine the density of each material used.* Determine the density of each material used during the compliance period from test results using ASTM D1475–13 (incorporated by reference, *see* § 63.14) or for powder coatings, test method A or test method B of ASTM D5965–02 (Reapproved 2013) (incorporated by reference, *see* § 63.14), or information from the supplier or manufacturer of the material. If there is disagreement between ASTM D1475–13 test results or ASTM D5965–02 (Reapproved 2013), test method A or test method B test results and the supplier's or manufacturer's information, the test results will take precedence unless after consultation, the facility demonstrates to the satisfaction of the enforcement authority that the facility's data are correct.

* * * * *

■ 10. Section 63.3160 is amended by revising the section heading and paragraph (b)(1) to read as follows:

§ 63.3160 By what date must I conduct initial performance tests and other initial compliance demonstrations?

* * * * *

(b) * * *

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3083. You must conduct an initial performance test of each capture system and add-on control device according to the procedures in §§ 63.3164 through 63.3166 and establish the operating limits required by § 63.3093 no later than the compliance date specified in § 63.3083.

* * * * *

■ 11. Section 63.3161 is amended by revising paragraphs (a), (d), (f)(1), (g), and (k)(3) to read as follows:

§ 63.3161 How do I demonstrate initial compliance?

(a) You must meet all of the requirements of this section to demonstrate initial compliance. To demonstrate initial compliance, the organic HAP emissions from the combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) must meet the applicable emission limitation in § 63.3090(a) or § 63.3091(a) and the applicable operating limits and work practice standards in §§ 63.3093 and 63.3094.

* * * * *

(d) *Compliance with emission limits.* You must follow the procedures in paragraphs (e) through (o) of this section to demonstrate compliance with the applicable emission limit in § 63.3090(a) or § 63.3091(a). You may also use the guidelines presented in ''Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations'' EPA–450/3–88–018 (incorporated by reference, *see* § 63.14), in making this demonstration.

* * * * *

(f) * * *

(1) *ASTM Method D2697–03 (Reapproved 2014) or ASTM Method D6093–97 (Reapproved 2016).* You may use ASTM D2697–03 (Reapproved 2014) (incorporated by reference, *see* § 63.14), or ASTM D6093–97 (Reapproved 2016) (incorporated by reference, *see* § 63.14), to determine the volume fraction of coating solids for each coating. Divide the nonvolatile volume percent obtained with the methods by 100 to calculate volume fraction of coating solids.

* * * * *

(g) *Determine the transfer efficiency for each coating.* You must determine the transfer efficiency for each primer-

surfacer and topcoat coating, and for all coatings, except for deadener and for adhesive and sealer that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) using ASTM D5066–91 (Reapproved 2017) (incorporated by reference, *see* § 63.14) or the guidelines presented in ''Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' EPA–450/3–88–018 (incorporated by reference, *see* § 63.14). You may conduct transfer efficiency testing on representative coatings and for representative spray booths as described in ''Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' EPA–450/3–88–018. You may assume 100-percent transfer efficiency for electrodeposition primer coatings, glass bonding primers, and glass bonding adhesives. For final repair coatings, you may assume 40-percent transfer efficiency for air atomized spray and 55-percent transfer efficiency for electrostatic spray and high volume, low pressure spray. For blackout, chip resistant edge primer, interior color, in-line repair, lower body anti-chip coatings, or underbody anti-chip coatings, you may assume 40-percent transfer efficiency for air atomized spray, 55-percent transfer efficiency for electrostatic spray and high volume-low pressure spray, and 80-percent transfer efficiency for airless spray.

* * * * *

(k) * * *

(3) Determine the mass fraction of volatile organic matter for each coating and thinner used in the coating operation controlled by the solvent recovery system during the month, kg volatile organic matter per kg coating. You may determine the volatile organic matter mass fraction using EPA Method 24 of 40 CFR part 60, appendix A–7, or an EPA approved alternative method, or you may use information provided by the manufacturer or supplier of the coating. In the event of any inconsistency between information provided by the manufacturer or supplier and the results of EPA Method 24 of 40 CFR part 60, appendix A–7, or an approved alternative method, the test method results will govern unless after consultation, the facility demonstrates to the satisfaction of the enforcement authority that the facility's data are correct.

* * * * *

■ 12. Section 63.3163 is amended by revising the section heading and paragraph (c) introductory text, adding paragraph (c)(3), and revising paragraphs (f) and (h) to read as follows:

§ 63.3163 How do I conduct periodic performance tests and demonstrate continuous compliance with the emission limitations?

* * * * *

(c) You must demonstrate continuous compliance with each operating limit required by § 63.3093 that applies to you, as specified in table 1 to this subpart, and you must conduct performance tests as specified in paragraph (c)(3) of this section.

* * * * *

(3) Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3161(k) for controlled coating operations, you must conduct periodic performance tests of add-on controls and establish the operating limits required by § 63.3093 within 5 years following the previous performance test. You must conduct the first periodic performance test before July 8, 2023, unless you are already required to complete periodic performance tests as a requirement of renewing your facility's operating permit under 40 CFR part 70 or 40 CFR part 71 and have conducted a performance test on or after July 8, 2022. Thereafter you must conduct a performance test no later than 5 years following the previous performance test. Operating limits must be confirmed or reestablished during each performance test. For any control device for which you are using the catalytic oxidizer control option at § 63.3167(b) and following the catalyst maintenance procedures in § 63.3167(b)(6), you are not required to conduct periodic control device performance testing as specified by this paragraph. For any control device for which instruments are used to continuously measure organic compound emissions, you are not required to conduct periodic control device performance testing as specified by this paragraph. The requirements of this paragraph do not apply to measuring emission capture system efficiency.

* * * * *

(f) If there were no deviations from the emission limitations, submit a statement as part of the semiannual compliance report that you were in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in § 63.3090(a) or § 63.3091(a), § 63.3090(b) or § 63.3091(b), or § 63.3092(a) or § 63.3092(b), you achieved the operating limits required by § 63.3093, and you achieved the work practice standards required by § 63.3094 during each compliance period.

* * * * *

(h) Before January 5, 2021, consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of SSM of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). The Administrator will determine whether deviations that occur during a period you identify as a SSM are violations according to the provisions in § 63.6(e). On and after January 5, 2021, the provisions of this paragraph no longer apply.

* * * * *

■ 13. Section 63.3164 is amended by revising paragraphs (a) introductory text and (a)(1) to read as follows:

§ 63.3164 What are the general requirements for performance tests?

(a) You must conduct each applicable performance test required by §§ 63.3160, 63.3163, and 63.3171 according to the requirements in § 63.7(e)(1) and under the conditions in this section unless you obtain a waiver of the performance test according to the provisions in § 63.7(h).

(1) *Representative coating operation operating conditions.* You must conduct the performance test under representative operating conditions for the coating operation. Before January 5, 2021, operations during periods of SSM, and during periods of nonoperation do not constitute representative conditions. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation. On and after January 5, 2021, operations during periods of startup, shutdown, or nonoperation do not constitute representative conditions for purposes of conducting a performance test. The owner or operator may not conduct performance tests during periods of malfunction. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation. Upon request, you must make available to the Administrator such records as may be

necessary to determine the conditions of performance tests.

* * * * *

■ 14. Section 63.3165 is amended by revising the introductory text and paragraphs (e) introductory text, the definition of ''$Wvoc_{c,i}$'' in Equation 6 of paragraph (e)(2), the definition of ''$Wvoc_{c,i}$'' in Equation 7 of paragraph (e)(3), and the definition of ''$W_{s,i}$'' in Equation 8 of paragraph (e)(4) to read as follows:

§ 63.3165 How do I determine the emission capture system efficiency?

You must use the procedures and test methods in this section to determine capture efficiency as part of the performance test required by §§ 63.3160 and 63.3163. For purposes of this subpart, a spray booth air seal is not considered a natural draft opening in a PTE or a temporary total enclosure provided you demonstrate that the direction of air movement across the interface between the spray booth air seal and the spray booth is into the spray booth. For purposes of this subpart, a bake oven air seal is not considered a natural draft opening in a PTE or a temporary total enclosure provided you demonstrate that the direction of air movement across the interface between the bake oven air seal and the bake oven is into the bake oven. You may use lightweight strips of fabric or paper, or smoke tubes to make such demonstrations as part of showing that your capture system is a PTE or conducting a capture efficiency test using a temporary total enclosure. You cannot count air flowing from a spray booth air seal into a spray booth as air flowing through a natural draft opening into a PTE or into a temporary total enclosure unless you elect to treat that spray booth air seal as a natural draft opening. You cannot count air flowing from a bake oven air seal into a bake oven as air flowing through a natural draft opening into a PTE or into a temporary total enclosure unless you elect to treat that bake oven air seal as a natural draft opening.

* * * * *

(e) *Panel testing to determine the capture efficiency of flash-off or bake oven emissions.* You may conduct panel testing to determine the capture efficiency of flash-off or bake oven emissions using ASTM D5087–02 (incorporated by reference, *see* § 63.14), ASTM D6266–00a (Reapproved 2017) (incorporated by reference, *see* § 63.14), or the guidelines presented in ''Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' EPA–450/3–88–018 (incorporated by reference, *see* § 63.14). You may conduct panel testing on representative coatings as described in ''Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' EPA–450/3–88–018. The results of these panel testing procedures are in units of mass of VOC per volume of coating solids deposited and must be converted to a percent value for use in this subpart. If you panel test representative coatings, then you may convert the panel test result for each representative coating either to a unique percent capture efficiency for each coating grouped with that representative coating by using coating specific values for the volume of coating solids deposited per volume of coating used, mass of VOC per volume of coating, volume fraction solids, transfer efficiency, density and mass fraction VOC in Equations 4 through 6 of this section; or to a composite percent capture efficiency for the group of coatings by using composite values for the group of coatings for the volume of coating solids deposited per volume of coating used and for the mass of VOC per volume of coating, and average values for the group of coatings for volume fraction solids, transfer efficiency, density and mass fraction VOC in Equations 4 through 6 of this section. If you panel test each coating, then you must convert the panel test result for each coating to a unique percent capture efficiency for that coating by using coating specific values for the volume of coating solids deposited per volume of coating used, mass of VOC per volume of coating, volume fraction solids, transfer efficiency, density, and mass fraction VOC in Equations 4 through 6 of this section. Panel test results expressed in units of mass of VOC per volume of coating solids deposited must be converted to percent capture efficiency using Equation 4 of this section. An alternative for using panel test results expressed in units of mass of VOC per mass of coating solids deposited is presented in paragraph (e)(3) of this section.

* * * * *

(2) * * *

$Wvoc_{c,i}$ = Mass fraction of VOC in coating, i, or average mass fraction of VOC for the group of coatings, including coating, i, kg VOC per kg coating, determined by EPA Method 24 (appendix A–7 to 40 CFR part 60) or the guidelines for combining analytical VOC content and formulation solvent content presented in Section 9 of ''Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' EPA–450/3–88–018 (incorporated by reference, *see* § 63.14).

(3) * * *

$Wvoc_{c,i}$ = Mass fraction of VOC in coating, i, or average mass fraction of VOC for the group of coatings, including coating, i, kg VOC per kg coating, determined by EPA Method 24 (appendix A–7 to 40 CFR part 60) or the guidelines for combining analytical VOC content and formulation solvent content presented in Section 9 of ''Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' EPA–450/3–88–018 (incorporated by reference, *see* § 63.14).

(4) * * *

$W_{s,i}$ = Mass fraction of coating solids for coating, i, or average mass fraction of coating solids for the group of coatings including coating, i, kg coating solids per kg coating, determined by EPA Method 24 (appendix A–7 to 40 CFR part 60) or the guidelines for combining analytical VOC content and formulation solvent content presented in ''Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' EPA–450/3–88–018 (incorporated by reference, *see* § 63.14).

* * * * *

■ 15. Section 63.3166 is amended by revising the introductory text and paragraphs (a)(1) through (4) and (b) introductory text, and adding paragraph (b)(4) to read as follows:

§ 63.3166 How do I determine the add-on control device emission destruction or removal efficiency?

You must use the procedures and test methods in this section to determine the add-on control device emission destruction or removal efficiency as part of the performance test required by § 63.3160, § 63.3163, or § 63.3171. You must conduct three test runs as specified in § 63.7(e)(3), and each test run must last at least 1 hour.

(a) * * *

(1) Use EPA Method 1 or 1A of appendix A–1 to 40 CFR part 60, as appropriate, to select sampling sites and velocity traverse points.

(2) Use EPA Method 2, 2A, 2C, 2D, or 2F of appendix A–1, or 2G of appendix A–2 to 40 CFR part 60, as appropriate, to measure gas volumetric flow rate.

(3) Use EPA Method 3, 3A, or 3B of appendix A–2 to 40 CFR part 60, as appropriate, for gas analysis to determine dry molecular weight. The ANSI/ASME PTC 19.10–1981 (incorporated by reference, *see* § 63.14), may be used as an alternative to EPA Method 3B.

(4) Use EPA Method 4 of appendix A–3 to 40 CFR part 60 to determine stack gas moisture.

* * * * *

(b) Measure total gaseous organic mass emissions as carbon at the inlet and outlet of the add-on control device simultaneously, using either EPA Method 25 or 25A of appendix A–7 to 40 CFR part 60, as specified in paragraphs (b)(1) through (4) of this section. You must use the same method for both the inlet and outlet measurements.

* * * * *

(4) You may use EPA Method 18 of appendix A–6 to 40 CFR part 60 to subtract methane emissions from measured total gaseous organic mass emissions as carbon.

* * * * *

■ 16. Section 63.3167 is amended by revising the section heading, the introductory text, and paragraph (f)(1) to read as follows:

§ 63.3167 How do I establish the add-on control device operating limits during performance tests?

During the performance tests required by §§ 63.3160, 63.3163, and 63.3171 (and described in §§ 63.3164 and 63.3166), you must establish the operating limits required by § 63.3093 according to this section, unless you have received approval for alternative monitoring and operating limits under § 63.8(f) as specified in § 63.3093.

* * * * *

(f) * * *

(1) During the capture efficiency determination required by §§ 63.3160 and 63.3163 and described in §§ 63.3164 and 63.3165, you must monitor and record either the gas volumetric flow rate or the duct static pressure for each separate capture device in your emission capture system at least once every 15 minutes during each of the three test runs at a point in the duct between the capture device and the add-on control device inlet.

* * * * *

■ 17. Section 63.3168 is amended by revising paragraphs (a)(4) through (7) and (c)(3) introductory text to read as follows:

§ 63.3168 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?

(a) * * *

(4) You must maintain the CPMS at all times in accordance with § 63.3100(d) and have readily available necessary parts for routine repairs of the monitoring equipment.

(5) Before January 5, 2021, you must operate the CPMS and collect emission capture system and add-on control device parameter data at all times that a controlled coating operation is operating, except during monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, if applicable, calibration checks and required zero and span adjustments). On and after January 5, 2021, you must operate the CPMS and collect emission capture system and add-on control device parameter data at all times that a controlled coating operation is operating in accordance with § 63.3100(d).

(6) Before January 5, 2021, you must not use emission capture system or add-on control device parameter data recorded during monitoring malfunctions, associated repairs, out-of-control periods, or required quality assurance or control activities when calculating data averages. You must use all the data collected during all other periods in calculating the data averages for determining compliance with the emission capture system and add-on control device operating limits. On and after January 5, 2021, startups and shutdowns are normal operation for this source category. Emissions from these activities are to be included when determining if the standards specified in §§ 63.3090, 63.3091, 63.3092, 63.4292, and 63.4293 are being attained. You must not use emission capture system or add-on control device parameter data recorded during monitoring malfunctions, associated repairs, out-of-control periods, or required quality assurance or control activities when calculating data averages. You must use all the data collected during all other periods in calculating the data averages for determining compliance with the emission capture system and add-on control device operating limits.

(7) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the CPMS to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. Before January 5, 2021, any period for which the monitoring system is out of control and data are not available for required calculations is a deviation from the monitoring requirements. On and after January 5, 2021, except for periods of required quality assurance or control activities, any period during which the CPMS fails to operate and record data continuously as required by paragraph (a)(1) of this section, or generates data that cannot be included in calculating averages as specified in this paragraph (a)(7) constitutes a deviation from the monitoring requirements.

* * * * *

(c) * * *

(3) For all thermal oxidizers and catalytic oxidizers, you must meet the requirements in paragraphs (a)(1) through (6) and (c)(3)(i) through (vii) of this section for each gas temperature monitoring device. For the purposes of this paragraph (c)(3), a thermocouple is part of the temperature sensor.

* * * * *

■ 18. Section 63.3171 is amended by revising paragraphs (a) and (e)(3) to read as follows:

§ 63.3171 How do I demonstrate initial compliance?

(a) You must meet all of the requirements of this section to demonstrate initial compliance. To demonstrate initial compliance, the organic HAP emissions from the combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations plus all coatings and thinners, except for deadener materials and for adhesive and sealer materials that are not components of glass bonding systems, used in coating operations added to the affected source pursuant to § 63.3082(c) must meet the applicable emission limitation in § 63.3090(b) or § 63.3091(b); the organic HAP emissions from the electrodeposition primer operation must meet the applicable emissions limitations in § 63.3092(a) or (b); and you must meet the applicable operating limits and work practice standards in §§ 63.3093 and 63.3094.

* * * * *

(e) * * *

(3) *Information from the supplier or manufacturer of the material.* You may rely on information other than that generated by the test methods specified in paragraphs (e)(1) and (2) of this section, such as manufacturer's formulation data, if it represents each organic HAP in Table 5 to this subpart that is present at 0.1 percent by mass, and at 1.0 percent by mass or more for other compounds. If there is a disagreement between such information and results of a test conducted according to paragraph (e)(1) or (2) of this section, then the test method results will take precedence unless after consultation, the facility demonstrates to the satisfaction of the enforcement authority that the facility's data are correct.

* * * * *

■ 19. Section 63.3176 is amended by revising the definition of ''*Deviation*'' to read as follows:

§ 63.3176 What definitions apply to this subpart?

* * * * *

Deviation means:

(1) Before January 5, 2021, any instance in which an affected source subject to this subpart or an owner or operator of such a source:

(i) Fails to meet any requirement or obligation established by this subpart including but not limited to any emission limit, operating limit, or work practice standard;

(ii) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(iii) Fails to meet any emission limit or operating limit or work practice standard in this subpart during SSM, regardless of whether or not such failure is permitted by this subpart; and

(2) On and after January 5, 2021, any instance in which an affected source subject to this subpart or an owner or operator of such a source:

(i) Fails to meet any requirement or obligation established by this subpart including but not limited to any emission limit, operating limit, or work practice standard; or

(ii) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit.

* * * * *

■ 20. Table 2 to subpart IIII of part 63 is revised to read as follows:

TABLE 2 TO SUBPART IIII OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART IIII OF PART 63

You must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Applicable to subpart IIII	Explanation
§ 63.1(a)(1)–(12)	General Applicability	Yes.	
§ 63.1(b)(1)–(3)	Initial Applicability Determination	Yes	Applicability to subpart IIII is also specified in § 63.3081.
§ 63.1(c)(1)	Applicability After Standard Established.	Yes.	
§ 63.1(c)(2)	Applicability of Permit Program for Area Sources.	No	Area sources are not subject to subpart IIII.
§ 63.1(c)(5)	Extensions and Notifications	Yes.	
§ 63.1(e)	Applicability of Permit Program Before Relevant Standard is Set.	Yes.	
§ 63.2	Definitions	Yes	Additional definitions are specified in § 63.3176.
§ 63.3	Units and Abbreviations	Yes.	
§ 63.4(a)(1)–(2)	Prohibited Activities	Yes.	
§ 63.4(b)–(c)	Circumvention/Fragmentation	Yes.	
§ 63.5(a)	Preconstruction Review Applicability.	Yes.	
§ 63.5(b)(1), (3), (4), (6)	Requirements for Existing, Newly Constructed, and Reconstructed Sources.	Yes.	
§ 63.5(d)(1)(i)–(ii)(F), (d)(1)(ii)(H), (d)(1)(ii)(J), (d)(1)(iii), (d)(2)–(4).	Application for Approval of Construction/Reconstruction.	Yes.	
§ 63.5(e)	Approval of Construction/Reconstruction.	Yes.	
§ 63.5(f)	Approval of Construction/Reconstruction Based on Prior State Review.	Yes.	
§ 63.6(a)	Compliance With Standards and Maintenance Requirements—Applicability.	Yes.	
§ 63.6(b)(1)–(5), (b)(7)	Compliance Dates for New and Reconstructed Sources.	Yes	Section 63.3083 specifies the compliance dates.
§ 63.6(c)(1), (2), (5)	Compliance Dates for Existing Sources.	Yes	Section 63.3083 specifies the compliance dates.
§ 63.6(e)(1)(i)–(ii)	Operation and Maintenance	Yes before January 5, 2021. No on and after January 5, 2021.	*See* § 63.3100(d) for general duty requirement.
§ 63.6(e)(1)(iii)	Operation and Maintenance	Yes.	
§ 63.6(e)(3)(i), (e)(3)(iii)–(ix)	SSMP	Yes before January 5, 2021. No on and after January 5, 2021.	
§ 63.6(f)(1)	Compliance Except During SSM	Yes before January 5, 2021. No on and after January 5, 2021.	
§ 63.6(f)(2)–(3)	Methods for Determining Compliance.	Yes.	
§ 63.6(g)	Use of an Alternative Standard	Yes.	
§ 63.6(h)	Compliance With Opacity/Visible Emission Standards.	No	Subpart IIII does not establish opacity standards and does not require continuous opacity monitoring systems (COMS).
§ 63.6(i)(1)–(14), (16)	Extension of Compliance	Yes.	
63.6(j)	Presidential Compliance Exemption.	Yes.	

TABLE 2 TO SUBPART IIII OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART IIII OF PART 63—Continued

You must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Applicable to subpart IIII	Explanation
§ 63.7(a)(1)	Performance Test Requirements—Applicability.	Yes	Applies to all affected sources. Additional requirements for performance testing are specified in §§ 63.3164 and 63.3166.
§ 63.7(a)(2) except (a)(2)(i)–(viii)	Performance Test Requirements—Dates.	Yes	Applies only to performance tests for capture system and control device efficiency at sources using these to comply with the standards. Section 63.3160 specifies the schedule for performance test requirements that are earlier than those specified in § 63.7(a)(2).
§ 63.7(a)(3)–(4)	Performance Tests Required By the Administrator, Force Majeure.	Yes.	
§ 63.7(b)–(d)	Performance Test Requirements—Notification, Quality Assurance, Facilities Necessary for Safe Testing Conditions During Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standards.
§ 63.7(e)(1)	Conduct of performance tests	Yes before January 5, 2021. No on and after January 5, 2021.	*See* § 63.3164.
§ 63.7(e)(2)–(4)	Conduct of performance tests	Yes.	
§ 63.7(f)	Performance Test Requirements—Use of Alternative Test Method.	Yes	Applies to all test methods except those used to determine capture system efficiency.
§ 63.7(g)–(h)	Performance Test Requirements—Data Analysis, Recordkeeping, Reporting, Waiver of Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standards.
§ 63.8(a)(1)–(2)	Monitoring Requirements—Applicability.	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standards. Additional requirements for monitoring are specified in § 63.3168.
§ 63.8(a)(4)	Additional Monitoring Requirements.	No	Subpart IIII does not have monitoring requirements for flares.
§ 63.8(b)	Conduct of Monitoring	Yes.	
§ 63.8(c)(1)	Continuous Monitoring Systems (CMS) Operation and Maintenance.	Yes before January 5, 2021. No on and after January 5, 2021.	Section 63.3168 specifies the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply.
63.8(c)(2)–(3)	CMS Operation and Maintenance	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standards. Additional requirements for CMS operations and maintenance are specified in § 63.3168.
§ 63.8(c)(4)	CMS	No	Section 63.3168 specifies the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply with the standards.
§ 63.8(c)(5)	COMS	No	Subpart IIII does not have opacity or visible emission standards.
§ 63.8(c)(6)	CMS Requirements	No	Section 63.3168 specifies the requirements for monitoring systems for capture systems and add-on control devices at sources using these to comply with the standards.

TABLE 2 TO SUBPART IIII OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART IIII OF PART 63—Continued

You must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Applicable to subpart IIII	Explanation
§ 63.8(c)(7)	CMS Out-of-Control Periods	Yes.	
§ 63.8(c)(8)	CMS Out-of-Control Periods Reporting.	No	Section 63.3120 requires reporting of CMS out-of-control periods.
§ 63.8(d)–(e)	Quality Control Program and CMS Performance Evaluation.	No	Subpart IIII does not require the use of continuous emissions monitoring systems.
§ 63.8(f)(1)–(5)	Use of an Alternative Monitoring Method.	Yes.	
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	No	Subpart IIII does not require the use of CEMS.
§ 63.8(g)	Data Reduction	No	Sections 63.3167 and 63.3168 specify monitoring data reduction.
§ 63.9(a)	Notification Requirements	Yes.	
§ 63.9(b)(1)–(2)	Initial Notifications	Yes.	
§ 63.9(b)(4)(i), (b)(4)(v), (b)(5)	Application for Approval of Construction or Reconstruction.	Yes.	
§ 63.9(c)	Request for Extension of Compliance.	Yes.	
§ 63.9(d)	Special Compliance Requirement Notification.	Yes.	
§ 63.9(e)	Notification of Performance Test	Yes	Applies only to capture system and add-on control device performance tests at sources using these to comply with the standards.
§ 63.9(f)	Notification of Visible Emissions/Opacity Test.	No	Subpart IIII does not have opacity or visible emission standards.
§ 63.9(g)	Additional Notifications When Using CMS.	No	Subpart IIII does not require the use of CEMS.
§ 63.9(h)(1)–(3), (5)–(6)	Notification of Compliance Status	Yes	Section 63.3110 specifies the dates for submitting the notification of compliance status.
§ 63.9(i)	Adjustment of Submittal Deadlines.	Yes.	
§ 63.9(j)	Change in Previous Information	Yes.	
§ 63.10(a)	Recordkeeping/Reporting—Applicability and General Information.	Yes.	
§ 63.10(b)(1)	General Recordkeeping Requirements.	Yes	Additional requirements are specified in §§ 63.3130 and 63.3131.
§ 63.10(b)(2)(i)–(ii)	Recordkeeping of Occurrence and Duration of Startups and Shutdowns and of Failures to Meet Standards.	Yes before January 5, 2021. No on and after January 5, 2021.	*See* 63.3130(g).
§ 63.10(b)(2)(iii)	Recordkeeping Relevant to Maintenance of Air Pollution Control and Monitoring Equipment.	Yes.	
§ 63.10(b)(2)(iv)–(v)	Actions Taken to Minimize Emissions During SSM.	Yes before January 5, 2021. No on and after January 5, 2021.	*See* § 63.3130(g)(4) for a record of actions taken to minimize emissions during a deviation from the standard.
§ 63.10(b)(2)(vi)	Recordkeeping for CMS Malfunctions.	Yes before January 5, 2021. No on and after January 5, 2021.	*See* § 63.3130(g) for records of periods of deviation from the standard, including instances where a CMS is inoperative or out-of-control.
§ 63.10(b)(2)(vii)–(xi)	Records	Yes.	
§ 63.10(b)(2)(xii)	Records	Yes.	
§ 63.10(b)(2)(xiii)		No	Subpart IIII does not require the use of CEMS.
§ 63.10(b)(2)(xiv)		Yes.	
§ 63.10(b)(3)	Recordkeeping Requirements for Applicability Determinations.	Yes.	
§ 63.10(c)(1)–(6)	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	

TABLE 2 TO SUBPART IIII OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART IIII OF PART 63—Continued

You must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Applicable to subpart IIII	Explanation
§ 63.10(c)(7)–(8)	Additional Recordkeeping Requirements for Sources with CMS.	No	*See* § 63.3130(g) for records of periods of deviation from the standard, including instances where a CMS is inoperative or out-of-control.
§ 63.10(c)(10)–(14)		Yes.	
§ 63.10(c)(15)	Records Regarding the SSM Plan	Yes before January 5, 2021. No on and after January 5, 2021.	
§ 63.10(d)(1)	General Reporting Requirements	Yes	Additional requirements are specified in § 63.3120.
§ 63.10(d)(2)	Report of Performance Test Results.	Yes	Additional requirements are specified in § 63.3120(b).
§ 63.10(d)(3)	Reporting Opacity or Visible Emissions Observations.	No	Subpart IIII does not require opacity or visible emissions observations.
§ 63.10(d)(4)	Progress Reports for Sources With Compliance Extensions.	Yes.	
§ 63.10(d)(5)	SSM Reports	Yes before January 5, 2021. No on and after January 5, 2021.	*See* 63.3120(a)(6).
§ 63.10(e)(1)–(2)	Additional CMS Reports	No	Subpart IIII does not require the use of CEMS.
§ 63.10(e)(3)	Excess Emissions/CMS Performance Reports.	No	Section 63.3120(b) specifies the contents of periodic compliance reports.
§ 63.10(e)(4)	COMS Data Reports	No	Subpart IIII does not specify requirements for opacity or COMS.
§ 63.10(f)	Recordkeeping/Reporting Waiver	Yes.	
§ 63.11	Control Device Requirements/Flares.	No	Subpart IIII does not specify use of flares for compliance.
§ 63.12	State Authority and Delegations	Yes.	
§ 63.13	Addresses	Yes.	
§ 63.14	IBR	Yes.	
§ 63.15	Availability of Information/Confidentiality.	Yes.	

■ 21. Table 5 to subpart IIII of part 63 is added to read as follows:

TABLE 5 TO SUBPART IIII OF PART 63—LIST OF HAP THAT MUST BE COUNTED TOWARD TOTAL ORGANIC HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS

Chemical name	CAS No.
1,1,2,2-Tetrachloroethane	79–34–5
1,1,2-Trichloroethane	79–00–5
1,1-Dimethylhydrazine	57–14–7
1,2-Dibromo-3-chloropropane	96–12–8
1,2-Diphenylhydrazine	122–66–7
1,3-Butadiene	106–99–0
1,3-Dichloropropene	542–75–6
1,4-Dioxane	123–91–1
2,4,6-Trichlorophenol	88–06–2
2,4/2,6-Dinitrotoluene (mixture)	25321–14–6
2,4-Dinitrotoluene	121–14–2
2,4-Toluene diamine	95–80–7
2-Nitropropane	79–46–9
3,3′-Dichlorobenzidine	91–94–1
3,3′-Dimethoxybenzidine	119–90–4
3,3′-Dimethylbenzidine	119–93–7
4,4′-Methylene bis(2-chloroaniline)	101–14–4
Acetaldehyde	75–07–0
Acrylamide	79–06–1
Acrylonitrile	107–13–1
Allyl chloride	107–05–1
alpha-Hexachlorocyclohexane (a-HCH)	319–84–6
Aniline	62–53–3

TABLE 5 TO SUBPART IIII OF PART 63—LIST OF HAP THAT MUST BE COUNTED TOWARD TOTAL ORGANIC HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS—Continued

Chemical name	CAS No.
Benzene	71–43–2
Benzidine	92–87–5
Benzotrichloride	98–07–7
Benzyl chloride	100–44–7
beta-Hexachlorocyclohexane (b-HCH)	319–85–7
Bis(2-ethylhexyl)phthalate	117–81–7
Bis(chloromethyl)ether	542–88–1
Bromoform	75–25–2
Captan	133–06–2
Carbon tetrachloride	56–23–5
Chlordane	57–74–9
Chlorobenzilate	510–15–6
Chloroform	67–66–3
Chloroprene	126–99–8
Cresols (mixed)	1319–77–3
DDE	3547–04–4
Dichloroethyl ether	111–44–4
Dichlorvos	62–73–7
Epichlorohydrin	106–89–8
Ethyl acrylate	140–88–5
Ethylene dibromide	106–93–4
Ethylene dichloride	107–06–2
Ethylene oxide	75–21–8
Ethylene thiourea	96–45–7
Ethylidene dichloride (1,1-Dichloroethane)	75–34–3
Formaldehyde	50–00–0
Heptachlor	76–44–8
Hexachlorobenzene	118–74–1
Hexachlorobutadiene	87–68–3
Hexachloroethane	67–72–1
Hydrazine	302–01–2
Isophorone	78–59–1
Lindane (hexachlorocyclohexane, all isomers)	58–89–9
m-Cresol	108–39–4
Methylene chloride	75–09–2
Naphthalene	91–20–3
Nitrobenzene	98–95–3
Nitrosodimethylamine	62–75–9
o-Cresol	95–48–7
o-Toluidine	95–53–4
Parathion	56–38–2
p-Cresol	106–44–5
p-Dichlorobenzene	106–46–7
Pentachloronitrobenzene	82–68–8
Pentachlorophenol	87–86–5
Propoxur	114–26–1
Propylene dichloride	78–87–5
Propylene oxide	75–56–9
Quinoline	91–22–5
Tetrachloroethene	127–18–4
Toxaphene	8001–35–2
Trichloroethylene	79–01–6
Trifluralin	1582–09–8
Vinyl bromide	593–60–2
Vinyl chloride	75–01–4
Vinylidene chloride	75–35–4

■ 22. Appendix A to Subpart IIII of part 63 is amended by revising sections 2.1, 2.2, and 4.1 and the definitions of ''$W_{s,i}$'' and ''$Wvoc_{c,i}$'' in Equation A–6 in section 4.2 to read as follows:

Appendix A to Subpart IIII of Part 63—Determination of Capture Efficiency of Automobile and Light-Duty Truck Spray Booth Emissions From Solvent-Borne Coatings Using Panel Testing

* * * * *

2.1 You may conduct panel testing to determine the capture efficiency of spray booth emissions. You must follow the instructions and calculations in this appendix A, and use the panel testing procedures in ASTM Method D5087–02 (incorporated by reference, *see* § 63.14), or the guidelines presented in ''Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' EPA–450/3–88–018 (incorporated by reference, *see* § 63.14). You must weigh panels at the points described in section 2.5 of this appendix A and perform calculations as described in sections 3 and 4 of this appendix A. You may

conduct panel tests on the production paint line in your facility or in a laboratory simulation of the production paint line in your facility.

2.2 You may conduct panel testing on representative coatings as described in ''Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' EPA–450/3–88–018 (incorporated by reference, *see* § 63.14). If you panel test representative coatings, then you may calculate either a unique percent capture efficiency value for each coating grouped with that representative coating, or a composite percent capture efficiency value for the group of coatings. If you panel test each coating, then you must convert the panel test result for each coating to a unique percent capture efficiency value for that coating.

* * * * *

4.1 If you panel test representative coatings, then you may convert the panel test result for each representative coating from section 3.3 of this appendix A either to a unique percent capture efficiency value for each coating grouped with that representative coating by using coating specific values for the mass fraction coating solids and mass fraction VOC in section 4.2 of this appendix A, or to a composite percent capture efficiency value for the group of coatings by using the average values for the group of coatings for mass fraction coating solids and mass fraction VOC in section 4.2 of this appendix A. If you panel test each coating, then you must convert the panel test result for each coating to a unique percent capture efficiency value by using coating specific values for the mass fraction coating solids and mass fraction VOC in section 4.2 of this appendix A. The mass fraction of VOC in the coating and the mass fraction of solids in the coating must be determined by EPA Method 24 (appendix A–7 to 40 CFR part 60) or by following the guidelines for combining analytical VOC content and formulation solvent content presented in ''Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' EPA–450/3–88–018 (incorporated by reference, *see* § 63.14).

4.2 * * *

$W_{s,\ i}$ = Mass fraction of coating solids for coating, i, or average mass fraction of coating solids for the group of coatings including coating, i, grams coating solids per gram coating, determined by EPA Method 24 (appendix A–7 to 40 CFR part 60) or by following the guidelines for combining analytical VOC content and formulation solvent content presented in ''Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' EPA–450/3–88–018 (incorporated by reference, *see* § 63.14).

$Wvoc_{c,\ i}$ = Mass fraction of VOC in coating, i, or average mass fraction of VOC for the group of coatings including coating, i, grams VOC per grams coating, determined by EPA Method 24 (appendix A–7 to 40 CFR part 60) or the guidelines for combining analytical VOC content and formulation solvent content presented in ''Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' EPA–450/3–88–018 (incorporated by reference, *see* § 63.14).

* * * * *

Subpart MMMM—National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products

■ 23. Section 63.3900 is amended by revising paragraphs (a)(2)(i) and (ii), (b), and (c) to read as follows:

§ 63.3900 What are my general requirements for complying with this subpart?

(a) * * *

(2) * * *

(i) Before January 5, 2021, the coating operation(s) must be in compliance with the applicable emission limit in § 63.3890 at all times except during periods of SSM. On or after January 5, 2021, you must be in compliance with the applicable emission limits in § 63.3890 and the operating limits in table 1 of this subpart at all times.

(ii) Before January 5, 2021, the coating operation(s) must be in compliance with the operating limits for emission capture systems and add-on control devices required by § 63.3892 at all times except during periods of SSM and except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3961(j). On or after January 5, 2021, the coating operation(s) must be in compliance with the operating limits for emission capture systems and add-on control devices required by § 63.3892 at all times, except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3961(j).

* * * * *

(b) Before January 5, 2021, you must always operate and maintain your affected source, including all air pollution control and monitoring equipment you use for purposes of complying with this subpart, according to the provisions in § 63.6(e)(1)(i). On and after January 5, 2021, at all times, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator that may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the affected source.

(c) Before January 5, 2021, if your affected source uses an emission capture system and add-on control device, you must develop a written SSMP according to the provisions in § 63.6(e)(3). The plan must address the startup, shutdown, and corrective actions in the event of a malfunction of the emission capture system or the add-on control device. The plan must also address any coating operation equipment that may cause increased emissions or that would affect capture efficiency if the process equipment malfunctions, such as conveyors that move parts among enclosures. On and after January 5, 2021, the SSMP is not required.

■ 24. Section 63.3920 is amended by:

■ a. Revising paragraphs (a)(5) introductory text and (a)(5)(i) and (iv);

■ b. Adding paragraph (a)(5)(v);

■ c. Revising paragraphs (a)(6) introductory text and (a)(6)(iii);

■ d. Adding paragraph (a)(6)(iv);

■ e. Revising paragraphs (a)(7) introductory text and (a)(7)(iii), (vi) through (viii), (x), (xiii), and (xiv);

■ f. Adding paragraph (a)(7)(xv);

■ g. Revising paragraph (c) introductory text; and

■ h. Adding paragraphs (d) through (h).

The revisions and additions read as follows:

§ 63.3920 What reports must I submit?

(a) * * *

(5) *Deviations: Compliant material option.* If you used the compliant material option and there was a deviation from the applicable organic HAP content requirements in § 63.3890, the semiannual compliance report must contain the information in paragraphs (a)(5)(i) through (v) of this section.

(i) Identification of each coating used that deviated from the applicable emission limit, and each thinner and/or other additive, and cleaning material used that contained organic HAP, and the dates, time and duration each was used.

* * * * *

(iv) Before January 5, 2021, a statement of the cause of each deviation. On and after January 5, 2021, a statement of the cause of each deviation

(including unknown cause, if applicable).

(v) On and after January 5, 2021, the number of deviations and, for each deviation, a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any applicable emission limit in § 63.3890, a description of the method used to estimate the emissions, and the actions you took to minimize emissions in accordance with § 63.3900(b).

(6) *Deviations: Emission rate without add-on controls option.* If you used the emission rate without add-on controls option and there was a deviation from the applicable emission limit in § 63.3890, the semiannual compliance report must contain the information in paragraphs (a)(6)(i) through (iv) of this section.

* * * * *

(iii) Before January 5, 2021, a statement of the cause of each deviation. On and after January 5, 2021, a statement of the cause of each deviation (including unknown cause, if applicable).

(iv) On and after January 5, 2021, the number of deviations and, for each deviation, the date, time, duration, a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any applicable emission limit in § 63.3890, a description of the method used to estimate the emissions, and the actions you took to minimize emissions in accordance with § 63.3900(b).

(7) *Deviations: Emission rate with add-on controls option.* If you used the emission rate with add-on controls option and there was a deviation from the applicable emission limit in § 63.3890 or the applicable operating limit(s) in table 1 to this subpart (including any periods when emissions bypassed the add-on control device and were diverted to the atmosphere), before January 5, 2021, the semiannual compliance report must contain the information in paragraphs (a)(7)(i) through (xiv) of this section. This includes periods of SSM during which deviations occurred. On and after January 5, 2021, the semiannual compliance report must contain the information in paragraphs (a)(7)(i) through (xii), (xiv), and (xv) of this section. If you use the emission rate with add-on controls option and there was a deviation from the applicable work practice standards in § 63.3893(b), the semiannual compliance report must contain the information in paragraph (a)(7)(xiii) of this section.

* * * * *

(iii) The date and time that each malfunction of the capture system or add-on control devices started and stopped.

* * * * *

(vi) Before January 5, 2021, the date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks. On and after January 5, 2021, the number of instances that the CPMS was inoperative, and for each instance, except for zero (low-level) and high-level checks, the date, time, and duration that the CPMS was inoperative; the cause (including unknown cause) for the CPMS being inoperative; and the actions you took to minimize emissions in accordance with § 63.3900(b).

(vii) Before January 5, 2021, the date, time, and duration that each CPMS was out-of-control, including the information in § 63.8(c)(8). On and after January 5, 2021, the number of instances that the CPMS was out of control as specified in § 63.8(c)(7) and, for each instance, the date, time, and duration that the CPMS was out-of-control; the cause (including unknown cause) for the CPMS being out-of-control; and descriptions of corrective actions taken.

(viii) Before January 5, 2021, the date and time period of each deviation from an operating limit in table 1 to this subpart; date and time period of any bypass of the add-on control device; and whether each deviation occurred during a period of SSM or during another period. On and after January 5, 2021, the number of deviations from an operating limit in table 1 to this subpart and, for each deviation, the date, time, and duration of each deviation; and the date, time, and duration of any bypass of the add-on control device.

* * * * *

(x) Before January 5, 2021, a breakdown of the total duration of the deviations from the operating limits in table 1 of this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes. On and after January 5, 2021, a breakdown of the total duration of the deviations from the operating limits in Table 1 to this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to control equipment problems, process problems, other known causes, and other unknown causes.

* * * * *

(xiii) Before January 5, 2021, for each deviation from the work practice standards, a description of the deviation, the date and time period of the deviation, and the actions you took to correct the deviation. On and after January 5, 2021, for deviations from the work practice standards, the number of deviations, and, for each deviation, the information in paragraphs (a)(7)(xiii)(A) and (B) of this section:

(A) A description of the deviation; the date, time, and duration of the deviation; and the actions you took to minimize emissions in accordance with § 63.3900(b).

(B) The description required in paragraph (a)(7)(xiii)(A) of this section must include a list of the affected sources or equipment for which a deviation occurred and the cause of the deviation (including unknown cause, if applicable).

(xiv) Before January 5, 2021, statement of the cause of each deviation. On and after January 5, 2021, for deviations from an emission limit in § 63.3890 or an operating limit in table 1 to this subpart, a statement of the cause of each deviation (including unknown cause, if applicable) and the actions you took to minimize emissions in accordance with § 63.3900(b).

(xv) On and after January 5, 2021, for each deviation from an emission limit in § 63.3890 or operating limit in table 1 to this subpart, a list of the affected sources or equipment for which a deviation occurred, an estimate of the quantity of each regulated pollutant emitted over any emission limit in § 63.3890 or operating limit in table 1 to this subpart, and a description of the method used to estimate the emissions.

* * * * *

(c) *SSM reports.* Before January 5, 2021, if you used the emission rate with add-on controls option and you had a SSM during the semiannual reporting period, you must submit the reports specified in paragraphs (c)(1) and (2) of this section. On and after January 5, 2021, the reports specified in paragraphs (c)(1) and (2) of this section are not required.

* * * * *

(d) *Performance test reports.* On and after January 5, 2021, you must submit the results of the performance test required in §§ 63.3940 and 63.3950 following the procedure specified in paragraphs (d)(1) through (3) of this section.

(1) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (*https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert*) at the time of the test,

you must submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). The CEDRI interface can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov//*). Performance test data must be submitted in a file format generated through the use of the EPA's ERT or an alternate electronic file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT website.

(2) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test, you must submit the results of the performance test to the Administrator at the appropriate address listed in § 63.13, unless the Administrator agrees to or specifies an alternate reporting method.

(3) If you claim that some of the performance test information being submitted under paragraph (d)(1) of this section is Confidential Business Information (CBI), you must submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage medium to the EPA. The electronic medium must be clearly marked as CBI and mailed to U.S. EPA/OAPQS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraph (d)(1) of this section.

(e) *Initial notification reports.* On and after January 5, 2021, the owner or operator shall submit the initial notifications required in § 63.9(b) and the notification of compliance status required in §§ 63.9(h) and 63.3910(c) to the EPA via the CEDRI. The CEDRI interface can be accessed through the EPA's CDX (*https://cdx.epa.gov/*). The owner or operator must upload to CEDRI an electronic copy of each applicable notification in portable document format (PDF). The applicable notification must be submitted by the deadline specified in this subpart, regardless of the method in which the reports are submitted. Owners or operators who claim that some of the information required to be submitted via CEDRI is CBI shall submit a complete report generated using the appropriate form in CEDRI or an alternate electronic file consistent with the XML schema listed on the EPA's CEDRI website, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage medium to the EPA. The electronic medium shall be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted shall be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(f) *Semiannual compliance reports.* On and after January 5, 2021, or once the reporting template has been available on the CEDRI website for 1 year, whichever date is later, the owner or operator shall submit the semiannual compliance report required in paragraph (a) of this section to the EPA via the CEDRI. The CEDRI interface can be accessed through the EPA's CDX (*https://cdx.epa.gov/*). The owner or operator must use the appropriate electronic template on the CEDRI website for this subpart or an alternate electronic file format consistent with the XML schema listed on the CEDRI website (*https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri*). The date report templates become available will be listed on the CEDRI website. If the reporting form for the semiannual compliance report specific to this subpart is not available in CEDRI at the time that the report is due, you must submit the report to the Administrator at the appropriate addresses listed in § 63.13. Once the form has been available in CEDRI for 1 year, you must begin submitting all subsequent reports via CEDRI. The reports must be submitted by the deadlines specified in this subpart, regardless of the method in which the reports are submitted. Owners or operators who claim that some of the information required to be submitted via CEDRI is CBI shall submit a complete report generated using the appropriate form in CEDRI or an alternate electronic file consistent with the XML schema listed on the EPA's CEDRI website, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage medium to the EPA. The electronic medium shall be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted shall be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(g) *Reporting during EPA system outages.* If you are required to electronically submit a report through the CEDRI in the EPA's CDX, and due to a planned or actual outage of either the EPA's CEDRI or CDX systems within the period of time beginning 5 business days prior to the date that the submission is due, you will be or are precluded from accessing CEDRI or CDX and submitting a required report within the time prescribed, you may assert a claim of the EPA system outage for failure to timely comply with the reporting requirement. You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or caused a delay in reporting. You must provide to the Administrator a written description identifying the date, time, and length of the outage; a rationale for attributing the delay in reporting beyond the regulatory deadline to the EPA system outage; describe the measures taken or to be taken to minimize the delay in reporting; and identify a date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported. In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved. The decision to accept the claim of the EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(h) *Reporting during force majeure events.* If you are required to electronically submit a report through CEDRI in the EPA's CDX and a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning 5 business days prior to the date the submission is due, the owner or operator may assert a claim of force majeure for failure to timely comply with the reporting requirement. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (*e.g.,* hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (*e.g.,* large scale power outage). If you intend to assert a

claim of force majeure, you must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or caused a delay in reporting. You must provide to the Administrator a written description of the force majeure event and a rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event; describe the measures taken or to be taken to minimize the delay in reporting; and identify a date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported. In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs. The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

■ 25. Section 63.3930 is amended by revising paragraphs (j), (k) introductory text, and (k)(1) and (2) to read as follows:

§ 63.3930 What records must I keep?

* * * * *

(j) Before January 5, 2021, you must keep records of the date, time, and duration of each deviation. On and after January 5, 2021, for each deviation from an emission limitation reported under § 63.3920(a)(5) through (7), a record of the information specified in paragraphs (j)(1) through (4) of this section, as applicable.

(1) The date, time, and duration of the deviation, as reported under § 63.3920(a)(5) through (7).

(2) A list of the affected sources or equipment for which the deviation occurred and the cause of the deviation, as reported under § 63.3920(a)(5) through (7).

(3) An estimate of the quantity of each regulated pollutant emitted over any applicable emission limit in § 63.3890 or any applicable operating limit in table 1 to this subpart, and a description of the method used to calculate the estimate, as reported under § 63.3920(a)(5) through (7).

(4) A record of actions taken to minimize emissions in accordance with § 63.3900(b) and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

(k) If you use the emission rate with add-on controls option, you must also keep the records specified in paragraphs (k)(1) through (8) of this section.

(1) Before January 5, 2021, for each deviation, a record of whether the deviation occurred during a period of SSM. On and after January 5, 2021, a record of whether the deviation occurred during a period of SSM is not required.

(2) Before January 5, 2021, the records in § 63.6(e)(3)(iii) through (v) related to SSM. On and after January 5, 2021, the records in § 63.6(e)(3)(iii) through (v) related to SSM are not required.

* * * * *

■ 26. Section 63.3931 is amended by revising paragraph (a) to read as follows:

§ 63.3931 In what form and for how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1). Where appropriate, the records may be maintained as electronic spreadsheets or as a database. On and after January 5, 2021, any records required to be maintained by this subpart that are in reports that were submitted electronically via the EPA's CEDRI may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

* * * * *

■ 27. Section 63.3941 is amended by revising paragraphs (a)(1)(i), (a)(4), (b)(1), the definition of "D_{avg}" in Equation 1 of paragraph (b)(4), and paragraph (c) to read as follows:

§ 63.3941 How do I demonstrate initial compliance with the emission limitations?

* * * * *

(a) * * *

(1) * * *

(i) Count each organic HAP in table 5 to this subpart that is measured to be present at 0.1 percent by mass or more and at 1.0 percent by mass or more for other compounds. For example, if toluene (not listed in table 5 to this subpart) is measured to be 0.5 percent of the material by mass, you do not have to count it. Express the mass fraction of each organic HAP you count as a value truncated to four places after the decimal point (*e.g.,* 0.3791).

* * * * *

(4) *Information from the supplier or manufacturer of the material.* You may rely on information other than that generated by the test methods specified in paragraphs (a)(1) through (3) of this section, such as manufacturer's formulation data, if it represents each organic HAP in table 5 to this subpart that is present at 0.1 percent by mass or more and at 1.0 percent by mass or more for other compounds. For example, if toluene (not listed in table 5 to this subpart) is 0.5 percent of the material by mass, you do not have to count it. For reactive adhesives in which some of the HAP react to form solids and are not emitted to the atmosphere, you may rely on manufacturer's data that expressly states the organic HAP or volatile matter mass fraction emitted. If there is a disagreement between such information and results of a test conducted according to paragraphs (a)(1) through (3) of this section, then the test method results will take precedence unless, after consultation, you demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

* * * * *

(b) * * *

(1) *ASTM Method D2697–03 (Reapproved 2014) or D6093–97 (Reapproved 2016).* You may use ASTM D2697–03 (Reapproved 2014) (incorporated by reference, *see* § 63.14), or D6093–97 (Reapproved 2016) (incorporated by reference, *see* § 63.14), to determine the volume fraction of coating solids for each coating. Divide the nonvolatile volume percent obtained with the methods by 100 to calculate volume fraction of coating solids.

* * * * *

(4) * * *

D_{avg} = Average density of volatile matter in the coating, grams volatile matter per liter volatile matter, determined from test results using ASTM D1475–13 (incorporated by reference, *see* § 63.14), information from the supplier or manufacturer of the material, or reference sources providing density or specific gravity data for pure materials. If there is disagreement between ASTM D1475–13 test results and other information sources, the test results will take precedence unless, after consultation you demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

(c) *Determine the density of each coating.* Determine the density of each coating used during the compliance period from test results using ASTM D1475–13 (incorporated by reference, *see* § 63.14), information from the supplier or manufacturer of the material, or specific gravity data for pure chemicals. If there is disagreement between ASTM D1475–13 test results and the supplier's or manufacturer's information, the test results will take precedence unless, after consultation you demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

* * * * *

■ 28. Section 63.3951 is amended by revising paragraph (c) to read as follows:

§ 63.3951 How do I demonstrate initial compliance with the emission limitations?

* * * * *

(c) *Determine the density of each material.* Determine the density of each liquid coating, thinner and/or other additive, and cleaning material used during each month from test results using ASTM D1475–13 or ASTM D2111–10 (Reapproved 2015) (both incorporated by reference, *see* § 63.14), information from the supplier or manufacturer of the material, or reference sources providing density or specific gravity data for pure materials. If you are including powder coatings in the compliance determination, determine the density of powder coatings, using ASTM D5965–02 (Reapproved 2013) (incorporated by reference, *see* § 63.14), or information from the supplier. If there is disagreement between ASTM D1475–13 or ASTM D2111–10 (Reapproved 2015) test results and other such information sources, the test results will take precedence unless, after consultation you demonstrate to the satisfaction of the enforcement agency that the formulation data are correct. If you purchase materials or monitor consumption by weight instead of volume, you do not need to determine material density. Instead, you may use the material weight in place of the combined terms for density and volume in Equations 1A, 1B, 1C, and 2 of this section.

* * * * *

■ 29. Section 63.3960 is amended by revising paragraphs (a)(1) and (4), (b)(1), and (c) introductory text to read as follows:

§ 63.3960 By what date must I conduct performance tests and other initial compliance demonstrations?

(a) * * *

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3883. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3961(j), you must conduct according to the schedule in paragraphs (a)(1)(i) and (ii) of this section initial and periodic performance tests of each capture system and add-on control device according to the procedures in §§ 63.3964, 63.3965, and 63.3966 and establish the operating limits required by § 63.3892. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.3961(j), you must initiate the first material balance no later than the applicable compliance date specified in § 63.3883. For magnet wire coating operations, you may, with approval, conduct a performance test of one representative magnet wire coating machine for each group of identical or very similar magnet wire coating machines.

(i) You must conduct the initial performance test and establish the operating limits required by § 63.3892 no later than 180 days after the applicable compliance date specified in § 63.3883.

(ii) You must conduct periodic performance tests and establish the operating limits required by § 63.3892 within 5 years following the previous performance test. You must conduct the first periodic performance test before July 8, 2023, unless you are already required to complete periodic performance tests as a requirement of renewing your facility's operating permit under 40 CFR part 70 or 40 CFR part 71 and have conducted a performance test on or after July 8, 2018. Thereafter you must conduct a performance test no later than 5 years following the previous performance test. Operating limits must be confirmed or reestablished during each performance test. For any control device for which you are using the catalytic oxidizer control option at § 63.3967(b) and following the catalyst maintenance procedures in § 63.3967(b)(4), you are not required to conduct periodic testing control device performance testing as specified by this paragraph. For any control device for which instruments are used to continuously measure organic compound emissions, you are not required to conduct periodic control device performance testing as specified by this paragraph.

* * * * *

(4) For the initial compliance demonstration, you do not need to comply with the operating limits for the emission capture system and add-on control device required by § 63.3892 until after you have completed the initial performance tests specified in paragraph (a)(1) of this section. Instead, you must maintain a log detailing the operation and maintenance of the emission capture system, add-on control device, and continuous parameter monitors during the period between the compliance date and the performance test. You must begin complying with the operating limits established based on the initial performance tests specified in paragraph (a)(1) of this section for your affected source on the date you complete the performance tests. For magnet wire coating operations, you must begin complying with the operating limits for all identical or very similar magnet wire coating machines on the date you complete the performance test of a representative magnet wire coating machine. The requirements in this paragraph (a)(4) do not apply to solvent recovery systems for which you conduct liquid-liquid material balances according to the requirements in § 63.3961(j).

(b) * * *

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3883. Except for magnet wire coating operations and solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3961(j), you must conduct according to the schedule in paragraphs (b)(1)(i) and (ii) of this section initial and periodic performance tests of each capture system and add-on control device according to the procedures in §§ 63.3964, 63.3965, and 63.3966 and establish the operating limits required by § 63.3892. For magnet wire coating operations, you may, with approval, conduct a performance test of a single magnet wire coating machine that represents identical or very similar magnet wire coating machines. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.3961(j), you must initiate the first material balance no later than the compliance date specified in § 63.3883.

(i) You must conduct the initial performance test and establish the operating limits required by § 63.3892 no later than 180 days after the applicable compliance date specified in § 63.3883.

(ii) You must conduct periodic performance tests and establish the operating limits required by § 63.3892 within 5 years following the previous performance test. You must conduct the first periodic performance test before July 8, 2020, unless you are already required to complete periodic performance tests as a requirement of renewing your facility's operating permit under 40 CFR part 70 or 40 CFR part 71 and have conducted a performance test on or after July 8, 2018. Thereafter you must conduct a performance test no later than 5 years following the previous performance test. Operating limits must be confirmed or reestablished during each performance test. For any control device for which you are using the catalytic oxidizer control option at § 63.3967(b) and following the catalyst maintenance procedures in § 63.3967(b)(4), you are not required to conduct periodic testing

control device performance testing as specified by this paragraph. For any control device for which instruments are used to continuously measure organic compound emissions, you are not required to conduct periodic control device performance testing as specified by this paragraph.

* * * * *

(c) You are not required to conduct an initial performance test to determine capture efficiency or destruction efficiency of a capture system or control device if you receive approval to use the results of a performance test that has been previously conducted on that capture system or control device. Any such previous tests must meet the conditions described in paragraphs (c)(1) through (3) of this section. You are still required to conduct a periodic performance test according to the applicable requirements of paragraphs (a)(1)(ii) and (b)(2)(ii) of this section.

* * * * *

■ 30. Section 63.3961 is amended by revising paragraph (j)(3) to read as follows:

§ 63.3961 How do I demonstrate initial compliance?

* * * * *

(j) * * *

(3) Determine the mass fraction of volatile organic matter for each coating, thinner and/or other additive, and cleaning material used in the coating operation controlled by the solvent recovery system during the month, kg volatile organic matter per kg coating. You may determine the volatile organic matter mass fraction using EPA Method 24 of 40 CFR part 60, appendix A–7, ASTM D2369–10 (Reapproved 2015)[e] (incorporated by reference, *see* § 63.14), or an EPA approved alternative method, or you may use information provided by the manufacturer or supplier of the coating. In the event of any inconsistency between information provided by the manufacturer or supplier and the results of EPA Method 24 of 40 CFR part 60, appendix A–7, ASTM D2369–10 (Reapproved 2015)[e], or an approved alternative method, the test method results will take precedence unless, after consultation you demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

* * * * *

■ 31. Section 63.3963 is amended by revising paragraph (f) and adding paragraph (i) to read as follows:

§ 63.3963 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(f) As part of each semiannual compliance report required in § 63.3920, you must identify the coating operation(s) for which you used the emission rate with add-on controls option. If there were no deviations from the emission limits in § 63.3890, the operating limits in § 63.3892, and the work practice standards in § 63.3893, submit a statement that you were in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in § 63.3890, and you achieved the operating limits required by § 63.3892 and the work practice standards required by § 63.3893 during each compliance period.

* * * * *

(i) On and after January 5, 2021, deviations that occur due to malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are required to operate in accordance with § 63.3900(b). The Administrator will determine whether the deviations are violations according to the provisions in § 63.3900(b).

* * * * *

■ 32. Section 63.3964 is amended by revising paragraphs (a) introductory text and (a)(1) to read as follows:

§ 63.3964 What are the general requirements for performance tests?

(a) Before January 5, 2021, you must conduct each performance test required by § 63.3960 according to the requirements in § 63.7(e)(1) and under the conditions in this section, unless you obtain a waiver of the performance test according to the provisions in § 63.7(h). On and after January 5, 2021, you must conduct each performance test required by § 63.3960 according to the requirements in this section unless you obtain a waiver of the performance test according to the provisions in § 63.7(h).

(1) *Representative coating operation operating conditions.* You must conduct the performance test under representative operating conditions for the coating operation. Operations during periods of startup, shutdown, or periods of nonoperation do not constitute representative conditions for purposes of conducting a performance test. The owner or operator may not conduct performance tests during periods of malfunction. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation. Upon request, you must make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

■ 33. Section 63.3965 is amended by revising the introductory text to read as follows:

§ 63.3965 How do I determine the emission capture system efficiency?

You must use the procedures and test methods in this section to determine capture efficiency as part of each performance test required by § 63.3960.

* * * * *

■ 34. Section 63.3966 is amended by revising the introductory text and paragraph (b) to read as follows:

§ 63.3966 How do I determine the add-on control device emission destruction or removal efficiency?

You must use the procedures and test methods in this section to determine the add-on control device emission destruction or removal efficiency as part of the performance test required by § 63.3960. For each performance test, you must conduct three test runs as specified in § 63.7(e)(3) and each test run must last at least 1 hour. If the source is a magnet wire coating machine, you may use the procedures in section 3.0 of appendix A to this subpart as an alternative.

* * * * *

(b) Measure total gaseous organic mass emissions as carbon at the inlet and outlet of the add-on control device simultaneously, using either EPA Method 25 or 25A of appendix A–7 to 40 CFR part 60.

(1) Use EPA Method 25 of appendix A–7 to 40 CFR part 60 if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be more than 50 parts per million (ppm) at the control device outlet.

(2) Use EPA Method 25A of appendix A–7 to 40 CFR part 60 if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be 50 ppm or less at the control device outlet.

(3) Use EPA Method 25A of appendix A–7 to 40 CFR part 60 if the add-on control device is not an oxidizer.

(4) You may use EPA Method 18 of appendix A–6 to 40 CFR part 60 to subtract methane emissions from measured total gaseous organic mass emissions as carbon.

* * * * *

■ 35. Section 63.3967 is amended by revising paragraphs (a)(1) and (2), (b)(1) through (3), (d)(1) and (2), and (e)(1) through (4) to read as follows:

§ 63.3967 How do I establish the emission capture system and add-on control device operating limits during the performance test?

* * * * *

(a) * * *

(1) During performance tests, you must monitor and record the combustion temperature at least once every 15 minutes during each of the three test runs. You must monitor the temperature in the firebox of the thermal oxidizer or immediately downstream of the firebox before any substantial heat exchange occurs.

(2) For each performance test, use the data collected during the performance test to calculate and record the average combustion temperature maintained during the performance test. This average combustion temperature is the minimum operating limit for your thermal oxidizer.

(b) * * *

(1) During performance tests, you must monitor and record the temperature just before the catalyst bed and the temperature difference across the catalyst bed at least once every 15 minutes during each of the three test runs.

(2) For each performance test, use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed and the average temperature difference across the catalyst bed maintained during the performance test. These are the minimum operating limits for your catalytic oxidizer.

(3) You must monitor the temperature at the inlet to the catalyst bed and implement a site-specific inspection and maintenance plan for your catalytic oxidizer as specified in paragraph (b)(4) of this section. During the performance test, you must monitor and record the temperature just before the catalyst bed at least once every 15 minutes during each of the three test runs. For each performance test, use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed during the performance test. This is the minimum operating limit for your catalytic oxidizer.

* * * * *

(d) * * *

(1) During performance tests, you must monitor and record the condenser outlet (product side) gas temperature at least once every 15 minutes during each of the three test runs.

(2) For each performance test, use the data collected during the performance test to calculate and record the average condenser outlet (product side) gas temperature maintained during the performance test. This average condenser outlet gas temperature is the maximum operating limit for your condenser.

(e) * * *

(1) During performance tests, you must monitor and record the desorption concentrate stream gas temperature at least once every 15 minutes during each of the three runs of the performance test.

(2) For each performance test, use the data collected during the performance test to calculate and record the average temperature. This is the minimum operating limit for the desorption concentrate gas stream temperature.

(3) During performance tests, you must monitor and record the pressure drop of the dilute stream across the concentrator at least once every 15 minutes during each of the three runs of the performance test.

(4) For each performance test, use the data collected during the performance test to calculate and record the average pressure drop. This is the minimum operating limit for the dilute stream across the concentrator.

* * * * *

■ 36. Section 63.3968 is amended by revising paragraphs (a)(4), (5), and (7), and (c)(3) introductory text to read as follows:

§ 63.3968 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?

(a) * * *

(4) Before January 5, 2021, you must maintain the CPMS at all times and have available necessary parts for routine repairs of the monitoring equipment. On and after January 5, 2021, you must maintain the CPMS at all times in accordance with § 63.3900(b) and keep necessary parts readily available for routine repairs of the monitoring equipment.

(5) Before January 5, 2021, you must operate the CPMS and collect emission capture system and add-on control device parameter data at all times that a controlled coating operation is operating, except during monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, if applicable, calibration checks and required zero and span adjustments). On and after January 5, 2021, you must operate the CPMS and collect emission capture system and add-on control device parameter data at all times in accordance with § 63.3900(b).

* * * * *

(7) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the CPMS to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. Before January 5, 2021, any period for which the monitoring system is out-of-control and data are not available for required calculations is a deviation from the monitoring requirements. On and after January 5, 2021, except for periods of required quality assurance or control activities, any period for which the CPMS fails to operate and record data continuously as required by paragraph (a)(5) of this section, or generates data that cannot be included in calculating averages as specified in (a)(6) of this section constitutes a deviation from the monitoring requirements.

* * * * *

(c) * * *

(3) For all thermal oxidizers and catalytic oxidizers, you must meet the requirements in paragraphs (a) and (c)(3)(i) through (v) of this section for each gas temperature monitoring device. For the purposes of this paragraph (c)(3), a thermocouple is part of the temperature sensor.

* * * * *

■ 37. Section 63.3981 is amended by revising the definitions of ''*Deviation*'' and ''*Non-HAP coating*'' to read as follows:

§ 63.3981 What definitions apply to this subpart?

* * * * *

Deviation means:

(1) Before January 5, 2021, any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(i) Fails to meet any requirement or obligation established by this subpart including but not limited to, any emission limit or operating limit or work practice standard;

(ii) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(iii) Fails to meet any emission limit, or operating limit, or work practice standard in this subpart during SSM, regardless of whether or not such failure is permitted by this subpart; and

(2) On and after January 5, 2021, any instance in which an affected source subject to this subpart or an owner or operator of such a source:

(i) Fails to meet any requirement or obligation established by this subpart including but not limited to any emission limit, operating limit, or work practice standard; or

(ii) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit.

* * * * *

Non-HAP coating means, for the purposes of this subpart, a coating that contains no more than 0.1 percent by mass of any individual organic HAP that is listed in Table 5 to this subpart and no more than 1.0 percent by mass for any other individual HAP.

* * * * *

■ 38. Table 2 to Subpart MMMM of part 63 is revised to read as follows:

TABLE 2 TO SUBPART MMMM OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMM OF PART 63

You must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Applicable to subpart MMMM	Explanation
§ 63.1(a)(1)–(14)	General Applicability	Yes.	
§ 63.1(b)(1)–(3)	Initial Applicability Determination	Yes	Applicability to subpart MMMM is also specified in § 63.3881.
§ 63.1(c)(1)	Applicability After Standard Established.	Yes.	
§ 63.1(c)(2)–(3)	Applicability of Permit Program for Area Sources.	No	Area sources are not subject to subpart MMMM.
§ 63.1(c)(4)–(5)	Extensions and Notifications	Yes.	
§ 63.1(e)	Applicability of Permit Program Before Relevant Standard is Set.	Yes.	
§ 63.2	Definitions	Yes	Additional definitions are specified in § 63.3981.
§ 63.1(a)–(c)	Units and Abbreviations	Yes.	
§ 63.4(a)(1)–(5)	Prohibited Activities	Yes.	
§ 63.4(b)–(c)	Circumvention/Severability	Yes.	
§ 63.5(a)	Construction/Reconstruction	Yes.	
§ 63.5(b)(1)–(6)	Requirements for Existing Newly Constructed, and Reconstructed Sources.	Yes.	
§ 63.5(d)	Application for Approval of Construction/Reconstruction.	Yes.	
§ 63.5(e)	Approval of Construction/Reconstruction.	Yes.	
§ 63.5(f)	Approval of Construction/Reconstruction Based on Prior State Review.	Yes.	
§ 63.6(a)	Compliance With Standards and Maintenance Requirements—Applicability.	Yes.	
§ 63.6(b)(1)–(7)	Compliance Dates for New and Reconstructed Sources.	Yes	Section 63.3883 specifies the compliance dates.
§ 63.6(c)(1)–(5)	Compliance Dates for Existing Sources.	Yes	Section 63.3883 specifies the compliance dates.
§ 63.6(e)(1)–(2)	Operation and Maintenance	Yes before January 5, 2021. No on and after January 5, 2021.	*See* § 63.3900(b) for general duty requirement.
§ 63.6(e)(3)	SSMP	Yes before January 5, 2021. No on and after January 5, 2021.	
§ 63.6(f)(1)	Compliance Except During SSM	Yes before January 5, 2021. No on and after January 5, 2021.	
§ 63.6(f)(2)–(3)	Methods for Determining Compliance..	Yes.	
§ 63.6(g)(1)–(3)	Use of an Alternative Standard	Yes.	
§ 63.6(h)	Compliance With Opacity/Visible Emission Standards.	No	Subpart MMMM does not establish opacity standards and does not require continuous opacity monitoring systems (COMS).
§ 63.6(i)(1)–(16)	Extension of Compliance	Yes.	
§ 63.6(j)	Presidential Compliance Exemption.	Yes.	
§ 63.7(a)(1)	Performance Test Requirements—Applicability.	Yes	Applies to all affected sources. Additional requirements for performance testing are specified in §§ 63.3964, 63.3965, and 63.3966.

TABLE 2 TO SUBPART MMMM OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMM OF PART 63—Continued

You must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Applicable to subpart MMMM	Explanation
§ 63.7(a)(2)	Performance Test Requirements—Dates.	Yes	Applies only to performance tests for capture system and control device efficiency at sources using these to comply with the standard. Section 63.3960 specifies the schedule for performance test requirements that are earlier than those specified in § 63.7(a)(2).
§ 63.7(a)(3)–(4)	Performance Tests Required By the Administrator, Force Majeure.	Yes.	
§ 63.7(b)–(d)	Performance Test Requirements—Notification, Quality Assurance, Facilities Necessary for Safe Testing, Conditions During Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standard.
§ 63.7(e)(1)	Conduct of Performance Tests	Yes before January 5, 2021. No on and after January 5, 2021.	*See* §§ 63.3964.
§ 63.7(e)(2)–(4)	Conduct of Performance Tests	Yes.	
§ 63.7(f)	Performance Test Requirements—Use of Alternative Test Method.	Yes	Applies to all test methods except those used to determine capture system efficiency.
§ 63.7(g)–(h)	Performance Test Requirements—Data Analysis, Recordkeeping, Reporting, Waiver of Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standard.
§ 63.8(a)(1)–(3)	Monitoring Requirements—Applicability.	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standard. Additional requirements for monitoring are specified in § 63.3968.
§ 63.8(a)(4)	Additional Monitoring Requirements.	No	Subpart MMMM does not have monitoring requirements for flares.
§ 63.8(b)	Conduct of Monitoring	Yes.	
§ 63.8(c)(1)	Continuous Monitoring System (CMS) Operation and Maintenance.	Yes before January 5, 2021. No on and after January 5, 2021.	Section 63.3968 specifies the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(2)–(3)	CMS Operation and Maintenance	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standard. Additional requirements for CMS operations and maintenance are specified in § 63.3968.
§ 63.8(c)(4)	CMS	No	§ 63.3968 specifies the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(5)	COMS	No	Subpart MMMM does not have opacity or visible emission standards.
§ 63.8(c)(6)	CMS Requirements	No	Section 63.3968 specifies the requirements for monitoring systems for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(7)	CMS Out-of-Control Periods	Yes.	
§ 63.8(c)(8)	CMS Out-of-Control Periods and Reporting.	No	§ 63.3920 requires reporting of CMS out-of-control periods.

TABLE 2 TO SUBPART MMMM OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMM OF PART 63—Continued

You must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Applicable to subpart MMMM	Explanation
§ 63.8(d)–(e)	Quality Control Program and CMS Performance Evaluation.	No	Subpart MMMM does not require the use of continuous emissions monitoring systems.
§ 63.8(f)(1)–(5)	Use of an Alternative Monitoring Method.	Yes.	
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	No	Subpart MMMM does not require the use of continuous emissions monitoring systems.
§ 63.8(g)(1)–(5)	Data Reduction	No	Sections 63.3967 and 63.3968 specify monitoring data reduction.
§ 63.9(a)–(d)	Notification Requirements	Yes.	
§ 63.9(e)	Notification of Performance Test	Yes	Applies only to capture system and add-on control device performance tests at sources using these to comply with the standard.
§ 63.9(f)	Notification of Visible Emissions/Opacity Test.	No	Subpart MMMM does not have opacity or visible emissions standards.
§ 63.9(g)(1)–(3)	Additional Notifications When Using CMS.	No	Subpart MMMM does not require the use of continuous emissions monitoring systems.
§ 63.9(h)	Notification of Compliance Status	Yes	Section 63.3910 specifies the dates for submitting the notification of compliance status.
§ 63.9(i)	Adjustment of Submittal Deadlines.	Yes.	
§ 63.9(j)	Change in Previous Information	Yes.	
§ 63.10(a)	Recordkeeping/Reporting—Applicability and General Information.	Yes.	
§ 63.10(b)(1)	General Recordkeeping Requirements.	Yes	Additional requirements are specified in §§ 63.3930 and 63.3931.
§ 63.10(b)(2)(i)–(ii)	Recordkeeping of Occurrence and Duration of Startups and Shutdowns and of Failures to Meet Standards.	Yes before January 5, 2021. No on and after January 5, 2021.	*See* § 63.3930(j).
§ 63.10(b)(2)(iii)	Recordkeeping Relevant to Maintenance of Air Pollution Control and Monitoring Equipment.	Yes	§ 63.10(b)(2)(iii).
§ 63.10(b)(2)(iv)–(v)	Actions Taken to Minimize Emissions During SSM.	Yes before January 5, 2021. No on and after January 5, 2021.	*See* § 63.3930(j) for a record of actions taken to minimize emissions duration a deviation from the standard.
§ 63.10(b)(2)(vi)	Recordkeeping for CMS Malfunctions.	Yes before January 5, 2021. No on and after January 5, 2021.	*See* § 63.3930(j) for records of periods of deviation from the standard, including instances where a CMS is inoperative or out-of-control.
§ 63.10(b)(2)(xii)	Records	Yes.	
§ 63.10(b)(2)(xiii)		No	Subpart MMMM does not require the use of continuous emissions monitoring systems.
§ 63.10(b)(2)(xiv)		Yes.	
§ 63.10(b)(3)	Recordkeeping Requirements for Applicability Determinations.	Yes.	
§ 63.10(c)(1)–(6)	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	
§ 63.10(c)(7)–(8)	Additional Recordkeeping Requirements for Sources with CMS.	No	*See* § 63.3930(j) for records of periods of deviation from the standard, including instances where a CMS is inoperative or out-of-control.
§ 63.10(c)(10)–(14)	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	
§ 63.10(c)(15)	Records Regarding the SSMP	Yes before January 5, 2021. No on and after January 5, 2021.	

TABLE 2 TO SUBPART MMMM OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMM OF PART 63—Continued

You must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Applicable to subpart MMMM	Explanation
§ 63.10(d)(1)	General Reporting Requirements	Yes	Additional requirements are specified in § 63.3920.
§ 63.10(d)(2)	Report of Performance Test Results.	Yes	Additional requirements are specified in § 63.3920(b) and (d).
§ 63.10(d)(3)	Reporting Opacity or Visible Emissions Observations.	No	Subpart MMMM does not require opacity or visible emissions observations.
§ 63.10(d)(4)	Progress Reports for Sources With Compliance Extensions.	Yes.	
§ 63.10(d)(5)	SSM Reports	Yes before January 5, 2021. No on and after January 5, 2021.	*See* § 63.3920 (a)(7) and (c).
§ 63.10(e)(1)–(2)	Additional CMS Reports	No	Subpart MMMM does not require the use of continuous emissions monitoring systems.
§ 63.10(e)(3)	Excess Emissions/CMS Performance Reports.	No	Section 63.3920(b) specifies the contents of periodic compliance reports.
§ 63.10(e)(4)	COMS Data Reports	No	Subpart MMMMM does not specify requirements for opacity or COMS.
§ 63.10(f)	Recordkeeping/Reporting Waiver	Yes.	
§ 63.11	Control Device Requirements/Flares.	No	Subpart MMMM does not specify use of flares for compliance.
§ 63.12	State Authority and Delegations	Yes.	
§ 63.13	Addresses	Yes.	
§ 63.14	IBR	Yes.	
§ 63.15	Availability of Information/Confidentiality.	Yes.	

■ 39. Table 5 to Subpart MMMM of part 63 is added to read as follows:

TABLE 5 TO SUBPART MMMM OF PART 63—LIST OF HAP THAT MUST BE COUNTED TOWARD TOTAL ORGANIC HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS

Chemical Name	CAS No.
1,1,2,2-Tetrachloroethane	79–34–5
1,1,2-Trichloroethane	79–00–5
1,1-Dimethylhydrazine	57–14–7
1,2-Dibromo-3-chloropropane	96–12–8
1,2-Diphenylhydrazine	122–66–7
1,3-Butadiene	106–99–0
1,3-Dichloropropene	542–75–6
1,4-Dioxane	123–91–1
2,4,6-Trichlorophenol	88–06–2
2,4/2,6-Dinitrotoluene (mixture)	25321–14–6
2,4-Dinitrotoluene	121–14–2
2,4-Toluene diamine	95–80–7
2-Nitropropane	79–46–9
3,3′-Dichlorobenzidine	91–94–1
3,3′-Dimethoxybenzidine	119–90–4
3,3′-Dimethylbenzidine	119–93–7
4,4′-Methylene bis(2-chloroaniline)	101–14–4
Acetaldehyde	75–07–0
Acrylamide	79–06–1
Acrylonitrile	107–13–1
Allyl chloride	107–05–1
alpha-Hexachlorocyclohexane (a-HCH)	319–84–6
Aniline	62–53–3
Benzene	71–43–2
Benzidine	92–87–5
Benzotrichloride	98–07–7
Benzyl chloride	100–44–7
beta-Hexachlorocyclohexane (b-HCH)	319–85–7
Bis(2-ethylhexyl)phthalate	117–81–7
Bis(chloromethyl)ether	542–88–1

TABLE 5 TO SUBPART MMMM OF PART 63—LIST OF HAP THAT MUST BE COUNTED TOWARD TOTAL ORGANIC HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS—Continued

Chemical Name	CAS No.
Bromoform	75–25–2
Captan	133–06–2
Carbon tetrachloride	56–23–5
Chlordane	57–74–9
Chlorobenzilate	510–15–6
Chloroform	67–66–3
Chloroprene	126–99–8
Cresols (mixed)	1319–77–3
DDE	3547–04–4
Dichloroethyl ether	111–44–4
Dichlorvos	62–73–7
Epichlorohydrin	106–89–8
Ethyl acrylate	140–88–5
Ethylene dibromide	106–93–4
Ethylene dichloride	107–06–2
Ethylene oxide	75–21–8
Ethylene thiourea	96–45–7
Ethylidene dichloride (1,1-Dichloroethane)	75–34–3
Formaldehyde	50–00–0
Heptachlor	76–44–8
Hexachlorobenzene	118–74–1
Hexachlorobutadiene	87–68–3
Hexachloroethane	67–72–1
Hydrazine	302–01–2
Isophorone	78–59–1
Lindane (hexachlorocyclohexane, all isomers)	58–89–9
m-Cresol	108–39–4
Methylene chloride	75–09–2
Naphthalene	91–20–3
Nitrobenzene	98–95–3
Nitrosodimethylamine	62–75–9
o-Cresol	95–48–7
o-Toluidine	95–53–4
Parathion	56–38–2
p-Cresol	106–44–5
p-Dichlorobenzene	106–46–7
Pentachloronitrobenzene	82–68–8
Pentachlorophenol	87–86–5
Propoxur	114–26–1
Propylene dichloride	78–87–5
Propylene oxide	75–56–9
Quinoline	91–22–5
Tetrachloroethene	127–18–4
Toxaphene	8001–35–2
Trichloroethylene	79–01–6
Trifluralin	1582–09–8
Vinyl bromide	593–60–2
Vinyl chloride	75–01–4
Vinylidene chloride	75–35–4

Subpart NNNN—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances

■ 40. Section 63.4168 is amended by adding paragraphs (c)(3)(i) through (vii) to read as follows:

§ 63.4168 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?

* * * * *

(c) * * *

(3) * * *

(i) Locate the temperature sensor in a position that provides a representative temperature.

(ii) Use a temperature sensor with a measurement sensitivity of 4 degrees Fahrenheit or 0.75 percent of the temperature value, whichever is larger.

(iii) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(iv) If a gas temperature chart recorder is used, it must have a measurement sensitivity in the minor division of at least 20 degrees Fahrenheit.

(v) Perform an electronic calibration at least semiannually according to the procedures in the manufacturer's owner's manual. Following the electronic calibration, you must conduct a temperature sensor validation check in which a second or redundant temperature sensor placed nearby the process temperature sensor must yield a reading within 30 degrees Fahrenheit of the process temperature sensor's reading.

(vi) Any time the sensor exceeds the manufacturer's specified maximum operating temperature range, either conduct calibration and validation checks or install a new temperature sensor.

(vii) At least monthly, inspect components for integrity and electrical connections for continuity, oxidation, and galvanic corrosion.

* * * * *

Subpart OOOO—National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles

■ 41. Section 63.4371 is amended by revising the definition for ''*No organic HAP*'' to read as follows:

§ 63.4371 What definitions apply to this subpart?

* * * * *

No organic HAP means no organic HAP in table 5 to this subpart is present at 0.1 percent by mass or more and no organic HAP not listed in table 5 to this subpart is present at 1.0 percent by mass or more. The organic HAP content of a regulated material is determined according to § 63.4321(e)(1).

* * * * *

Subpart PPPP—National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products

■ 42. Section 63.4492 is amended by revising paragraph (b) to read as follows:

§ 63.4492 What operating limits must I meet?

* * * * *

(b) For any controlled coating operation(s) on which you use the emission rate with add-on controls option, except those for which you use a solvent recovery system and conduct a liquid-liquid material balance according to § 63.4561(j), you must meet the operating limits specified in table 1 to this subpart. These operating limits apply to the emission capture and control systems on the coating operation(s) for which you use this option, and you must establish the operating limits during the performance tests required in § 63.4560 according to the requirements in § 63.4567. You must meet the operating limits established during the most recent performance tests required in § 63.4560 at all times after you establish them.

* * * * *

■ 43. Section 63.4500 is amended by revising paragraphs (a)(2)(i) and (ii), (b), and (c) to read as follows:

§ 63.4500 What are my general requirements for complying with this subpart?

(a) * * *

(2) * * *

(i) The coating operation(s) must be in compliance with the applicable emission limit in § 63.4490 at all times.

(ii) The coating operation(s) must be in compliance with the operating limits for emission capture systems and add-on control devices required by § 63.4492 at all times, except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4561(j).

* * * * *

(b) Before January 5, 2021, you must always operate and maintain your affected source, including all air pollution control and monitoring equipment you use for purposes of complying with this subpart, according to the provisions in § 63.6(e)(1)(i). On and after January 5, 2021, at all times, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator that may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the affected source.

(c) Before January 5, 2021, if your affected source uses an emission capture system and add-on control device, you must develop a written SSMP according to the provisions in § 63.6(e)(3). The plan must address the startup, shutdown, and corrective actions in the event of a malfunction of the emission capture system or the add-on control device. The plan must also address any coating operation equipment that may cause increased emissions or that would affect capture efficiency if the process equipment malfunctions, such as conveyors that move parts among enclosures. On and after January 5, 2021, the SSMP is not required.

■ 44. Section 63.4520 is amended by:

■ a. Revising paragraphs (a)(5) introductory text and (a)(5)(i) and (iv);

■ b. Adding paragraph (a)(5)(v);

■ c. Revising paragraph (a)(6) introductory text and (a)(6)(iii);

■ d. Adding paragraph (a)(6)(iv);

■ e. Revising paragraphs (a)(7) introductory text and (a)(7)(iii), (vi) through (viii), (x), (xiii), and (xiv);

■ f. Adding paragraph (a)(7)(xv);

■ g. Revising paragraph (c) introductory text; and

■ h. Adding paragraphs (d) through (h).

The revisions and additions read as follows:

§ 63.4520 What reports must I submit?

(a) * * *

(5) *Deviations: Compliant material option.* If you used the compliant material option and there was a deviation from the applicable organic HAP content requirements in § 63.4490, the semiannual compliance report must contain the information in paragraphs (a)(5)(i) through (v) of this section.

(i) Identification of each coating used that deviated from the applicable emission limit, and each thinner and/or other additive, and cleaning material used that contained organic HAP, and the date, time, and duration each was used.

* * * * *

(iv) Before January 5, 2021, a statement of the cause of each deviation. On and after January 5, 2021, a statement of the cause of each deviation (including unknown cause, if applicable).

(v) On and after January 5, 2021, the number of deviations and, for each deviation, a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any applicable emission limit in § 63.4490, a description of the method used to estimate the emissions, and the actions you took to minimize emissions in accordance with § 63.4500(b).

(6) *Deviations: Emission rate without add-on controls option.* If you used the emission rate without add-on controls option and there was a deviation from the applicable emission limit in § 63.4490, the semiannual compliance report must contain the information in paragraphs (a)(6)(i) through (iv) of this section.

* * * * *

(iii) Before January 5, 2021, a statement of the cause of each deviation. On and after January 5, 2021, a statement of the cause of each deviation (including unknown cause, if applicable).

(iv) On and after January 5, 2021, the number of deviations, date, time, duration, a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any applicable emission limit in § 63.4490, a description of the method used to estimate the emissions, and the actions you took to minimize emissions in accordance with § 63.4500(b).

(7) *Deviations: Emission rate with add-on controls option.* If you used the

emission rate with add-on controls option and there was a deviation from the applicable emission limit in § 63.4490 or the applicable operating limit(s) in table 1 to this subpart (including any periods when emissions bypassed the add-on control device and were diverted to the atmosphere), before January 5, 2021, the semiannual compliance report must contain the information in paragraphs (a)(7)(i) through (xiv) of this section. This includes periods of SSM during which deviations occurred. On and after January 5, 2021, the semiannual compliance report must contain the information in paragraphs (a)(7)(i) through (xii), (xiv), and (xv) of this section. If you use the emission rate with add-on controls option and there was a deviation from the applicable work practice standards in § 63.4493(b), the semiannual compliance report must contain the information in paragraph (a)(7)(xiii) of this section.

* * * * *

(iii) The date and time that each malfunction of the capture system or add-on control devices started and stopped.

* * * * *

(vi) Before January 5, 2021, the date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks. On and after January 5, 2021, the number of instances that the CPMS was inoperative, and for each instance, except for zero (low-level) and high-level checks, the date, time, and duration that the CPMS was inoperative; the cause (including unknown cause) for the CPMS being inoperative; and the actions you took to minimize emissions in accordance with § 63.4500(b).

(vii) Before January 5, 2021, the date, time, and duration that each CPMS was out-of-control, including the information in § 63.8(c)(8). On and after January 5, 2021, the number of instances that the CPMS was out of control as specified in § 63.8(c)(7) and, for each instance, the date, time, and duration that the CPMS was out-of-control; the cause (including unknown cause) for the CPMS being out-of-control; and descriptions of corrective actions taken.

(viii) Before January 5, 2021, the date and time period of each deviation from an operating limit in table 1 to this subpart; date and time period of any bypass of the add-on control device; and whether each deviation occurred during a period of SSM or during another period. On and after January 5, 2021, the number of deviations from an operating limit in table 1 to this subpart and, for each deviation, the date, time, and duration of each deviation; the date, time, and duration of any bypass of the add-on control device.

* * * * *

(x) Before January 5, 2021, a breakdown of the total duration of the deviations from the operating limits in table 1 of this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes. On and after January 5, 2021, a breakdown of the total duration of the deviations from the operating limits in table 1 to this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to control equipment problems, process problems, other known causes, and other unknown causes.

* * * * *

(xiii) Before January 5, 2021, for each deviation from the work practice standards, a description of the deviation, the date and time period of the deviation, and the actions you took to correct the deviation. On and after January 5, 2021, for deviations from the work practice standards, the number of deviations, and, for each deviation, the information in paragraphs (a)(7)(xiii)(A) and (B) of this section:

(A) A description of the deviation; the date, time, and duration of the deviation; and the actions you took to minimize emissions in accordance with § 63.4500(b).

(B) The description required in paragraph (a)(7)(xiii)(A) of this section must include a list of the affected sources or equipment for which a deviation occurred and the cause of the deviation (including unknown cause, if applicable.

(xiv) Before January 5, 2021, a statement of the cause of each deviation. On and after January 5, 2021, for deviations from an emission limit in § 63.4490 or an operating limit in Table 1 to this subpart, a statement of the cause of each deviation (including unknown cause, if applicable) and the actions you took to minimize emissions in accordance with § 63.4500(b).

(xv) On and after January 5, 2021, for each deviation from an emission limit in § 63.4490 or operating limit in table 1 to this subpart, a list of the affected sources or equipment for which a deviation occurred, an estimate of the quantity of each regulated pollutant emitted over any emission limit in § 63.4490 or operating limit in table 1 to this subpart, and a description of the method used to estimate the emissions.

* * * * *

(c) *SSM reports.* Before January 5, 2021, if you used the emission rate with add-on controls option and you had a SSM during the semiannual reporting period, you must submit the reports specified in paragraphs (c)(1) and (2) of this section. On and after January 5, 2021, the reports specified in paragraphs (c)(1) and (2) of this section are not required.

* * * * *

(d) *Performance test reports.* On and after January 5, 2021, you must submit the results of the performance tests required in § 63.4560 following the procedure specified in paragraphs (d)(1) through (3) of this section.

(1) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (*https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert*) at the time of the test, you must submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). The CEDRI interface can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). Performance test data must be submitted in a file format generated through the use of the EPA's ERT or an alternate electronic file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT website.

(2) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test, you must submit the results of the performance test to the Administrator at the appropriate address listed in § 63.13, unless the Administrator agrees to or specifies an alternate reporting method.

(3) If you claim that some of the performance test information being submitted under paragraph (d)(1) of this section is Confidential Business Information (CBI), you must submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage medium to the EPA. The electronic medium must be clearly marked as CBI and mailed to U.S. EPA/OAPQS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or

alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraph (d)(1) of this section.

(e) *Initial notification reports.* On and after January 5, 2021, the owner or operator shall submit the initial notifications required in § 63.9(b) and the notification of compliance status required in § 63.9(h) and § 63.4510(c) to the EPA via the CEDRI. The CEDRI interface can be accessed through the EPA's CDX (*https://cdx.epa.gov/*). The owner or operator must upload to CEDRI an electronic copy of each applicable notification in portable document format (PDF). The applicable notification must be submitted by the deadline specified in this subpart, regardless of the method in which the reports are submitted. Owners or operators who claim that some of the information required to be submitted via CEDRI is CBI shall submit a complete report generated using the appropriate form in CEDRI or an alternate electronic file consistent with the XML schema listed on the EPA's CEDRI website, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage medium to the EPA. The electronic medium shall be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted shall be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(f) *Semiannual compliance reports.* On and after January 5, 2021, or once the reporting template has been available on the CEDRI website for 1 year, whichever date is later, the owner or operator shall submit the semiannual compliance report required in paragraph (a) of this section to the EPA via the CEDRI. (CEDRI can be accessed through the EPA's CDX (*https://cdx.epa.gov/*)). The owner or operator must use the appropriate electronic template on the CEDRI website for this subpart or an alternate electronic file format consistent with the XML schema listed on the CEDRI website (*https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri*). The date report templates become available will be listed on the CEDRI website. If the reporting form for the semiannual compliance report specific to this subpart is not available in CEDRI at the time that the report is due, you must submit the report to the Administrator at the appropriate addresses listed in § 63.13. Once the form has been available in CEDRI for 1 year, you must begin submitting all subsequent reports via CEDRI. The reports must be submitted by the deadlines specified in this subpart, regardless of the method in which the reports are submitted. Owners or operators who claim that some of the information required to be submitted via CEDRI is CBI shall submit a complete report generated using the appropriate form in CEDRI or an alternate electronic file consistent with the XML schema listed on the EPA's CEDRI website, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage medium to the EPA. The electronic medium shall be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted shall be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(g) *Reporting during EPA system outages.* If you are required to electronically submit a report through the CEDRI in the EPA's CDX, and due to a planned or actual outage of either the EPA's CEDRI or CDX systems within the period of time beginning 5 business days prior to the date that the submission is due, you will be or are precluded from accessing CEDRI or CDX and submitting a required report within the time prescribed, you may assert a claim of the EPA system outage for failure to timely comply with the reporting requirement. You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or caused a delay in reporting. You must provide to the Administrator a written description identifying the date, time and length of the outage; a rationale for attributing the delay in reporting beyond the regulatory deadline to the EPA system outage; describe the measures taken or to be taken to minimize the delay in reporting; and identify a date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported. In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved. The decision to accept the claim of the EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(h) *Reporting during force majeure events.* If you are required to electronically submit a report through CEDRI in the EPA's CDX and a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning 5 business days prior to the date the submission is due, the owner or operator may assert a claim of force majeure for failure to timely comply with the reporting requirement. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (*e.g.,* hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (*e.g.,* large scale power outage). If you intend to assert a claim of force majeure, you must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or caused a delay in reporting. You must provide to the Administrator a written description of the force majeure event and a rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event; describe the measures taken or to be taken to minimize the delay in reporting; and identify a date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported. In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs. The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

■ 45. Section 63.4530 is amended by revising paragraphs (h), (i) introductory text, and (i)(1) and (2) to read as follows:

§ 63.4530 What records must I keep?

* * * * *

(h) Before January 5, 2021, you must keep records of the date, time, and duration of each deviation. On and after January 5, 2021, for each deviation from an emission limitation reported under § 63.4520(a)(5) through (7), a record of the information specified in paragraphs (h)(1) through (4) of this section, as applicable.

(1) The date, time, and duration of the deviation, as reported under § 63.4520(a)(5) through (7).

(2) A list of the affected sources or equipment for which the deviation occurred and the cause of the deviation, as reported under § 63.4520(a)(5) through (7).

(3) An estimate of the quantity of each regulated pollutant emitted over any applicable emission limit in § 63.4490 or any applicable operating limit in Table 1 to this subpart, and a description of the method used to calculate the estimate, as reported under § 63.4520(a)(5) through (7).

(4) A record of actions taken to minimize emissions in accordance with § 63.4500(b) and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

(i) If you use the emission rate with add-on controls option, you must also keep the records specified in paragraphs (i)(1) through (8) of this section.

(1) Before January 5, 2021, for each deviation, a record of whether the deviation occurred during a period of SSM. On and after January 5, 2021, a record of whether the deviation occurred during a period of SSM is not required.

(2) Before January 5, 2021, the records in § 63.6(e)(3)(iii) through (v) related to SSM. On and after January 5, 2021, the records in § 63.6(e)(3)(iii) through (v) related to SSM are not required.

* * * * *

■ 46. Section 63.4531 is amended by revising paragraph (a) to read as follows:

§ 63.4531 In what form and for how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1). Where appropriate, the records may be maintained as electronic spreadsheets or as a database. On and after January 5, 2021, any records required to be maintained by this subpart that are in reports that were submitted electronically via the EPA's CEDRI may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

* * * * *

■ 47. Section 63.4541 is amended by revising paragraphs (a)(1)(i) and (a)(2) and (4) to read as follows:

§ 63.4541 How do I demonstrate initial compliance with the emission limitations?

* * * * *

(a) * * *

(1) * * *

(i) Count each organic HAP in Table 5 to this subpart that is measured to be present at 0.1 percent by mass or more and at 1.0 percent by mass or more for other compounds. For example, if toluene (not listed in Table 5 to this subpart) is measured to be 0.5 percent of the material by mass, you do not have to count it. Express the mass fraction of each organic HAP you count as a value truncated to four places after the decimal point (*e.g.,* 0.3791).

* * * * *

(2) *EPA Method 24 (appendix A–7 to 40 CFR part 60).* For coatings, you may use EPA Method 24 to determine the mass fraction of nonaqueous volatile matter and use that value as a substitute for mass fraction of organic HAP. As an alternative to using EPA Method 24, you may use ASTM D2369–10 (Reapproved 2015)[e] (incorporated by reference, *see* § 63.14). For reactive adhesives in which some of the HAP react to form solids and are not emitted to the atmosphere, you may use the alternative method contained in appendix A to this subpart, rather than EPA Method 24. You may use the volatile fraction that is emitted, as measured by the alternative method in appendix A to this subpart, as a substitute for the mass fraction of organic HAP.

* * * * *

(4) *Information from the supplier or manufacturer of the material.* You may rely on information other than that generated by the test methods specified in paragraphs (a)(1) through (3) of this section, such as manufacturer's formulation data, if it represents each organic HAP in Table 5 to this subpart that is present at 0.1 percent by mass or more and at 1.0 percent by mass or more for other compounds. For example, if toluene (not listed in Table 5 to this subpart) is 0.5 percent of the material by mass, you do not have to count it. For reactive adhesives in which some of the HAP react to form solids and are not emitted to the atmosphere, you may rely on manufacturer's data that expressly states the organic HAP or volatile matter mass fraction emitted. If there is a disagreement between such information and results of a test conducted according to paragraphs (a)(1) through (3) of this section, then the test method results will take precedence unless, after consultation you demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

* * * * *

■ 48. Section 63.4551 is amended by revising paragraph (c) to read as follows:

§ 63.4551 How do I demonstrate initial compliance with the emission limitations?

* * * * *

(c) *Determine the density of each material.* Determine the density of each liquid coating, thinner and/or other additive, and cleaning material used during each month from test results using ASTM D1475–13 or ASTM D2111–10 (Reapproved 2015) (both incorporated by reference, *see* § 63.14), information from the supplier or manufacturer of the material, or reference sources providing density or specific gravity data for pure materials. If there is disagreement between ASTM D1475–13 or ASTM D2111–10 (Reapproved 2015) and other such information sources, the test results will take precedence unless, after consultation you demonstrate to the satisfaction of the enforcement agency that the formulation data are correct. If you purchase materials or monitor consumption by weight instead of volume, you do not need to determine material density. Instead, you may use the material weight in place of the combined terms for density and volume in Equations 1A, 1B, 1C, and 2 of this section.

* * * * *

■ 49. Section 63.4560 is amended by revising the section heading and paragraphs (a)(1) and (4), (b)(1), and (c) introductory text to read as follows:

§ 63.4560 By what date must I conduct performance tests and initial compliance demonstrations?

(a) * * *

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.4483. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4561(j), you must conduct according to the schedule in paragraphs (a)(1)(i) and (ii) of this section initial and periodic performance tests of each capture system and add-on control device according to the procedures in §§ 63.4564, 63.4565, and 63.4566 and establish the operating limits required by § 63.4492. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.4561(j), you must initiate the first material balance no later than the applicable compliance date specified in § 63.4483.

(i) You must conduct the initial performance test and establish the operating limits required by § 63.4492 no later than 180 days after the applicable compliance date specified in § 63.4483.

(ii) You must conduct periodic performance tests and establish the operating limits required by § 63.4492 within 5 years following the previous performance test. You must conduct the first periodic performance test before July 8, 2023, unless you are already required to complete periodic performance tests as a requirement of renewing your facility's operating permit under 40 CFR part 70 or 40 CFR part 71 and have conducted a performance test on or after July 8, 2018. Thereafter you must conduct a performance test no later than 5 years following the previous performance test. Operating limits must be confirmed or reestablished during each performance test. For any control device for which you are using the catalytic oxidizer control option at § 63.4567(b) and following the catalyst maintenance procedures in § 63.4567(b)(4), you are not required to conduct periodic control device performance testing as specified by this paragraph. For any control device for which instruments are used to continuously measure organic compound emissions, you are not required to conduct periodic control device performance testing as specified by this paragraph.

* * * * *

(4) For the initial compliance demonstration, you do not need to comply with the operating limits for the emission capture system and add-on control device required by § 63.4492 until after you have completed the initial performance tests specified in paragraph (a)(1) of this section. Instead, you must maintain a log detailing the operation and maintenance of the emission capture system, add-on control device, and continuous parameter monitors during the period between the compliance date and the performance test. You must begin complying with the operating limits established based on the initial performance tests specified in paragraph (a)(1) of this section for your affected source on the date you complete the performance tests. The requirements in this paragraph (a)(4) do not apply to solvent recovery systems for which you conduct liquid-liquid material balances according to the requirements in § 63.4561(j).

(b) * * *

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.4483. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4561(j), you must conduct according to the schedule in paragraphs (b)(1)(i) and (ii) of this section initial and periodic performance tests of each capture system and add-on control device according to the procedures in §§ 63.4564, 63.4565, and 63.4566 and establish the operating limits required by § 63.4492. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.4561(j), you must initiate the first material balance no later than the compliance date specified in § 63.4483.

(i) You must conduct the initial performance test and establish the operating limits required by § 63.4492 no later than 180 days after the applicable compliance date specified in § 63.4483.

(ii) You must conduct periodic performance tests and establish the operating limits required by § 63.4492 within 5 years following the previous performance test. You must conduct the first periodic performance test before July 8, 2023, unless you are already required to complete periodic performance tests as a requirement of renewing your facility's operating permit under 40 CFR part 70 or 40 CFR part 71 and have conducted a performance test on or after July 8, 2018. Thereafter you must conduct a performance test no later than 5 years following the previous performance test. Operating limits must be confirmed or reestablished during each performance test. For any control device for which you are using the catalytic oxidizer control option at § 63.4567(b) and following the catalyst maintenance procedures in § 63.4567(b)(4), you are not required to conduct periodic control device performance testing as specified by this paragraph. For any control device for which instruments are used to continuously measure organic compound emissions, you are not required to conduct periodic control device performance testing as specified by this paragraph.

* * * * *

(c) You are not required to conduct an initial performance test to determine capture efficiency or destruction efficiency of a capture system or control device if you receive approval to use the results of a performance test that has been previously conducted on that capture system or control device. Any such previous tests must meet the conditions described in paragraphs (c)(1) through (3) of this section. You are still required to conduct a periodic performance test according to the applicable requirements of paragraphs (a)(1)(ii) and (b)(2)(ii) of this section.

* * * * *

■ 50. Section 63.4561 is amended by revising paragraphs (j)(3) and (n) to read as follows:

§ 63.4561 How do I demonstrate initial compliance?

* * * * *

(j) * * *

(3) Determine the mass fraction of volatile organic matter for each coating, thinner and/or other additive, and cleaning material used in the coating operation controlled by the solvent recovery system during the month, kg volatile organic matter per kg coating. You may determine the volatile organic matter mass fraction using EPA Method 24 of 40 CFR part 60, appendix A–7, ASTM D2369–10 (Reapproved 2015)[e] (incorporated by reference, *see* § 63.14), or an EPA approved alternative method. Alternatively, you may determine the volatile organic matter mass fraction using information provided by the manufacturer or supplier of the coating. In the event of any inconsistency between information provided by the manufacturer or supplier and the results of EPA Method 24 of 40 CFR part 60, appendix A–7, ASTM D2369–10 (Reapproved 2015)[e], or an approved alternative method, the test method results will take precedence unless, after consultation you demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

* * * * *

(n) *Compliance demonstration.* The organic HAP emission rate for the initial compliance period, calculated using Equation 5 of this section, must be less than or equal to the applicable emission limit for each subcategory in § 63.4490 or the predominant activity or facility-specific emission limit allowed in § 63.4490(c). You must keep all records as required by §§ 63.4530 and 63.4531. As part of the notification of compliance status required by § 63.4510, you must identify the coating operation(s) for which you used the emission rate with add-on controls option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate was less than or equal to the applicable emission limit in § 63.4490, and for control devices other than solvent recovery system using a liquid-liquid material balance, you achieved the operating limits required by § 63.4492 and the work practice standards required by § 63.4493.

■ 51. Section 63.4563 is amended by revising paragraph (f) and adding paragraph (g) to read as follows:

§ 63.4563 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(f) As part of each semiannual compliance report required in § 63.4520, you must identify the coating operation(s) for which you used the emission rate with add-on controls option. If there were no deviations from the emission limits in § 63.4490, the operating limits in § 63.4492, and the work practice standards in § 63.4493, submit a statement that you were in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in § 63.4490, and you achieved the operating limits required by § 63.4492 and the work practice standards required by § 63.4493 during each compliance period.

(g) On and after January 5, 2021, deviations that occur due to malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are required to operate in accordance with § 63.4500(b). The Administrator will determine whether the deviations are violations according to the provisions in § 63.4500(b).

* * * * *

■ 52. Section 63.4564 is amended by revising paragraphs (a) introductory text and (a)(1) to read as follows:

§ 63.4564 What are the general requirements for performance tests?

(a) Before January 5, 2021, you must conduct each performance test required by § 63.4560 according to the requirements in § 63.7(e)(1) and under the conditions in this section, unless you obtain a waiver of the performance test according to the provisions in § 63.7(h). On and after January 5, 2021, you must conduct each performance test required by § 63.4560 according to the requirements in this section unless you obtain a waiver of the performance test according to the provisions in § 63.7(h).

(1) Representative coating operation operating conditions. You must conduct the performance test under representative operating conditions for the coating operation. Operations during periods of startup, shutdown, or nonoperation do not constitute representative conditions for purposes of conducting a performance test. The owner or operator may not conduct performance tests during periods of malfunction. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation. Upon request, you must make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

■ 53. Section 63.4565 is amended by revising the introductory text to read as follows:

§ 63.4565 How do I determine the emission capture system efficiency?

You must use the procedures and test methods in this section to determine capture efficiency as part of each performance test required by § 63.4560.

* * * * *

■ 54. Section 63.4566 is amended by revising the introductory text and paragraphs (a)(1) through (4) and (b) to read as follows:

§ 63.4566 How do I determine the add-on control device emission destruction or removal efficiency?

You must use the procedures and test methods in this section to determine the add-on control device emission destruction or removal efficiency as part of the performance test required by § 63.4560. For each performance test, you must conduct three test runs as specified in § 63.7(e)(3) and each test run must last at least 1 hour.

(a) * * *

(1) Use EPA Method 1 or 1A of appendix A–1 to 40 CFR part 60, as appropriate, to select sampling sites and velocity traverse points.

(2) Use EPA Method 2, 2A, 2C, 2D, or 2F of appendix A–1 to 40 CFR part 60, or 2G of appendix A–2 to 40 CFR part 60, as appropriate, to measure gas volumetric flow rate.

(3) Use EPA Method 3, 3A, or 3B of appendix A–2 to 40 CFR part 60, as appropriate, for gas analysis to determine dry molecular weight.

(4) Use EPA Method 4 of appendix A–3 to 40 CFR part 60, to determine stack gas moisture.

* * * * *

(b) Measure total gaseous organic mass emissions as carbon at the inlet and outlet of the add-on control device simultaneously, using either EPA Method 25 or 25A of appendix A–7 to 40 CFR part 60.

(1) Use EPA Method 25 of appendix A–7 if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be more than 50 parts per million (ppm) at the control device outlet.

(2) Use EPA Method 25A of appendix A–7 if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be 50 ppm or less at the control device outlet.

(3) Use EPA Method 25A of appendix A–7 if the add-on control device is not an oxidizer.

(4) You may use EPA Method 18 in appendix A–6 of part 60 to subtract methane emissions from measured total gaseous organic mass emissions as carbon.

* * * * *

■ 55. Section 63.4567 is amended by revising the introductory text and paragraphs (a)(1) and (2), (b)(1) through (3), (c)(1), (d)(1) and (2), and (e)(1) through (4) to read as follows:

§ 63.4567 How do I establish the emission capture system and add-on control device operating limits during the performance test?

During performance tests required by § 63.4560 and described in §§ 63.4564, 63.4565, and 63.4566, you must establish the operating limits required by § 63.4492 according to this section, unless you have received approval for alternative monitoring and operating limits under § 63.8(f) as specified in § 63.4492.

(a) * * *

(1) During performance tests, you must monitor and record the combustion temperature at least once every 15 minutes during each of the three test runs. You must monitor the temperature in the firebox of the thermal oxidizer or immediately downstream of the firebox before any substantial heat exchange occurs.

(2) For each performance test, use the data collected during the performance test to calculate and record the average combustion temperature maintained during the performance test. This average combustion temperature is the minimum operating limit for your thermal oxidizer.

(b) * * *

(1) During performance tests, you must monitor and record the temperature just before the catalyst bed and the temperature difference across the catalyst bed at least once every 15 minutes during each of the three test runs.

(2) For each performance test, use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed and the average temperature difference across the catalyst bed maintained during the performance test. These are the minimum operating limits for your catalytic oxidizer.

(3) You must monitor the temperature at the inlet to the catalyst bed and implement a site-specific inspection and

maintenance plan for your catalytic oxidizer as specified in paragraph (b)(4) of this section. During performance tests, you must monitor and record the temperature just before the catalyst bed at least once every 15 minutes during each of the three test runs. For each performance test, use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed during the performance test. This is the minimum operating limit for your catalytic oxidizer.

* * * * *

(c) * * *

(1) During performance tests, you must monitor and record the total regeneration desorbing gas (*e.g.,* steam or nitrogen) mass flow for each regeneration cycle, and the carbon bed temperature after each carbon bed regeneration and cooling cycle for the regeneration cycle either immediately preceding or immediately following the performance test.

* * * * *

(d) * * *

(1) During performance tests, you must monitor and record the condenser outlet (product side) gas temperature at least once every 15 minutes during each of the three test runs of the performance test.

(2) For each performance test, use the data collected during the performance test to calculate and record the average condenser outlet (product side) gas temperature maintained during the performance test. This average condenser outlet gas temperature is the maximum operating limit for your condenser.

(e) * * *

(1) During performance tests, you must monitor and record the desorption concentrate stream gas temperature at least once every 15 minutes during each of the three runs of the performance test.

(2) For each performance test, use the data collected during the performance test to calculate and record the average temperature. This is the minimum operating limit for the desorption concentrate gas stream temperature.

(3) During each performance test, you must monitor and record the pressure drop of the dilute stream across the concentrator at least once every 15 minutes during each of the three runs of the performance test.

(4) For each performance test, use the data collected during the performance test to calculate and record the average pressure drop. This is the minimum operating limit for the dilute stream across the concentrator.

* * * * *

■ 56. Section 63.4568 is amended by revising paragraphs (a)(4), (5), and (7) and (c)(3) introductory text to read as follows:

§ 63.4568 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?

(a) * * *

(4) Before January 5, 2021, you must maintain the CPMS at all times and have available necessary parts for routine repairs of the monitoring equipment. On and after January 5, 2021, you must maintain the CPMS at all times in accordance with § 63.4500(b) and keep necessary parts readily available for routine repairs of the monitoring equipment.

(5) Before January 5, 2021, you must operate the CPMS and collect emission capture system and add-on control device parameter data at all times that a controlled coating operation is operating, except during monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, if applicable, calibration checks and required zero and span adjustments). On and after January 5, 2021, you must operate the CPMS and collect emission capture system and add-on control device parameter data at all times in accordance with § 63.4500(b).

* * * * *

(7) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the CPMS to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. Before January 5, 2021, any period for which the monitoring system is out-of-control and data are not available for required calculations is a deviation from the monitoring requirements. On and after January 5, 2021, except for periods of required quality assurance or control activities, any period for which the CPMS fails to operate and record data continuously as required by paragraph (a)(5) of this section, or generates data that cannot be included in calculating averages as specified in (a)(6) of this section constitutes a deviation from the monitoring requirements.

* * * * *

(c) * * *

(3) For all thermal oxidizers and catalytic oxidizers, you must meet the requirements in paragraphs (a) and (c)(3)(i) through (v) of this section for each gas temperature monitoring device. For the purposes of this paragraph (c)(3), a thermocouple is part of the temperature sensor.

* * * * *

■ 57. Section 63.4581 is amended by revising the definitions of ''*Deviation*'' and ''*Non-HAP coating*'' to read as follows:

§ 63.4581 What definitions apply to this subpart?

* * * * *

Deviation means:

(1) Before January 5, 2021, any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(i) Fails to meet any requirement or obligation established by this subpart including but not limited to, any emission limit or operating limit or work practice standard;

(ii) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(iii) Fails to meet any emission limit, or operating limit, or work practice standard in this subpart during SSM, regardless of whether or not such failure is permitted by this subpart; and

(2) On and after January 5, 2021, any instance in which an affected source subject to this subpart or an owner or operator of such a source:

(i) Fails to meet any requirement or obligation established by this subpart including but not limited to any emission limit, operating limit, or work practice standard; or

(ii) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit.

* * * * *

Non-HAP coating means, for the purposes of this subpart, a coating that contains no more than 0.1 percent by mass of any individual organic HAP that is listed in table 5 to this subpart and no more than 1.0 percent by mass for any other individual HAP.

* * * * *

■ 58. Table 2 to Subpart PPPP of part 63 is revised to read as follows:

TABLE 2 TO SUBPART PPPP OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPP OF PART 63

You must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Applicable to subpart PPPP	Explanation
§ 63.1(a)(1)–(12)	General Applicability	Yes.	
§ 63.1(b)(1)–(3)	Initial Applicability Determination	Yes	Applicability to subpart PPPP is also specified in § 63.4481.
§ 63.1(c)(1)	Applicability After Standard Established.	Yes.	
§ 63.1(c)(2)	Applicability of Permit Program for Area Sources.	No	Area sources are not subject to subpart PPPP.
§ 63.1(c)(5)	Extensions and Notifications	Yes.	
§ 63.1(e)	Applicability of Permit Program Before Relevant Standard is Set.	Yes.	
§ 63.2	Definitions	Yes	Additional definitions are specified in § 63.4581.
§ 63.3	Units and Abbreviations	Yes.	
§ 63.4(a)(1)–(2)	Prohibited Activities	Yes.	
§ 63.4(b)–(c)	Circumvention/Fragmentation	Yes.	
§ 63.5(a)	Construction/Reconstruction	Yes.	
§ 63.5(b)(1), (3), (4), (6)	Requirements for Existing, Newly Constructed, and Reconstructed Sources.	Yes.	
§ 63.5(d)(1)(i)–(ii)(F), (d)(1)(ii)(H), (d)(1)(ii)(J), (d)(1)(iii), (d)(2)–(4).	Application for Approval of Construction/Reconstruction.	Yes.	
§ 63.5(e)	Approval of Construction/Reconstruction.	Yes.	
§ 63.5(f)	Approval of Construction/Reconstruction Based on Prior State Review.	Yes.	
§ 63.6(a)	Compliance With Standards and Maintenance Requirements—Applicability.	Yes.	
§ 63.6(b)(1)–(5), (b)(7)	Compliance Dates for New and Reconstructed Sources.	Yes	Section 63.4483 specifies the compliance dates.
§ 63.6(c)(1), (2), (5)	Compliance Dates for Existing Sources.	Yes	Section 63.4483 specifies the compliance dates.
§ 63.6(e)(1)(i)–(ii)	Operation and Maintenance	Yes before January 5, 2021. No on and after January 5, 2021.	*See* § 63.4500(b) for general duty requirement.
§ 63.6(e)(1)(iii)	Operation and Maintenance	Yes.	
§ 63.6(e)(3)(i), (e)(3)(iii)–(ix)	SSMP	Yes before January 5, 2021. No on and after January 5, 2021.	
§ 63.6(f)(1)	Compliance Except During SSM	Yes before January 5, 2021. No on and after January 5, 2021.	
§ 63.6(f)(2)–(3)	Methods for Determining Compliance.	Yes.	
§ 63.6(g)	Use of an Alternative Standard	Yes.	
§ 63.6(h)	Compliance With Opacity/Visible Emission Standards.	No	Subpart PPPP does not establish opacity standards and does not require continuous opacity monitoring systems (COMS).
§ 63.6(i)(1)–(14), (16)	Extension of Compliance	Yes.	
§ 63.6(j)	Presidential Compliance Exemption.	Yes.	
§ 63.7(a)(1)	Performance Test Requirements—Applicability.	Yes	Applies to all affected sources. Additional requirements for performance testing are specified in §§ 63.4564, 63.4565, and 63.4566.
§ 63.7(a)(2), except (a)(2)(i)–(viii)	Performance Test Requirements—Dates.	Yes	Applies only to performance tests for capture system and control device efficiency at sources using these to comply with the standards. Section 63.4560 specifies the schedule for performance test requirements that are earlier than those specified in § 63.7(a)(2).
§ 63.7(a)(3)–(4)	Performance Tests Required By the Administrator, Force Majeure.	Yes.	

TABLE 2 TO SUBPART PPPP OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPP OF PART 63—Continued

You must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Applicable to subpart PPPP	Explanation
§ 63.7(b)–(d)	Performance Test Requirements—Notification, Quality Assurance, Facilities Necessary for Safe Testing, Conditions During Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standards.
§ 63.7(e)(1)	Conduct of Performance Tests	Yes before January 5, 2021. No on and after January 5, 2021.	*See* § 63.4500 and § 63.4564(a).
§ 63.7(e)(2)–(4)	Conduct of Performance Tests	Yes.	
§ 63.7(f)	Performance Test Requirements—Use Alternative Test Method.	Yes	Applies to all test methods except those of used to determine capture system efficiency.
§ 63.7(g)–(h)	Performance Test Requirements—Data Analysis, Recordkeeping, Reporting, Waiver of Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standards.
§ 63.8(a)(1)–(2)	Monitoring Requirements—Applicability.	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standards. Additional requirements for monitoring are specified in § 63.4568.
§ 63.8(a)(4)	Additional Monitoring Requirements.	No	Subpart PPPP does not have monitoring requirements for flares.
§ 63.8(b)	Conduct of Monitoring	Yes.	
§ 63.8(c)(1)	Continuous Monitoring System (CMS) Operation and Maintenance.	Yes before January 5, 2021. No on and after January 5, 2021.	Section 63.4568 specifies the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(2)–(3)	CMS Operation and Maintenance	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standard. Additional requirements for CMS operations and maintenance are specified in § 63.4568.
§ 63.8(c)(4)	CMS	No	Section 63.4568 specifies the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(5)	COMS	No	Subpart PPPP does not have opacity or visible emission standards.
§ 63.8(c)(6)	CMS Requirements	No	Section 63.4568 specifies the requirements for monitoring systems for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(7)	CMS Out-of-Control Periods	Yes.	
§ 63.8(c)(8)	CMS Out-of-Control Periods and Reporting.	No	Section 63.4520 requires reporting of CMS out-of-control periods.
§ 63.8(d)–(e)	Quality Control Program and CMS Performance Evaluation.	No	Subpart PPPP does not require the use of continuous emissions monitoring systems.
§ 63.8(f)(1)–(5)	Use of an Alternative Monitoring Method.	Yes.	
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	No	Subpart PPPP does not require the use of continuous emissions monitoring systems.
§ 63.8(g)	Data Reduction	No	Sections 63.4567 and 63.4568 specify monitoring data reduction.

TABLE 2 TO SUBPART PPPP OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPP OF PART 63—Continued

You must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Applicable to subpart PPPP	Explanation
§ 63.9(a)–(d)	Notification Requirements	Yes.	
§ 63.9(e)	Notification of Performance Test	Yes	Applies only to capture system and add-on control device performance tests at sources using these to comply with the standards.
§ 63.9(f)	Notification of Visible Emissions/Opacity Test.	No	Subpart PPPP does not have opacity or visible emission standards.
§ 63.9(g)	Additional Notifications When Using CMS.	No	Subpart PPPP does not require the use of continuous emissions monitoring systems.
§ 63.9(h)(1)–(3), (5)–(6)	Notification of Compliance Status	Yes	Section 63.4510 specifies the dates for submitting the notification of compliance status.
§ 63.9(i)	Adjustment of Submittal Deadlines.	Yes.	
§ 63.9(j)	Change in Previous Information	Yes.	
§ 63.10(a)	Recordkeeping/Reporting—Applicability and General Information.	Yes.	
§ 63.10(b)(1)	General Recordkeeping Requirements.	Yes	Additional requirements are specified in §§ 63.4530 and 63.4531.
§ 63.10(b)(2)(i)–(ii)	Recordkeeping of Occurrence and Duration of Startups and Shutdowns and of Failures to Meet Standards.	Yes before January 5, 2021. No on and after January 5, 2021.	*See* § 63.4530(h).
§ 63.10(b)(2)(iii)	Recordkeeping Relevant to Maintenance of Air Pollution Control and Monitoring Equipment.	Yes.	
§ 63.10(b)(2)(iv)–(v)	Actions Taken to Minimize Emissions During SSM.	Yes before January 5, 2021. No on and after January 5, 2021.	*See* § 63.4530(h)(4) for a record of actions taken to minimize emissions during a deviation from the standard.
§ 63.10(b)(2)(vi)	Recordkeeping for CMS Malfunctions.	Yes before January 5, 2021. No on and after January 5, 2021.	*See* § 63.4530(h) for records of periods of deviation from the standard, including instances where a CMS is inoperative or out-of-control.
§ 63.10(b)(2)(vii)–(xii)	Records	Yes.	
§ 63.10(b)(2)(xiii)		No	Subpart PPPP does not require the use of continuous emissions monitoring systems.
§ 63.10(b)(2)(xiv)		Yes.	
§ 63.10(b)(3)	Recordkeeping Requirements for Applicability Determinations.	Yes.	
§ 63.10(c)(1), (5)–(6)	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	
§ 63.10(c)(7)–(8)	Additional Recordkeeping Requirements for Sources with CMS.	No	*See* § 63.4530(h) for records of periods of deviation from the standard, including instances where a CMS is inoperative or out-of-control.
§ 63.10(c)(10)–(14)	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	
§ 63.10(c)(15)	Records Regarding the SSMP	Yes before January 5, 2021. No on and after January 5, 2021.	
§ 63.10(d)(1)	General Reporting Requirements	Yes	Additional requirements are specified in § 63.4520.
§ 63.10(d)(2)	Report of Performance Test Results.	Yes	Additional requirements are specified in § 63.4520(b).
§ 63.10(d)(3)	Reporting Opacity or Visible Emissions Observations.	No	Subpart PPPP does not require opacity or visible emissions observations.
§ 63.10(d)(4)	Progress Reports for Sources With Compliance Extensions.	Yes.	

TABLE 2 TO SUBPART PPPP OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPP OF PART 63—Continued

You must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Applicable to subpart PPPP	Explanation
§ 63.10(d)(5)	SSM Reports	Yes before January 5, 2021. No on and after January 5, 2021.	*See* § 63.4520(a)(7).
§ 63.10(e)(1)–(2)	Additional CMS Reports	No	Subpart PPPP does not require the use of continuous emissions monitoring systems.
§ 63.10(e)(3)	Excess Emissions/CMS Performance Reports.	No	Section 63.4520(b) specifies the contents of periodic compliance reports.
§ 63.10(e)(4)	COMS Data Reports	No	Subpart PPPP does not specify requirements for opacity or COMS.
§ 63.10(f)	Recordkeeping/Reporting Waiver	Yes.	
§ 63.11	Control Device Requirements/Flares.	No	Subpart PPPP does not specify use of flares for compliance.
§ 63.12	State Authority and Delegations	Yes.	
§ 63.13	Addresses	Yes.	
§ 63.14	IBR	Yes.	
§ 63.15	Availability of Information/Confidentiality.	Yes.	

■ 59. Table 5 to Subpart PPPP of part 63 is added to read as follows:

TABLE 5 TO SUBPART PPPP OF PART 63—LIST OF HAP THAT MUST BE COUNTED TOWARD TOTAL ORGANIC HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS

Chemical name	CAS No.
1,1,2,2-Tetrachloroethane	79–34–5
1,1,2-Trichloroethane	79–00–5
1,1-Dimethylhydrazine	57–14–7
1,2-Dibromo-3-chloropropane	96–12–8
1,2-Diphenylhydrazine	122–66–7
1,3-Butadiene	106–99–0
1,3-Dichloropropene	542–75–6
1,4-Dioxane	123–91–1
2,4,6-Trichlorophenol	88–06–2
2,4/2,6-Dinitrotoluene (mixture)	25321–14–6
2,4-Dinitrotoluene	121–14–2
2,4-Toluene diamine	95–80–7
2-Nitropropane	79–46–9
3,3′-Dichlorobenzidine	91–94–1
3,3′-Dimethoxybenzidine	119–90–4
3,3′-Dimethylbenzidine	119–93–7
4,4′-Methylene bis(2-chloroaniline)	101–14–4
Acetaldehyde	75–07–0
Acrylamide	79–06–1
Acrylonitrile	107–13–1
Allyl chloride	107–05–1
alpha-Hexachlorocyclohexane (a-HCH)	319–84–6
Aniline	62–53–3
Benzene	71–43–2
Benzidine	92–87–5
Benzotrichloride	98–07–7
Benzyl chloride	100–44–7
beta-Hexachlorocyclohexane (b-HCH)	319–85–7
Bis(2-ethylhexyl)phthalate	117–81–7
Bis(chloromethyl)ether	542–88–1
Bromoform	75–25–2
Captan	133–06–2
Carbon tetrachloride	56–23–5
Chlordane	57–74–9
Chlorobenzilate	510–15–6
Chloroform	67–66–3
Chloroprene	126–99–8
Cresols (mixed)	1319–77–3

TABLE 5 TO SUBPART PPPP OF PART 63—LIST OF HAP THAT MUST BE COUNTED TOWARD TOTAL ORGANIC HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS—Continued

Chemical name	CAS No.
DDE	3547–04–4
Dichloroethyl ether	111–44–4
Dichlorvos	62–73–7
Epichlorohydrin	106–89–8
Ethyl acrylate	140–88–5
Ethylene dibromide	106–93–4
Ethylene dichloride	107–06–2
Ethylene oxide	75–21–8
Ethylene thiourea	96–45–7
Ethylidene dichloride (1,1-Dichloroethane)	75–34–3
Formaldehyde	50–00–0
Heptachlor	76–44–8
Hexachlorobenzene	118–74–1
Hexachlorobutadiene	87–68–3
Hexachloroethane	67–72–1
Hydrazine	302–01–2
Isophorone	78–59–1
Lindane (hexachlorocyclohexane, all isomers)	58–89–9
m-Cresol	108–39–4
Methylene chloride	75–09–2
Naphthalene	91–20–3
Nitrobenzene	98–95–3
Nitrosodimethylamine	62–75–9
o-Cresol	95–48–7
o-Toluidine	95–53–4
Parathion	56–38–2
p-Cresol	106–44–5
p-Dichlorobenzene	106–46–7
Pentachloronitrobenzene	82–68–8
Pentachlorophenol	87–86–5
Propoxur	114–26–1
Propylene dichloride	78–87–5
Propylene oxide	75–56–9
Quinoline	91–22–5
Tetrachloroethene	127–18–4
Toxaphene	8001–35–2
Trichloroethylene	79–01–6
Trifluralin	1582–09–8
Vinyl bromide	593–60–2
Vinyl chloride	75–01–4
Vinylidene chloride	75–35–4

■ 60. Appendix A to Subpart PPPP of Part 63 is amended by revising section 1.2 to read as follows:

Appendix A to Subpart PPPP of Part 63—Determination of Weight Volatile Matter Content and Weight Solids Content of Reactive Adhesives

* * * * *

1.2 Principle: One-part and multiple-part reactive adhesives undergo a reactive conversion from liquid to solid during the application and assembly process. Reactive adhesives are applied to a single surface, but then are usually quickly covered with another mating surface to achieve a bonded assembly. The monomers employed in such systems typically react and are converted to non-volatile solids. If left uncovered, as in a EPA Method 24 (or ASTM D2369–10 (Reapproved 2015)[e]) test, the reaction is inhibited by the presence of oxygen and volatile loss of the reactive components competes more heavily with the cure reaction. If this were to happen under normal use conditions, the adhesives would not provide adequate performance. This method minimizes this undesirable deterioration of the adhesive performance.

* * * * *

Subpart RRRR—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture

■ 61. Section 63.4965 is amended by adding paragraphs (b)(1) through (3) to read as follows:

§ 63.4965 How do I determine the add-on control device emission destruction or removal efficiency?

* * * * *

(b) * * *

(1) Use EPA Method 25 to appendix A–7 to part 60 if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be more than 50 parts per million (ppm) at the control device outlet.

(2) Use EPA Method 25A to appendix A–7 to part 60 if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be 50 ppm or less at the control device outlet.

(3) Use EPA Method 25A to appendix A–7 to part 60 if the add-on control device is not an oxidizer.

* * * * *

[FR Doc. 2020–05908 Filed 7–7–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL REGISTER

Vol. 85 Wednesday,

No. 131 July 8, 2020

Part III

The President

Executive Order 13934—Building and Rebuilding Monuments to American Heroes

Federal Register
Vol. 85, No. 131
Wednesday, July 8, 2020

Presidential Documents

Title 3—

The President

Executive Order 13934 of July 3, 2020

Building and Rebuilding Monuments to American Heroes

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Purpose.* America owes its present greatness to its past sacrifices. Because the past is always at risk of being forgotten, monuments will always be needed to honor those who came before. Since the time of our founding, Americans have raised monuments to our greatest citizens. In 1784, the legislature of Virginia commissioned the earliest statue of George Washington, a ''monument of affection and gratitude'' to a man who ''unit[ed] to the endowment[s] of the Hero the virtues of the Patriot'' and gave to the world ''an Immortal Example of true Glory.'' I Res. H. Del. (June 24, 1784). In our public parks and plazas, we have erected statues of great Americans who, through acts of wisdom and daring, built and preserved for us a republic of ordered liberty.

These statues are silent teachers in solid form of stone and metal. They preserve the memory of our American story and stir in us a spirit of responsibility for the chapters yet unwritten. These works of art call forth gratitude for the accomplishments and sacrifices of our exceptional fellow citizens who, despite their flaws, placed their virtues, their talents, and their lives in the service of our Nation. These monuments express our noblest ideals: respect for our ancestors, love of freedom, and striving for a more perfect union. They are works of beauty, created as enduring tributes. In preserving them, we show reverence for our past, we dignify our present, and we inspire those who are to come. To build a monument is to ratify our shared national project.

To destroy a monument is to desecrate our common inheritance. In recent weeks, in the midst of protests across America, many monuments have been vandalized or destroyed. Some local governments have responded by taking their monuments down. Among others, monuments to Christopher Columbus, George Washington, Thomas Jefferson, Benjamin Franklin, Francis Scott Key, Ulysses S. Grant, leaders of the abolitionist movement, the first all-volunteer African-American regiment of the Union Army in the Civil War, and American soldiers killed in the First and Second World Wars have been vandalized, destroyed, or removed.

These statues are not ours alone, to be discarded at the whim of those inflamed by fashionable political passions; they belong to generations that have come before us and to generations yet unborn. My Administration will not abide an assault on our collective national memory. In the face of such acts of destruction, it is our responsibility as Americans to stand strong against this violence, and to peacefully transmit our great national story to future generations through newly commissioned monuments to American heroes.

Sec. 2. *Task Force for Building and Rebuilding Monuments to American Heroes.* (a) There is hereby established the Interagency Task Force for Building and Rebuilding Monuments to American Heroes (Task Force). The Task Force shall be chaired by the Secretary of the Interior (Secretary), and shall include the following additional members:

(i) the Administrator of General Services (Administrator);

(ii) the Chairperson of the National Endowment for the Arts (NEA);

(iii) the Chairperson of the National Endowment for the Humanities (NEH);

(iv) the Chairman of the Advisory Council on Historic Preservation (ACHP); and

(v) any officers or employees of any executive department or agency (agency) designated by the President or the Secretary.

(b) The Department of the Interior shall provide funding and administrative support as may be necessary for the performance and functions of the Task Force. The Secretary shall designate an official of the Department of the Interior to serve as the Executive Director of the Task Force, responsible for coordinating its day-to-day activities.

(c) The Chairpersons of the NEA and NEH and the Chairman of the ACHP shall establish cross-department initiatives within the NEA, NEH, and ACHP, respectively, to advance the purposes of the Task Force and this order and to coordinate relevant agency operations with the Task Force.

Sec. 3. *National Garden of American Heroes.* (a) It shall be the policy of the United States to establish a statuary park named the National Garden of American Heroes (National Garden).

(b) Within 60 days of the date of this order, the Task Force shall submit a report to the President through the Assistant to the President for Domestic Policy that proposes options for the creation of the National Garden, including potential locations for the site. In identifying options, the Task Force shall:

(i) strive to open the National Garden expeditiously;

(ii) evaluate the feasibility of creating the National Garden through a variety of potential avenues, including existing agency authorities and appropriations; and

(iii) consider the availability of authority to encourage and accept the donation or loan of statues by States, localities, civic organizations, businesses, religious organizations, and individuals, for display at the National Garden.

(c) In addition to the requirements of subsection 3(b) of this order, the proposed options for the National Garden should adhere to the criteria described in subsections (c)(i) through (c)(vi) of this section.

(i) The National Garden should be composed of statues, including statues of John Adams, Susan B. Anthony, Clara Barton, Daniel Boone, Joshua Lawrence Chamberlain, Henry Clay, Davy Crockett, Frederick Douglass, Amelia Earhart, Benjamin Franklin, Billy Graham, Alexander Hamilton, Thomas Jefferson, Martin Luther King, Jr., Abraham Lincoln, Douglas MacArthur, Dolley Madison, James Madison, Christa McAuliffe, Audie Murphy, George S. Patton, Jr., Ronald Reagan, Jackie Robinson, Betsy Ross, Antonin Scalia, Harriet Beecher Stowe, Harriet Tubman, Booker T. Washington, George Washington, and Orville and Wilbur Wright.

(ii) The National Garden should be opened for public access prior to the 250th anniversary of the proclamation of the Declaration of Independence on July 4, 2026.

(iii) Statues should depict historically significant Americans, as that term is defined in section 7 of this order, who have contributed positively to America throughout our history. Examples include: the Founding Fathers, those who fought for the abolition of slavery or participated in the underground railroad, heroes of the United States Armed Forces, recipients of the Congressional Medal of Honor or Presidential Medal of Freedom, scientists and inventors, entrepreneurs, civil rights leaders, missionaries and religious leaders, pioneers and explorers, police officers and firefighters killed or injured in the line of duty, labor leaders, advocates for the poor and disadvantaged, opponents of national socialism or international socialism, former Presidents of the United States and other elected officials, judges and justices, astronauts, authors, intellectuals, artists, and teachers. None will have lived perfect lives, but all will be worth honoring, remembering, and studying.

(iv) All statues in the National Garden should be lifelike or realistic representations of the persons they depict, not abstract or modernist representations.

(v) The National Garden should be located on a site of natural beauty that enables visitors to enjoy nature, walk among the statues, and be inspired to learn about great figures of America's history. The site should be proximate to at least one major population center, and the site should not cause significant disruption to the local community.

(vi) As part of its civic education mission, the National Garden should also separately maintain a collection of statues for temporary display at appropriate sites around the United States that are accessible to the general public.

Sec. 4. *Commissioning of New Statues and Works of Art.* (a) The Task Force shall examine the appropriations authority of the agencies represented on it in light of the purpose and policy of this order. Based on its examination of relevant authorities, the Task Force shall make recommendations for the use of these agencies' appropriations.

(b) To the extent appropriate and consistent with applicable law and the other provisions of this order, Task Force agencies that are authorized to provide for the commissioning of statues or monuments shall, in expending funds, give priority to projects involving the commissioning of publicly accessible statues of persons meeting the criteria described in section 3(b)(iii) of this order, with particular preference for statues of the Founding Fathers, former Presidents of the United States, leading abolitionists, and individuals involved in the discovery of America.

(c) To the extent appropriate and consistent with applicable law, these agencies shall prioritize projects that will result in the installation of a statue as described in subsection (b) of this section in a community where a statue depicting a historically significant American was removed or destroyed in conjunction with the events described in section 1 of this order.

(d) After consulting with the Task Force, the Administrator of General Services shall promptly revise and thereafter operate the General Service Administration's (GSA's) Art in Architecture (AIA) Policies and Procedures, GSA Acquisition Letter V–10–01, and Part 102–77 of title 41, Code of Federal Regulations, to prioritize the commission of works of art that portray historically significant Americans or events of American historical significance or illustrate the ideals upon which our Nation was founded. Priority should be given to public-facing monuments to former Presidents of the United States and to individuals and events relating to the discovery of America, the founding of the United States, and the abolition of slavery. Such works of art should be designed to be appreciated by the general public and by those who use and interact with Federal buildings. Priority should be given to this policy above other policies contained in Part 102–77 of title 41, Code of Federal Regulations, and revisions made pursuant to this subsection shall be made to supersede any regulatory provisions of AIA that may conflict with or otherwise impede advancing the purposes of this subsection.

(e) When a statue or work of art commissioned pursuant to this section is meant to depict a historically significant American, the statue or work of art shall be a lifelike or realistic representation of that person, not an abstract or modernist representation.

Sec. 5. *Educational Programming.* The Chairperson of the NEH shall prioritize the allocation of funding to programs and projects that educate Americans about the founding documents and founding ideals of the United States, as appropriate and to the extent consistent with applicable law, including section 956 of title 20, United States Code. The founding documents include the Declaration of Independence, the Constitution, and the Federalist Papers. The founding ideals include equality under the law, respect for inalienable individual rights, and representative self-government. Within 90 days of the conclusion of each Fiscal Year from 2021 through 2026, the Chairperson

shall submit a report to the President through the Assistant to the President for Domestic Policy that identifies funding allocated to programs and projects pursuant to this section.

Sec. 6. *Protection of National Garden and Statues Commissioned Pursuant to this Order.* The Attorney General shall apply section 3 of Executive Order 13933 of June 26, 2020 (Protecting American Monuments, Memorials, and Statues and Combating Recent Criminal Violence), with respect to violations of Federal law regarding the National Garden and all statues commissioned pursuant to this order.

Sec. 7. *Definition.* The term ''historically significant American'' means an individual who was, or became, an American citizen and was a public figure who made substantive contributions to America's public life or otherwise had a substantive effect on America's history. The phrase also includes public figures such as Christopher Columbus, Junipero Serra, and the Marquis de La Fayette, who lived prior to or during the American Revolution and were not American citizens, but who made substantive historical contributions to the discovery, development, or independence of the future United States.

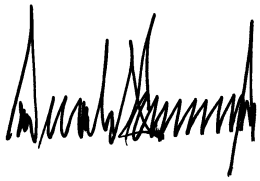
Sec. 8. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

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

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

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

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



THE WHITE HOUSE,

July 3, 2020.

[FR Doc. 2020–14872

Filed 7–7–20; 11:15 am]

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Vol. 85, No. 131

Wednesday, July 8, 2020

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